

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

May 26, 2011

CHANGE NOTICE NO. 4  
TO  
CONTRACT NO. 071B7200131  
(Supercedes Contract #071B6200411)  
between  
THE STATE OF MICHIGAN  
and

NAME & ADDRESS OF VENDOR  <b>ADP, Inc.</b> <b>2575 Westside Parkway, Suite 500</b> <b>Alpharetta, GA 30004</b>  leanora_weaver@adp.com	TELEPHONE (313) 845-6687 <b>Leanora Weaver</b>
	VENDOR NUMBER/MAIL CODE
	BUYER/CA (517) 241-3768 <b>Lance Kingsbury</b>
Contract Compliance Inspector: Laura Schmidt (517) 373-9211 <b>Administration of Flexible Spending Account – Department of Civil Service</b>	
CONTRACT PERIOD: From: <b>January 16, 2007</b> To: <b>May 31, 2012</b>	
TERMS  <b>N/A</b>	SHIPMENT  <b>N/A</b>
F.O.B.  <b>N/A</b>	SHIPPED FROM  <b>N/A</b>
MINIMUM DELIVERY REQUIREMENTS  <b>N/A</b>	

**NATURE OF CHANGE(S):**

Effective immediately, this Contract is hereby **EXTENDED** through May 31, 2012 and **INCREASED** by \$321,000.00, per the attached documents.

All other terms, conditions and specifications remain unchanged.

**AUTHORITY/REASON:**

Per agency request, Ad Board approval on 6/21/11, and DTMB Purchasing Operations' approval.

**INCREASE: \$321,000.00**

**TOTAL REVISED ESTIMATED CONTRACT VALUE: \$2,157,025.00**

## ADP TRANSITION EXTENSION AGREEMENT

- ADP to close out the 2011 FSA plan year and corresponding grace and run-out periods. The transition extension administration fee will be calculated on a monthly basis at the administration fee rate of \$3.40 per number of participants during September 2011 through December 2011. For January 2012 through May 2012, the fee will be based on the number of participants as of December 31, 2011. Administration fees will be paid on a monthly basis. No additional fees will be charged to the State of Michigan unless mutually agreed upon by both parties.
- 2011 Overpayment Reports will be submitted to the State of Michigan on a predetermined schedule to be mutually agreed upon prior to the inception of the Contract extension.
- The Performance Standards and Guarantees and corresponding penalties in place for the 2011 Contract will be continued and reported as currently Contractually arranged, throughout the run-out period. January, February, March – first quarter, and April and May prorated as if a three-month quarter with the third month meeting all Service Level Agreements.
- ADP will cooperate with the State of Michigan throughout the entire time period ending with the final close-out of the 2011 plan year. This cooperation will include provision of claim and participant contact history to the State of Michigan within five business days from the time of request.

### 2011-2012 Transition Timeline

<i>Activity/Task</i>		<i>Completion Date</i>	<i>Owner</i>	<i>Comments</i>
<b>Claims</b>				
1	Automatic Data Processing, Inc will continue to process 2011 claims activity through run out (4/15/12)	04/15/12	Automatic Data Processing, Inc.	Claims received with post mark dates or faxes of 04/16/12 or later, will be destroyed
2	Automatic Data Processing, Inc. will process AGP claims for State	05/31/12	Automatic Data Processing, Inc.	State of Michigan will alert employees to double dipping prohibition
3	Claims processing will continue through 5/31/12 for any late submissions and denials/appeals	05/31/12	Automatic Data Processing, Inc.	State of Michigan Contact is Deborah Fogg
4	Claims audit will continue to mitigate any future appeals	05/31/12	Automatic Data Processing, Inc.	
5	Automatic Data Processing, Inc. will deny any 2012 claims sent by State of Michigan participants in error to Automatic Data Processing, Inc	05/31/12	Automatic Data Processing, Inc.	Automatic Data Processing, Inc. claim form- Automatic Data Processing, Inc will update system and send claims denial form. New administrator form - Automatic Data Processing, Inc will not update system but will image documents
6	Update State of Michigan custom claims forms to reflect new administrator # and site	12/15/11	Automatic Data Processing, Inc.	Automatic Data Processing, Inc. system & Call Center will direct employees to the State of Michigan's website for the appropriate form

<b>Appeals</b>				
7	Automatic Data Processing, Inc. will continue to process participant appeals up to 180 days past run out date (4/15/12)	11/30/12	Automatic Data Processing, Inc.	State of Michigan Contact is Paula Robinson
8	Automatic Data Processing, Inc. will continue to work with claims denials up to 180 days past run out	11/30/12	Automatic Data Processing, Inc.	State of Michigan Contact is Paula Robinson
<b>Card</b>				
9	Cards will generate through 12/31/2011	12/31/11	Automatic Data Processing, Inc.	Contractor cannot stop card generation
10	Cards expire - Card swipe activity will end 12/31/11	12/31/11	Automatic Data Processing, Inc.	Force posts may occur after 12/31/11
11	Late Settlements will occur in January	01/31/12	Automatic Data Processing, Inc.	
12	State of Michigan will need to communicate to participants to update card numbers on file with vendors as Automatic Data Processing, Inc. cards are expiring	10/2011	State of Michigan	To be included in pre Open Enrollment communications
<b>Communications</b>				
13	Initial communication piece to participants informing them that a change is coming	10/2011	State of Michigan	To be included in the notification for FSA Open Enrollment
14	Explanation about run out and AGP claims processing and substantiation requests	10/2011	State of Michigan	To be explained the in FSA Open Enrollment Brochure. (Alert about double dipping and force posts.)
15	Explanation that cards will expire 12/31/11	10/2011	State of Michigan	See line #14
16	Explanation to remove Automatic Data Processing, Inc. card number from vendors and sites	To be determined	State of Michigan	See line #14
17	Reminder e-mails to plan participants about 2011 balance usage	11/2011	State of Michigan	See line #14
18	Automatic Data Processing, Inc. will update Solution Center Rep scripts with new administrator information	12/2011	Automatic Data Processing, Inc./State of Michigan	Automatic Data Processing, Inc. will direct employee's to State of Michigan's website for forms
19	Automatic Data Processing, Inc. will update State of Michigan custom claim forms to have additional page with new administrator info	12/2011	Automatic Data Processing, Inc./State of Michigan	See line #18
20	Review/Update Automatic Data Processing, Inc FSA Help Tools/Call Flows	12/2011	Automatic Data Processing, Inc.	See line #18
<b>Overpayments</b>				
21	Automatic Data Processing, Inc. will continue to send overpayment report to State of Michigan based upon pre-determined schedule	See comments	Automatic Data Processing, Inc./State of Michigan	01/17/12, 02/13/12, 03/22/12, 04/23/12, 05/21/12 & 06/05/12
22	Repayments	See comments	State of Michigan	State of Michigan will not supply these to Automatic Data Processing, Inc. unless repayment occurs before the end of the grace period
23	Final Annual Report	06/28/12	Automatic Data Processing, Inc./State of Michigan	

24	Weekly list of checks received by State of Michigan employees	Beginning 05/14/12	Automatic Data Processing, Inc./State of Michigan	
25	2010 Overpayments completed to date & reported	01/23/12	State of Michigan	
26	Letters from State of Michigan to Employee for 2012 Overpayment with 04/15 cut-off reminder	See comments	State of Michigan	01/24/12, 02/28/12, 03/31/12
27	Letters from State of Michigan to Employee for 2012 Overpayment. Payback letter	See comments	State of Michigan	04/30/12, 05/28/12, 06/12/12 & 07/03/12
<b>Statements</b>				
28	Automatic Data Processing, Inc. will send out 4th quarter 2011 statements	01/15/12	Automatic Data Processing, Inc.	
<b>File Feeds</b>				
29	Determine when last eligibility and contribution files will be received from State of Michigan	To be determined	Automatic Data Processing, Inc./State of Michigan	
30	State of Michigan to turn off functionality to send Automatic Data Processing, Inc. 2012 open enrollment file	To be determined	State of Michigan	No 2012 plan data will be sent to Automatic Data Processing, Inc.
<b>Funding</b>				
31	2010 Plan Year Forfeiture and Annual Report	03/13/12	Automatic Data Processing, Inc.	
32	2010 Plan Year Stale Dated Check Report	03/19/12	Automatic Data Processing, Inc.	
33	Automatic Data Processing, Inc. will continue to request funding of claims activity through March 2012	3/31/2012	Automatic Data Processing, Inc.	
34	Review is based on denied claims (this is the basis for possible claims which may need to paid).	5/6/2012	Automatic Data Processing, Inc.	
35	Funds held in the bank account in excess of the amount needed in #34 are returned to the State.	5/6/2012	Automatic Data Processing, Inc.	
36	Bank account will remain open for six months for stale dated checks and any appeals activity	11/30/2012	Automatic Data Processing, Inc.	
37	Reconcile Account with State of Michigan	8/1/2012	Automatic Data Processing, Inc.	
38	ADP can return funds on account as of 11/30/2012; the bank account cannot be closed – stale checks will be deposited into this account; ADP can make arrangements to return the stale checks to the State monthly or quarterly.	11/30/2012	Automatic Data Processing, Inc.	
39	State Date Check Report for 2011 - One year from last check issue date	6/20/2013	Automatic Data Processing, Inc.	
<b>WEB/IVR</b>				
40	Create a flash message on site to redirect participants to new administrator	12/15/11	Automatic Data Processing, Inc.	
41	Create a message on IVR with new administrator info - TBD	12/15/2011	Automatic Data Processing, Inc.	***additional charges will apply
42	Shut down IVR and FlexDirect access	06/30/13	Automatic Data Processing, Inc.	

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

August 4, 2010

CHANGE NOTICE NO. 3  
TO  
CONTRACT NO. 071B7200131  
(Supercedes Contract #071B6200411)  
between  
THE STATE OF MICHIGAN  
and

NAME & ADDRESS OF VENDOR		TELEPHONE (313) 845-6687
ADP, Inc. 2575 Westside Parkway, Suite 500 Alpharetta, GA 30004  leanora_weaver@adp.com		Leanora Weaver
		VENDOR NUMBER/MAIL CODE
		BUYER/CA (517) 241-3768 Lance Kingsbury
Contract Compliance Inspector: Susan Kant (517) 335-3068 <a href="mailto:kants@michigan.gov">kants@michigan.gov</a> Administration of Flexible Spending Account – Department of Civil Service		
CONTRACT PERIOD: From: January 16, 2007 To: August 31, 2011		
TERMS	N/A	SHIPMENT
F.O.B.	N/A	SHIPPED FROM
MINIMUM DELIVERY REQUIREMENTS	N/A	N/A

NATURE OF CHANGE(S):

Effective immediately, this Contract is hereby EXTENDED through August 31, 2011 and INCREASED by \$450,000.00.

Additionally, the buyer has been changed to Lance Kingsbury.

All other terms, conditions and specifications remain unchanged.

AUTHORITY/REASON:

Per agency request (PRF dated 5/25/10), Ad Board approval on 8/3/10, and DTMB Purchasing Operations' approval.

REVISED CURRENT AUTHORIZED SPEND LIMIT: \$1,836,025.00

FOR THE CONTRACTOR:

<div>ADP, Inc.</div> <div>Firm Name</div>
<div>Authorized Agent Signature</div>
<div>Authorized Agent (Print or Type)</div>
<div>Date</div>

FOR THE STATE:

<div>Signature</div> <div>Kevin Dunn, Buyer Manager</div> <div>Name/Title</div> <div>Services Division, Purchasing Operations</div> <div>Division</div>
<div>Date</div>

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

September 15, 2009

CHANGE NOTICE NO. 2  
TO  
CONTRACT NO. 071B7200131  
(Supercedes Contract #071B6200411)  
between  
THE STATE OF MICHIGAN  
and

NAME & ADDRESS OF VENDOR		TELEPHONE (313) 845-6687
ADP, Inc. 2575 Westside Parkway, Suite 500 Alpharetta, GA 30004  leanora_weaver@adp.com		Leanora Weaver
		VENDOR NUMBER/MAIL CODE
		BUYER/CA (517) 373-1080
Contract Compliance Inspector: Susan Kant		Melissa Castro, CPPB
Administration of Flexible Spending Account – Department of Civil Service		
CONTRACT PERIOD: From: January 16, 2007 To: August 30, 2010		
TERMS	N/A	SHIPMENT
F.O.B.	N/A	SHIPPED FROM
MINIMUM DELIVERY REQUIREMENTS	N/A	N/A

NATURE OF CHANGE(S):

Effective immediately, this Contract is hereby EXTENDED through August 30, 2010, and INCREASED by \$450,000.00.

Additionally, the stored value card renewal fee of \$1.75/card is hereby eliminated from this Contract.

All other terms, conditions, specifications, and pricing remain unchanged.

AUTHORITY/REASON:

Per agency request (PRF dated 6/5/09), Ad Board approval on 7/21/09, and DMB Purchasing Operations' approval.

REVISED CURRENT AUTHORIZED SPEND LIMIT: \$1,386,025.00

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

June 6, 2007

CHANGE NOTICE NO. 1  
TO  
CONTRACT NO. 071B7200131  
(Supercedes Contract #071B6200411)  
between  
THE STATE OF MICHIGAN  
and

NAME & ADDRESS OF VENDOR  <b>ADP, Inc.</b> <b>2575 Westside Parkway, Suite 500</b> <b>Alpharetta, GA 30004</b>  Chris_shee@adp.com	TELEPHONE (216) 643-5352 <b>Chris Shee</b>
	VENDOR NUMBER/MAIL CODE
	BUYER/CA (517) 373-1080 <b>Melissa Castro, CPPB</b>
Contract Compliance Inspector: Susan Kant <b>Administration of Flexible Spending Account – Department of Civil Service</b>	
CONTRACT PERIOD: From: <b>January 16, 2007</b> To: <b>August 30, 2009</b>	
TERMS <b>N/A</b>	SHIPMENT <b>N/A</b>
F.O.B. <b>N/A</b>	SHIPPED FROM <b>N/A</b>
MINIMUM DELIVERY REQUIREMENTS <b>N/A</b>	

NATURE OF CHANGE(S):

Effective immediately, Susan Kant hereby REPLACES Peggy Moczul as the Plan Administrator pursuant to Section 1.202. All other terms, conditions, specifications, and pricing remain unchanged.

AUTHORITY/REASON:

Per agency request and DMB Purchasing Operations.

TOTAL ESTIMATED CONTRACT VALUE REMAINS: \$936,025.00



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

March 22, 2007

NOTICE  
TO  
CONTRACT NO. 071B7200131  
(Supercedes Contract #071B6200411)  
between  
THE STATE OF MICHIGAN  
and

NAME & ADDRESS OF VENDOR		TELEPHONE (216) 643-5352
<b>ADP, Inc.</b> <b>2575 Westside Parkway, Suite 500</b> <b>Alpharetta, GA 30004</b>  Chris_shee@adp.com		<b>Chris Shee</b>
		VENDOR NUMBER/MAIL CODE
		BUYER/CA (517) 373-1080
Contract Compliance Inspector: Susan Kant		<b>Melissa Castro, CPPB</b>
<b>Administration of Flexible Spending Account – Department of Civil Service</b>		
CONTRACT PERIOD:	From: <b>January 16, 2007</b>	To: <b>August 30, 2009</b>
TERMS	<b>N/A</b>	SHIPMENT
		<b>N/A</b>
F.O.B.	<b>N/A</b>	SHIPPED FROM
		<b>N/A</b>
MINIMUM DELIVERY REQUIREMENTS		
<b>N/A</b>		

Estimated Contract Value: \$936,025.00

between  
THE STATE OF MICHIGAN  
and

Date \_\_\_\_\_



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

### **1.0 Project Identification**

#### **1.001 Project Request**

This Contract is to provide services to administer the State of Michigan's (State) Medical and Dependent Care Spending Account Plans (Services).

**Contractor Response:** *ADP acknowledges the parameters of the State's project.*

#### **1.002 Background**

The Michigan Department of Civil Service (MDCS) requires a third party administrator for administration of its Medical and Dependent Care Spending Account Plans, which are administered consistent with Internal Revenue Code (IRC) Section 125. Of 56,000 eligible active state employees, approximately 6,774 and 1,130 participate in the Medical and Dependent FSA plans, respectively. Medical Care Spending Account debit cards are used by 2,595 Medical FSA participants.

The objectives of this Contract are to:

- 1) Obtain competitive pricing and effective plan management for the FSA programs described in Appendix A.

**Contractor Response:** *ADP's comprehensive core FSA administration solution includes:*

- *Providing enrollment materials.*
- *Providing for plan documents and summary plan descriptions.*
- *Setting up all employees who are electing accounts on the FSA administration system.*
- *Producing original claim forms for the State of Michigan to copy and distribute to participants.*
- *Producing stored-value cards and distributing them to participants.*
- *Commencing ongoing administration.*
- *Determining claim payments.*
- *Soliciting follow-up documentation for stored-value card transactions.*
- *Processing claims submitted via mail or fax.*
- *Supporting direct deposit.*
- *Supporting the 2 ½-month extension as needed.*
- *Sending explanations of denied claims to participants.*
- *Providing customer service to participants.*
- *Preparing quarterly statements for participants.*
- *Conducting pass/fail nondiscrimination testing.*

*Optional services are provided for additional fees. Optional services include:*

- *Administering runout claims from the current plan administrator.*
- *Facilitating employee meetings.*
- *Consulting with the State of Michigan regarding additional nondiscrimination testing.*



ADP's FSA administration solution utilizes a per-participant pricing methodology – not per-account. If an associate has enrolled in both a health care and a dependent care account, the State is billed a single per-participant fee. If an increase or decrease in participation results in a change to the per-participant cost based on our pricing schedule, the per-participant price is adjusted accordingly.

- 2) Smoothly transition administration of the Medical and Dependent Care administrative services from the current contracted third party administrator

**Contractor Response:** Although we recommend that the current administrator handle runout claims for the current plan year because this is most efficient, we are able to administer the runout claims from the current administrator. You need to provide us with names, addresses, annual goal amounts, claims paid to date, pending claims, and total deductions credited for the year. This information needs to be provided as soon as possible after the last processing date of the current administrator.

If it is a new plan year and ADP is not required to perform the runout for the previous year, we do not need any data elements from the previous administrator. If it is a mid-year transition or ADP will be required to perform runout, we will need (at minimum):

- Each employee's Social Security number.
- Each employee's demographic data.
- Each employee's enrollment data (e.g., plan enrolled in, goal, per-payroll contribution).

If it is a mid-year transition or ADP will be required to perform the claims runout from the prior administrator, we will need:

- Each employee's Social Security number.
- Each employee's demographic data.
- Each employee's enrollment data (e.g., plan enrollment in, goal per-payroll contributions, year-to-date payments, year-to-date claims).
- Current year-to-date information for each participant's plans (e.g., year-to-date contributions, year-to-date payments, year-to-date claims).

- 3) Administer the FSA plans in accordance with applicable IRS and other regulations and ensure that the administration and documentation of the plans comply with any changes in regulations

**Contractor Response:** Eligible and ineligible health care expenses are identified by the IRS in the IRC 213. Eligible and ineligible dependent care expenses and providers are identified by the IRS in the IRC 502 and the IRS Publication 503.

To ensure that your plans are administered according to your specifications, we build your specific business rules and plan specifications into the administration system.

We continually inform our associates of new pronouncements from the IRS regarding eligible and ineligible expenses, conferences with IRS officials, and notices. Clients can choose to be more restrictive when defining eligible expenses and providers. Our client service representatives (CSRs), claim processors, and client account managers are trained to administer each client's plan according to each client's specific plan rules and documents.

ADP is in full compliance with all federal laws. We regularly receive updated IRS communications regarding changes in the regulations that pertain to Section 125 plans. In addition, ADP has a compliance officer who is responsible for notifying our administrative groups of any regulatory activities that would impact our services. If any changes would affect your plans, your FSA client service team would notify you and assist with any actions that need to be taken. We will also work with your communications staff to prepare updated HR communications for your participants.



*Due to our involvement in the regulatory environment, we are aware of any changes as they are initially announced, which means that we typically have at least a year to prepare our clients for any procedural change that is needed.*

*ADP publishes a client newsletter to provide our FSA administration clients with information regarding regulatory updates, product enhancements, and industry trends.*

4) Maintain a high level of member satisfaction with the program

**Contractor Response:** *Our solution center management reports allow both ADP and our clients to monitor/manage satisfaction. The following areas are tracked:*

- *Responsiveness.*
- *Call abandonment rates.*
- *Call volumes.*
- *Resolution turnaround times.*

*Our client service team also uses a performance tool that is emailed to each client on a monthly basis. This tool allows the account manager to provide a rating of the client service team and the quality of the overall administration service. The client may also use this tool to rate these categories.*

*From a qualitative standpoint, we measure overall client satisfaction in several ways:*

- *The service delivery manager and the client communicate regularly to discuss issues and client satisfaction. The service delivery manager is responsible for maintaining day-to-day communication with the client and addressing ongoing issues with the client and the administration team.*
- *An annual service survey specific to our account team and their performance is conducted to assess satisfaction at the corporate level.*
- *An account manager is assigned to communicate periodically with the client's senior HR and benefit managers to ensure that both organizations are focused on the partnership at the highest functional levels.*

*Assessments are typically done quarterly, semiannually, or annually – depending on the client's preference, the length of the engagement, the size and complexity of the client's programs, and the history of the responses to previous surveys. Should a previous survey indicate a problem or concern, the account manager takes action and intensifies communication with the client to successfully resolve the problem.*

*We also establish quantitative performance standards as appropriate for the services being delivered. These standards are established in partnership with each of our clients to meet their individual needs and expectations.*

5) Provide quality customer service and account service features, including performance standard guarantees

**Contractor Response:** *Our robust case management system provides broad call tracking support to our solution center. The system tracks all events – telephone calls, faxes, letters, and system-generated activity. We have built our case management system around four key values:*

- *Speed: Resolving cases in a timely manner.*
- *Accountability: Knowing who is accountable for a service item during all stages of the process.*
- *Simplicity: Analyzing the process to eliminate hand-offs and reduce turnaround time.*



- *Documentation: Ensuring that all issues, inquiries, and questions (including answers given) are well documented within the case management system.*

*When a CSR receives a call, the caller's record is retrieved from the case management database. The CSR uses drop-down menus to record the nature of the call and then notes the details of the conversation. The system always date- and time-stamps the record – whether the case is closed during the initial call or pending for further action.*

*If a case requires additional follow-up, it can be saved in the CSR's pending file or forwarded to another case manager for action. The system tracks the case's progress and status (open or closed). If a case is open beyond the standard time frame for resolution, the CSR's supervisor is notified.*

*The case management system monitors open cases based on their assignment to individual associates. Cases are dispatched to the appropriate department for resolution (Tier 2 research, accounting, etc.). Cases are returned to the solution center after the issue is resolved. Each department is responsible for monitoring the case management queue and closing cases on a timely basis. The case "clock" begins as soon as the case is dispatched.*

*Our service goal is to resolve 80 percent of all issues during the first call. We use a call resolution report to closely monitor the percentage of calls that are resolved during the participant's first contact with the solution center.*

*As a new ADP client, the State of Michigan works with our implementation team using a formal project plan to establish your new solution. Upon completion of implementation, the State's account is assigned to a specific team of customer service account specialists.*

*The customer service team to which the State of Michigan is assigned depends on the administrative complexity of your account as determined during implementation. A service delivery manager is assigned to each client account, and he or she acts as the point of escalation for the customer service team.*

*The team of account specialists handles the majority of your daily issues and inquiry resolution. The names, email addresses, and telephone numbers of your customer service team members are conveyed at the time the State's account is formally transitioned to our customer service area for ongoing administration.*

*The customer service teams are carefully composed of account specialists who have a variety of skills in order to provide the State with the high-quality customer service you deserve. Each team member becomes familiar with your account to ensure continuity of service and rapid issue resolution. An extensive operational support structure that is designed to ensure the success of our customer service teams in delivering exceptional service is in place.*

*Should the State of Michigan find if necessary, you may always contact your service delivery manager to discuss a matter that you believe requires management consideration.*

*ADP's proposed service level agreement for the State of Michigan has been provided as **Exhibit 1**. ADP is willing to negotiate performance guarantees that place a portion of our fees at risk should we fail to meet agreed-upon performance standards for certain service metrics.*

*Since we know that performance guarantees are an important business concern of the State of Michigan, we can incorporate discussion regarding specific performance standards into ongoing business negotiations.*

6) Obtain timely utilization and management reporting

**Contractor Response:** *ADP can provide management reports in virtually any format. Standard management reports include account activity statements, transaction summary reports, aggregate reports, reimbursement reconciliation reports, payroll deduction reports, and financial summary reports.*



*Our standard method is to provide electronic reports via the Internet. We can produce hard copy reports if required.*

**Summary account statement.** *Lists all participants enrolled in a plan, their payroll and annual contribution amounts, and other account totals for a specified time period and year-to-date. The summary account statement for the end of the runout period lists any account balances that were forfeited. This report is produced on a quarterly or monthly basis.*

**Distribution and adjustment report.** *Lists all participants who received a benefit and includes transactions processed by reimbursement check, direct deposit, and stored-value card. This report is produced on a frequency to be determined by the State – typically weekly or monthly.*

**Forfeiture report.** *Lists the amount of forfeiture for each participant. This report is produced annually.*

*These reports are also available:*

- Contribution summary.
- Payment summary.
- Organization census.
- Detail account statement (for individual participant information).
- Plan utilization.
- Enrollment confirmation.
- Participant analysis.
- Employer contribution report.
- Transaction history report.
- Check listing.

- 7) Provide the plan design shown in Appendix A. Any provisions that cannot be provided must be clearly noted.

**Contractor Response:** *ADP can support the plan design provisions listed in Appendix A*

- 8) Administer programs of this type for similar, large employers.

**Contractor Response:** *ADP is the world's largest provider of payroll and HR systems and services. Currently more than 400,000 clients in the U.S. use ADP's comprehensive line of services, including: payroll processing, HR support, health and welfare benefits administration, FSA administration, COBRA administration, business tax deposit and reporting, time and labor management, and 403(b) recordkeeping.*

*ADP currently counts more than 5,000 public-sector organizations as part of our client base, including:*

- *3,000 elementary and secondary schools.*
- *500 colleges, universities, and professional schools.*
- *1,000 government organizations (including city, county, state, and federal government organizations).*
- *300 public-order and safety departments (including courts, police departments, fire departments, and correctional facilities).*

*This extensive experience with public-sector organizations across a broad range of services places ADP in a strong position to meet the needs of the State of Michigan.*





ADP currently provides FSA administration solutions to 5,135 clients – which represents 759,960 participants. More than 5,000 clients currently offer a stored-value card to their participants, and 470,000 participants utilize the stored-value card.

- 9) Smoothly transition if necessary at the beginning or end of the contract to another administrator.

**Contractor Response:** Although we recommend that the current administrator handle runout claims for the current plan year because this is most efficient, we are able to administer the runout claims from the current administrator. You need to provide us with names, addresses, annual goal amounts, claims paid to date, pending claims, and total deductions credited for the year. This information needs to be provided as soon as possible after the last processing date of the current administrator.

If it is a new plan year and ADP is not required to perform the runout for the previous year, we do not need any data elements from the previous administrator. If it is a mid-year transition or ADP will be required to perform runout, we will need (at minimum):

- Each employee's Social Security number.
- Each employee's demographic data.
- Each employee's enrollment data (e.g., plan enrolled in, goal, per-payroll contribution).

If it is a mid-year transition or ADP will be required to perform the claims runout from the prior administrator, we will need:

- Each employee's Social Security number.
- Each employee's demographic data.
- Each employee's enrollment data (e.g., plan enrollment in, goal per-payroll contributions, year-to-date payments, year-to-date claims).
- Current year-to-date information for each participant's plans (e.g., year-to-date contributions, year-to-date payments, year-to-date claims).

Upon termination of this Agreement for any reason, ADP will cooperate with the State of Michigan to provide an orderly transfer of services and will provide the staff, services, and assistance reasonably required for such orderly transfer. Such services will be provided at the State's expense at ADP's standard rates in effect at that time for such services.

- 10) Fully administer a debit card offering

**Contractor Response:** ADP partners with MBI for the delivery of FSA stored-value cards. MBI is the leading provider of stored-value card solutions. The stored-value card simplifies claims and reimbursement processes for participants. One card per participant is provided following enrollment. The card is mailed directly to the participant, and the mailing includes a tri-fold brochure and an agreement for the card.

Upon the swipe of a card, the stored-value card uses the merchant ID, the plan parameters (e.g., copayment amounts), and the carrier feeds for much of the substantiation. The merchant ID is determined through merchant category codes (MCCs). We believe that the most effective way to substantiate expenses – while continuing to experience efficiency gains – is to match card transactions with data from the client's major medical plans, dental plans, and pharmacy benefit manager (PBMs). The remaining substantiation is done through an email or mailed letter that requests additional information, which ensures an optimum level of substantiation while minimizing the need for after-the-fact substantiation from the individual participant.

These procedures require no education or training for merchants and ensure that the card can be used anywhere that Visa is accepted.





- 11) Offer exceptional customer service with representatives who have access to a knowledge based system or are assigned to a dedicated customer service team

**Contractor Response:** All information accessed by our administration team is obtained from a single central database in a real-time environment, which ensures that all associates have access to the most up-to-date information – including claim detail. Our service teams also have access to a case management system, which our CSRs use to assign participant calls to other team members for research and resolution.

The majority of our clients are handled in a team environment; however, specific associates are dedicated to claims processing and customer service duties. A service delivery manager is designated to support each client. He or she interfaces with all key operating areas to ensure that issues are resolved promptly. We encourage our clients to work directly with their assigned service delivery manager and account specialists.

The customer service teams are carefully composed of account specialists who have a variety of skills in order to provide the State of Michigan with the high-quality customer service you deserve. Each team member becomes familiar with your account to ensure continuity of service and rapid issue resolution. An extensive operational support structure that is designed to ensure the success of our customer service teams in delivering exceptional service is in place.

- 12) Offer customer service representative's on-line access (i.e., through an electronic claim imaging system or equivalent) to claim processing information through the entire claim payment cycle.

**Contractor Response:** ADP uses a customized OCR solution for our claims department. OCR technology works by taking scanned forms and reading/recognizing the characters in specific fields, which eliminates the errors that can occur when data is manually keyed by claims representatives. OCR technology vastly improves the accuracy of the claim information that ADP inputs and reduces adjudication turnaround time.

ADP has document-imaging technology that saves and stores claims and receipts. This technology improves the ability of the solution center to service the State's participants by viewing the claims information online and providing real-time answers.

As stated above, all information accessed by our administration team is obtained from a single central database in a real-time environment, which ensures that all associates have access to the most up-to-date information – including claim detail. Our service teams also have access to a case management system, which our CSRs use to assign participant calls to other team members for research and resolution.

- 13) Receive and send all correspondence in HIPAA compliant electronic format, including participant eligibility, payroll deduction, plan experience reporting, and billing. All identifiable data must be sent using passwords and a File Transfer Protocol site for retrieval compliant with all HIPAA Security Regulations

**Contractor Response:** ADP FSA Services is not considered a "covered entity" with respect to HIPAA regulations. However, in some cases, ADP may be considered a "business associate" with respect to your health FSA plan. If ADP is considered to be a "business associate" under HIPAA, we shall comply with the EDI requirements applicable to business associates. However, as a general rule, the EDI transaction standards do not apply to typical FSA data transmissions – and thus we will not need to send data in EDI-specified formats. If the State of Michigan requires this procedure, ADP will comply.

ADP is compliant with all privacy obligations of "business associates" under the HIPAA regulations. ADP's internal privacy policies meet or exceed accepted industry standards and all applicable federal requirements – including the HIPAA regulations.

To support ongoing FSA claims processing, we receive payroll information electronically on a schedule determined by the payroll provider – typically each time a payroll is processed. A specific file layout has been designed for your system.



*The following methods have been used for data communications at ADP:*

- *Advantis Network for AS/400 to host transmissions using a Sterling Connect Direct.*
- *IBM's netview FTP.*
- *Network Job Entry (NJE).*
- *Remote Job Entry (RJE).*
- *Internet FTP server to server.*
- *Email attachment through Internet.*

*Each of the methods listed above is available on direct, leased-line communications. Some of these methods are available on dial-up access. We will work with you to establish a standard format, media, and method of electronic transfer. In addition to the data communications method listed above, we have also utilized ISDN as a transport mechanism.*

*In addition, the enrollment manager component of ADP's client/administrator FSA administration web site supports the following functionality:*

- *Enter data:*  
*Import files. This tool is used to upload a client's Excel (XLS) or CSV file into the system.*  
*Enter new employee data. Clients can use ADP's participant data entry tool to enter employee information. All of the information a client enters may be saved, reviewed, and updated during several visits to this site.*  
*Modify employee information. Clients can use this tool to review or edit the information entered by ADP or the client (via the file import wizard or the "enter new participant information" options).*
- *Extract data:*  
*Save a copy of a client's final enrollment history file to a PC – select this option and decide where to save the file.*  
*Access an enrollment summary report – create a detail report that lists all participants and their spending account elections.*  
*Access a participant summary report – create a report that shows the elections entered for a single participant.*

14) Post all forms needed for the adjudication of claims to the State's and Contractor's websites.

**Contractor Response:** *Our participant web application provides participants with the following information:*

- *Account summary.*
- *Claims details.*
- *Contribution details.*
- *Payment details.*
- *General information.*
- *Answers to frequently asked questions.*
- *Eligible and ineligible items for reimbursement.*



*Participants can also download claim forms and access a calculation worksheet, which will assist them with estimating their health care and/or dependent care expenses – as well as provide the tax savings realized by participation in an FSA program. In addition, participants can send an email message directly to our solution center staff from the web site. We respond to email messages within 24 hours.*

*We are currently developing web enrollment capabilities for our FSA solution.*

*All of these forms can be also posted to the State of Michigan's web site. A best practice is to keep all forms on one uniform web site; however, we can accommodate the State's request.*

- 15) Receive and track facsimile transmitted claim forms.

**Contractor Response:** *We accept claims submitted via fax. ADP uses a customized optical character recognition solution (OCR) for our claims department. OCR technology works by taking scanned forms and reading/recognizing the characters in specific fields, which eliminates the errors that can occur when data is manually keyed by claims representatives. OCR technology will vastly improve the accuracy of the claim information that ADP inputs and reduce adjudication turnaround time.*

*ADP has document-imaging technology that saves and stores claims and receipts. This technology improves the ability of the solution center to service the State of Michigan's participants by viewing the claims information online and providing real-time answers.*

- 16) Offer a web-based participant service center on a vendor supported website where participants can check claim status, view transaction history, account balances and general plan provisions.

**Contractor Response:** *Our participant web application provides participants with the following information:*

- *Account summary.*
- *Claims details.*
- *Contribution details.*
- *Payment details.*
- *General information.*
- *Answers to frequently asked questions.*
- *Eligible and ineligible items for reimbursement.*

*Participants can also download claim forms and access a calculation worksheet, which will assist them with estimating their health care and/or dependent care expenses – as well as provide the tax savings realized by participation in an FSA program. In addition, participants can send an email message directly to our solution center staff from the web site. We respond to email messages within 24 hours.*

*We are currently developing web enrollment capabilities for our FSA solution.*

- 17) Claim rejection notification sent to participants having specific and understandable reasons for rejection.

**Contractor Response:** *During processing, claims are reviewed for proper documentation, compliance, and completeness. If additional information is needed or if the claim is not in compliance, a written notification is sent to the participant with an explanation of why the claim was denied or what additional information is necessary to complete the process.*

- 18) Offer a State-defined unique participant identifier in all reporting and participant specific reporting and/or correspondence.



**Contractor Response:** *The Social Security number is the key to our files; however, we can also use an employee identification number if the information is supplied through the enrollment file. Many of our clients use other identification numbers.*

*At this time, we will maintain the use of Social Security numbers for internal use until the current laws change.*

- 19) Comply with the State of Michigan's Public Act 454 of 2004 (Social Security Number Privacy Act)

**Contractor Response:** *ADP will comply with those provisions of the State of Michigan Public Act 454 of 2004 specifically relating to ADP in performing the ADP services to the State as a service provider.*

## 1.1 Scope of Work and Deliverables

### **1.101 In Scope**

Contractor shall provide Services in this Statement of Work at the direction of the State. Contractor must provide Services and staff and do all necessary or incidental to perform the required Services set forth below:

The following are required services:

- 1) Administration in accordance with the plan design and the requirements of IRC Section 125

**Contractor Response:** *ADP can support the plan design provisions listed in Appendix A. ADP is in full compliance with all federal laws. We regularly receive updated IRS communications regarding changes in the regulations that pertain to Section 125 plans.*

- 2) Provide State of Michigan administrative staff with notice of changes to IRC Section 125 proactively and with interpretations of IRS rules, upon request.

**Contractor Response:** *ADP is in full compliance with all federal laws. We regularly receive updated IRS communications regarding changes in the regulations that pertain to Section 125 plans. In addition, ADP has a compliance officer who is responsible for notifying our administrative groups of any regulatory activities that would impact our services. If any changes would affect your plans, your FSA client service team would notify you and assist with any actions that need to be taken. We will also work with your communications staff to prepare updated HR communications for your participants.*

*Due to our involvement in the regulatory environment, we are aware of any changes as they are initially announced, which means that we typically have at least a year to prepare our clients for any procedural change that is needed.*

*ADP publishes a client newsletter to provide our FSA administration clients with information regarding regulatory updates, product enhancements, and industry trends.*

- 3) Administration in accordance with the latest HIPAA privacy and security regulations

**Contractor Response:** *ADP ensures compliance with all HIPAA regulations related to privacy, data security, and HIPAA certificates:*

- **Privacy.** *ADP does not display the employee's or dependent's Social Security number on printed materials or on our web site. As a result of the privacy legislation, ADP now displays only the last four digits of the Social Security number for identification purposes.*
- **Data security.** *Enrollment information is submitted electronically to plan carriers in the HIPAA-compliant 834 standard format on a recurring weekly schedule. Premium payment information is submitted electronically to plan carriers in the HIPAA-compliant 820 standard format on a monthly schedule.*



- **HIPAA certificates.** As an optional service within our COBRA administration solution, ADP can produce HIPAA certificates of coverage.

*ADP FSA Services is not considered a “covered entity” with respect to HIPAA regulations. However, in some cases, ADP may be considered a “business associate” with respect to your health FSA plan. If ADP is considered to be a “business associate” under HIPAA, we shall comply with the EDI requirements applicable to business associates. However, as a general rule, the EDI transaction standards do not apply to typical FSA data transmissions – and thus we will not need to send data in EDI-specified formats.*

*ADP is compliant with all privacy obligations of “business associates” under the HIPAA regulations. ADP’s internal privacy policies meet or exceed accepted industry standards and all applicable federal requirements – including the HIPAA regulations.*

4) Administration of a Debit Card offering for participant reimbursement

**Contractor Response:** ADP partners with MBI for the delivery of FSA stored-value cards. MBI is the leading provider of stored-value card solutions. The stored-value card simplifies claims and reimbursement processes for participants.

*The stored-value card works like a credit card and uses the Visa network to process transactions. The card contains different accounts that represent the different spending account plans (e.g., health care and dependent care). The provider is paid at POS, and the participant’s account is deducted. When a card is swiped through the Visa terminal, our systems check to see if the provider’s terminal matches an eligible MCC (there are approximately 31 eligible MCCs for our benefit products). If the MCC matches a participant’s elected benefit account, the system then checks for copay matches, parameter matches, and fund availability to drive an approval or denial back through the Visa network.*

*Some claim items can be automatically adjudicated with copay or PBM matching (PBMs provide the service that informs the pharmacy what copay to charge for a prescription). An audit at day’s end compares the PBM file with the participant’s purchase for adjudication.*

*All other purchases drive a substantiation request that can be sent via email or mail. Based on the results of the request (eligible expense, ineligible expense, no answer), the claim is approved or denied.*

*If the claim is denied, we request that the participant refund the payment. A card can be temporarily deactivated, and a claims balance can be made negative while awaiting a manual claim to make up the difference. Post-tax payroll deductions can also be made to obtain the funds if necessary.*

*With the stored-value card, a reimbursement is processed as long as the MCC is acceptable and the funds are available. Lack of funds and an unacceptable MCC are the only two reasons a transaction will not be accepted at the POS. Adjudication occurs when the transactions are reviewed by ADP.*

*One card per participant is provided following enrollment. The card is mailed directly to the participant, and the mailing includes a tri-fold brochure and an agreement for the card. The fee for this initial mailing is a one-time charge of \$1.75 per card. If a card is lost or stolen, the replacement cost is \$1.75 per card. Stored-value cards are valid for three years.*

5) Ability to administer a direct deposit option

**Contractor Response:** Participant direct deposit information can be sent via a data feed or manually entered from an enrollment form. Once the information is in the FSA administration system, ADP prenotes the employee’s bank account to help ensure that the account is set up. This setup process takes approximately ten days from the next reimbursement cycle.

*Once the account has been prenoted, EFTs are sent in lieu of paper checks. The EFT process takes two business days to post to an employee’s account. An EOB or an email notification is also sent to the employee to notify him or her of the reimbursement.*





## 6) Claims Services

**Contractor Response:** Claims that are reimbursed via the stored-value card have different claims substantiation procedures. When a participant's card is swiped by the merchant, this serves as an electronic claim for reimbursement. The MCC determines if the purchase is made at an eligible merchant. If automated substantiation requirements are not met, ADP's system automatically generates a letter to the participant to request additional documentation regarding the purchase.

Claims that are submitted via mail or fax are simultaneously imported into ADP's claims processing system and our imaging system using OCR technology. Before claims information is processed, claims are scrutinized for compliance with IRS regulations, and a quality check is performed to ensure that the data was imported correctly. Our dedicated claims processors look closely at the documentation – paying particular attention to the service type and the date services were performed. The system then automatically determines whether this claim was previously reimbursed through the participant's insurance company.

Claims information is entered into the database using the following criteria:

- Participant Social Security number.
- Plan type.
- Plan year.
- Date of service.
- Date claim was received.
- Type of expense (e.g., medical, dental, vision, prescription, etc.).
- Requested amount to be reimbursed.

During this process, the FSA administration system compares each claim entered with all prior entries to identify claims that have been previously submitted. We process claims and reimbursements daily.

## 7) Claim eligibility verification

**Contractor Response:** We accept all expenses allowed by the IRS as eligible for reimbursement – unless a client's plan document limits certain benefits (e.g., birth control pills). If the plan document limits certain benefits, we administer the plan according to the eligible expenses listed in the plan document.

For stored-value cards, copayment matching, recurring claim amounts, PBM matching, and coinsurance matching are acceptable to support reimbursement.

Each claim for health care reimbursement submitted by mail or fax must be accompanied by a completed claim form, as well as a bill, statement, or other proof of expense that lists the date of service, the service provided, and the expense incurred. EOBs from medical plans are also suitable documentation. EOBs are required in cases where it must be verified that expenses have not been reimbursed by insurance.

Participants must also sign a health care claim form that certifies "the expenses listed above qualify for reimbursement and have been incurred and paid by me or by eligible members of my family. These expenses have not been reimbursed by my health care plan or any other health care plan, such as my spouse's. Additionally, these expenses are not being claimed as tax deductions under Section 213 of the IRS Code."

Each claim for dependent care reimbursement submitted by mail or fax must be accompanied by a completed claim form, as well as a bill, statement, or other proof of expense that contains the date of service, the provider's tax identification number or Social Security number (unless tax-exempt), and the expense incurred. We can also design a claim form that lists the above information. The service provider signs the form to verify its accuracy.



## 8) Claims payment or denial

**Contractor Response:** *Employee contribution records (not funds) are sent to ADP on a periodic basis (typically with each payroll processing). Participant funds are held by the employer. The most common reimbursement process is for ADP to direct-debit the amount required to reimburse each day's manual claims and stored-value card transactions from the client's bank account.*

*ADP direct-debits the client's account only after claims are processed and reimbursements need to be paid to participants (clients often use a zero-balance account that automatically drafts the exact reimbursement amount from another interest-bearing account). ADP sends a daily reimbursement report to the client. This report documents reimbursement activity for manual claims and stored-value card transactions.*

*After receipt of payment, ADP mails reimbursement checks to participants or funds are sent via EFT directly into participants' bank accounts. Since stored-value card transactions are paid and FSA balances are updated at the time of service, reimbursement checks are not required for these transactions.*

*ADP's expert claims processors carefully examine each claim for compliance with proposed IRS regulations. Each claim must have sufficient supporting documentation to substantiate the request for reimbursement. We use IRS proposed regulations for guidelines as to what must be provided for claims substantiation.*

*When a stored-value card is swiped through the Visa terminal, our systems check to see if the provider's terminal matches an eligible MCC (there are approximately 31 eligible MCCs for our benefit products). If the MCC matches a participant's elected benefit account, the system then checks for copay matches, parameter matches, and fund availability to drive an approval or denial back through the Visa network.*

*Some claim items can automatically be adjudicated with copay or PBM matching (PBMs provide the services that informs the pharmacy what copay to charge for a prescription). An audit at day's end compares the PBM file with the participant's purchase for adjudication.*

*If a request is denied or the claim lacks sufficient supporting documentation, a letter that explains the situation is sent to the participant.*

## 9) Claims tracking

**Contractor Response:** *Whether a claim is received via fax or mail, it is imaged into our document-imaging system. Claims faxed on our OCR forms are automatically assigned a number that can be tracked and pulled at any time from the system. All other claims are manually scanned into the system where it is assigned a number.*

*If we are to receive electronic files for reimbursement from insurance carriers or other vendors, we will receive files according to the agreed-upon schedule. Properly formatted files will be loaded into our system and reconciled within 24 hours of receipt.*

## 10) Claim imaging

**Contractor Response:** *All claims and supporting documentation is imaged into DocuTREEV, an electronic document management system. We also use a service that stores the hard copies off-site.*

## 11) Review of claim appeals

**Contractor Response:** *An outline of our claims appeal procedures for ERISA follows: If all or part of a claim is denied, the participant receives an explanation in writing. This notice, called a "claim notification letter," states:*

- *The reason for denial.*
- *Specific references to the plan provisions on which the denial is based.*



- *If the claim was denied as incomplete, a description of any additional material needed to complete the claim, and why the information is needed.*
- *The steps that can be taken to appeal the denial.*

*The participant should receive a notice of claim denial within 90 days after the claim is filed. A notice is sent if unusual circumstances require an extension of up to another 90 days. If, within 90 days after the claim is filed, the participant does not receive either a denial or a notice of an additional 90-day extension, he or she may assume that the entire claim has been denied and may proceed directly to the appeal procedures for denied claims.*

*If a claim is denied in whole or in part, the participant may appeal this determination by requesting a review of the denied claim. The request must be in writing and must be sent to the address below within 180 days after the participant receives notice of the denial. As part of the appeal process, the participant (or his or her authorized representative) may examine documents, records, and other information relevant to the claim and submit issues, documents and comments in writing. Within 60 days after the request for review is received, the participant is notified in writing of the decision on review. The Plan Administrator's decisions on review are made within 30 days after the request for each review is received. The Plan Administrator ensures that each review takes into account all comments, documents, records, and other information submitted by the claimant relating to the claim without regard to whether such information was submitted or considered in a previous review.*

*Under no circumstances will the same individual(s) who made previous determinations or someone who is a subordinate of any individual who made such previous determinations review the appeal. The notice of the decision includes:*

- *The specific reasons on which the denial was based.*
- *Specific references to the pertinent plan provisions on which the denial is based.*
- *A statement that indicates the participant's right to request, free of charge, copies of all documents, records, and other information relevant to the claim.*
- *A statement that indicates the participant's right to file suit in federal court pursuant to ERISA Section s502(a).*
- *Any other information required by federal law.*

*Written appeals requests should be mailed to:*

*FSA Claims Appeals  
PO Box 1801  
Alpharetta, GA 30023-1801*

*Upon request, the participant may examine any pertinent documents, and he or she may have a representative present at any meetings concerning the claim. The participant receives the claims administrator's decision regarding the appeal in writing, usually within 30 days after the appeal is filed. In unusual cases, the claims administrator may take up to an additional 15 days to decide the appeal, but the participant is notified in writing in advance if this additional time is necessary and the reasons for it.*

*Eligibility for benefits is determined solely on the basis of information supplied to the claims administrator. Benefits cannot be granted or denied on the basis of information that has not been submitted in connection with a claim.*

*To speak with a claims representative, participants can call the solution center at 800.654.6695 (Monday through Friday from 8:00 a.m. to 8:00 p.m. Eastern time) regarding the appeal of a denied claim. Participants can also visit our ADP web site at [www.flexdirect.adp.com](http://www.flexdirect.adp.com) and review the frequently asked questions about denied claims.*





## 12) Fax and/or paper claim submission and tracking

**Contractor Response:** *Whether a claim is received via fax or mail, it is imaged into our document-imaging system. Claims faxed on our OCR forms are automatically assigned a number that can be tracked and pulled at any time from the system. All other claims are manually scanned into the system where it is assigned a number.*

*If we are to receive electronic files for reimbursement from insurance carriers or other vendors, we will receive files according to the agreed-upon schedule. Properly formatted files will be loaded into our system and reconciled within 24 hours of receipt.*

## 13) Customer Service

**Contractor Response:** *Our robust case management system provides broad call tracking support to our solution center. The system tracks all events – telephone calls, faxes, letters, and system-generated activity. We have built our case management system around four key values:*

- *Speed: Resolving cases in a timely manner.*
- *Accountability: Knowing who is accountable for a service item during all stages of the process.*
- *Simplicity: Analyzing the process to eliminate hand-offs and reduce turnaround time.*
- *Documentation: Ensuring that all issues, inquiries, and questions (including answers given) are well documented within the case management system.*

*When a CSR receives a call, the caller's record is retrieved from the case management database. The CSR uses drop-down menus to record the nature of the call and then notes the details of the conversation. The system always date- and time-stamps the record – whether the case is closed during the initial call or pending for further action.*

*If a case requires additional follow-up, it can be saved in the CSR's pending file or forwarded to another case manager for action. The system tracks the case's progress and status (open or closed). If a case is open beyond the standard time frame for resolution, the CSR's supervisor is notified.*

*The case management system monitors open cases based on their assignment to individual associates. Cases are dispatched to the appropriate department for resolution (Tier 2 research, accounting, etc.). Cases are returned to the solution center after the issue is resolved. Each department is responsible for monitoring the case management queue and closing cases on a timely basis. The case "clock" begins as soon as the case is dispatched.*

*Our service goal is to resolve 80 percent of all issues during the first call. We use a call resolution report to closely monitor the percentage of calls that are resolved during the participant's first contact with the solution center.*

## 14) Claim eligibility verification

**Contractor Response:** *We accept all expenses allowed by the IRS as eligible for reimbursement – unless a client's plan document limits certain benefits (e.g., birth control pills). If the plan document limits certain benefits, we administer the plan according to the eligible expenses listed in the plan document.*

*For stored-value cards, copayment matching, recurring claim amounts, PBM matching, and coinsurance matching are acceptable to support reimbursement.*

*Each claim for health care reimbursement submitted by mail or fax must be accompanied by a completed claim form, as well as a bill, statement, or other proof of expense that lists the date of service, the service provided, and the expense incurred. EOBs from medical plans are also suitable documentation. EOBs are required in cases where it must be verified that expenses have not been reimbursed by insurance.*



*Participants must also sign a health care claim form that certifies “the expenses listed above qualify for reimbursement and have been incurred and paid by me or by eligible members of my family. These expenses have not been reimbursed by my health care plan or any other health care plan, such as my spouse’s. Additionally, these expenses are not being claimed as tax deductions under Section 213 of the IRS Code.”*

*Each claim for dependent care reimbursement submitted by mail or fax must be accompanied by a completed claim form, as well as a bill, statement, or other proof of expense that contains the date of service, the provider’s tax identification number or Social Security number (unless tax-exempt), and the expense incurred. We can also design a claim form that lists the above information. The service provider signs the form to verify its accuracy.*

- 15) Use of a client specific knowledge based computer system for claim inquiry or dedicated staff

**Contractor Response:** *All information accessed by our administration team is obtained from a single central database in a real-time environment, which ensures that all associates have access to the most up-to-date information – including claim detail. Our service teams also have access to a case management system, which our CSRs use to assign participant calls to other team members for research and resolution.*

*The majority of our clients are handled in a team environment; however, specific associates are dedicated to claims processing and customer service duties. A service delivery manager is designated to support each client. He or she interfaces with all key operating areas to ensure that issues are resolved promptly. We encourage our clients to work directly with their assigned service delivery manager and account specialists.*

*The customer service teams are carefully composed of account specialists who have a variety of skills in order to provide the State of Michigan with the high-quality customer service you deserve. Each team member becomes familiar with your account to ensure continuity of service and rapid issue resolution. An extensive operational support structure that is designed to ensure the success of our customer service teams in delivering exceptional service is in place.*

- 16) Access to comprehensive, on-line claim tracking system (claim imaging or equivalent)

**Contractor Response:** *ADP uses a customized OCR solution for our claims department. OCR technology works by taking scanned forms and reading/recognizing the characters in specific fields, which eliminates the errors that can occur when data is manually keyed by claims representatives. OCR technology vastly improves the accuracy of the claim information that ADP inputs and reduces adjudication turnaround time.*

*ADP has document-imaging technology that saves and stores claims and receipts. This technology improves the ability of the solution center to service the State’s participants by viewing the claims information online and providing real-time answers.*

*As stated above, all information accessed by our administration team is obtained from a single central database in a real-time environment, which ensures that all associates have access to the most up-to-date information – including claim detail. Our service teams also have access to a case management system, which our CSRs use to assign participant calls to other team members for research and resolution.*

- 17) Extended hours on business days

**Contractor Response:** *CSRs are available Monday through Friday from 8:00 a.m. to 8:00 p.m. Eastern time (except ADP-designated holidays). We provide a toll-free telephone number for participants to reach CSRs via IVR technology. During peak times of the year, ADP offers expanded solution center hours based on demand.*

*Participants also have inquiry capability through our web site, which is included as part of our standard services.*



18) Live operator, IVR and Web-based customer service capabilities

**Contractor Response:** *An IVR system is available virtually 24 hours a day via a toll-free telephone number. Our IVR system currently provides these services in real time:*

- *Participants' account balance(s).*
- *Last reimbursement amount and date.*
- *Total reimbursements.*
- *Participants' most recent contributions.*
- *Year-to-date contributions.*
- *Ability to opt out of the IVR and speak with a CSR during regular business hours.*

*When hiring a new CSR, we consider his or her communication skills and the desire to work in service-oriented environment as the primary desired competencies. Virtually 100 percent of our representatives are full-time associates.*

*The advantage of our CSR staffing model is the cross-trained, cross-functional team, which enables us to provide better coverage and support for our clients through the various peaks of the year. This model also supports coverage when our associates take time off.*

*All CSRs must have no less than three years of customer service experience – preferably with insurance, claims, or employee benefits organizations. Candidates must be willing to work flexible hours and must complete three weeks of initial training and achieve an overall passing score of 90 percent proficiency on job knowledge testing. Ongoing and advanced training is provided to employees regarding FSA changes and client-specific plan enhancements.*

*When a question or complaint is fielded by one of our CSRs, it is usually answered or handled while the participant is on the telephone. If research or additional work is required, the CSR utilizes our Clarify case management tool to create a case. This process ensures that the question is answered or the complaint is handled in a professional, timely manner. If the participant requests documentation of an issue's resolution, the CSR offers to fax him or her copies of the applicable documents (IRS proposed regulations, rulings, or pronouncements; plan documents; summary plan descriptions).*

*Our participant web application provides participants with the following information:*

- *Account summary.*
- *Claims details.*
- *Contribution details.*
- *Payment details.*
- *General information.*
- *Answers to frequently asked questions.*
- *Eligible and ineligible items for reimbursement.*

*Participants can also download claim forms and access a calculation worksheet, which will assist them with estimating their health care and/or dependent care expenses – as well as provide the tax savings realized by participation in an FSA program. In addition, participants can send an email message directly to our solution center staff from the web site. We respond to email messages within 24 hours.*

*We are currently developing web enrollment capabilities for our FSA solution.*



19) Participant reporting to their homes (Monthly Statements are preferred).

**Contractor Response:** *As a standard component of ADP's FSA administration solution, we create and mail statements that detail account balances and activity directly to participants' homes each quarter – regardless of the amount of activity in the accounts. Quarterly statements are typically sent within two weeks following the end of the quarter.*

*Clients may also choose to have ADP send a generic email message to participants to notify them that quarterly statements can be viewed on ADP's FSA web site.*

*We can add text to the statements regarding plan rules and approaching claims submittal deadlines. The statement also shows the telephone number that participants should call if they have questions regarding this statement.*

*We also provide a statement to a participant upon request. Requests for participant statements are processed within a 24- to 48-hour time frame.*

*ADP is able to send statements on a more frequent basis; however, the client may incur postage fees for delivery of the statements. We have found that emailed statements provide the same value to plan participants at a fraction of the cost. ADP would recommend that, if more frequent program statements or reminders are desired, email be evaluated as a distribution mechanism. Driving participants to our web site would match the current self-service environment that the State has created.*

20) Data Reports

**Contractor Response:** *ADP can provide management reports in virtually any format. Standard management reports include account activity statements, transaction summary reports, aggregate reports, reimbursement reconciliation reports, payroll deduction reports, and financial summary reports. These reports are also available:*

- *Contribution summary.*
- *Payment summary.*
- *Organization census.*
- *Detail account statement (for individual participant information).*
- *Plan utilization.*
- *Enrollment confirmation.*
- *Participant analysis.*
- *Employer contribution report.*
- *Transaction history report.*
- *Check listing.*

*Our standard method is to provide electronic reports via the Internet. We can produce hard copy reports if required.*

21) Monthly, quarterly and annual data reports

**Contractor Response:** *The **summary account statement** lists all participants enrolled in a plan, their payroll and annual contribution amounts, and other account totals for a specified time period and year-to-date. The summary account statement for the end of the runout period lists any account balances that were forfeited. This report is produced on a quarterly or monthly basis.*



The **distribution and adjustment report** lists all participants who received a benefit and includes transactions processed by reimbursement check, direct deposit, and stored-value card. This report is produced on a frequency to be determined by the State of Michigan – typically weekly or monthly.

The **forfeiture report** lists the amount of forfeiture for each participant. This report is produced annually.

## 22) Discrimination testing

**Contractor Response:** As part of our standard solution, we can perform nondiscrimination testing for cafeteria plans, health care flexible spending account plans, and dependent care flexible spending account plans. Tests required under Sections 105(h) and 129 of the IRC, as well as those required by Section 125 of the IRC, are included in this package.

We usually perform nondiscrimination testing by exporting the necessary data from our FSA administration system and merging it with other data needed to conduct the test. Most of this additional information can be extracted from the client's payroll system.

The actual test is conducted after the data has been scrubbed and merged to the testing utility. If all tests are passed, we send a letter and the test results to the client for their records. If any portion of the test is failed, we consult with the client and outline possible solutions and adjustments that may correct the discrepancy.

Testing for highly compensated employees and key employees for health care, dependent care, and cafeteria plans is typically conducted in the first quarter of the year so any required adjustments to highly compensated employees' contributions can be made early in the plan year.

## 23) Communications

**Contractor Response:** We provide the following participant communications as part of our standard solution:

**Participant brochures.** The enrollment brochure provides plan details and answers to frequently asked questions about FSA programs.

**Claim forms.** Claim forms are designed with each client's name at the top of the form. A logo may also be added to the form. An original is provided for the State of Michigan to copy and distribute to your participants. Claim forms can also be obtained on our participant web site.

**Enrollment posters.** Enrollment posters remind employees of the benefits of the FSA plans and the enrollment period.

**Enrollment materials via the web application.** Enrollment materials for participants and clients are also available via the web application.

- **Participant:** Comprehensive enrollment materials include an interactive presentation that describes FSA plan details such as how to file a claim. A savings calculator to determine the tax savings of FSA plan participation is also available.
- **Client:** Our clients can access tools and training to assist with enrollment and ongoing administration.

**Stored-value card welcome kit.** If the State offers stored-value cards, each participant receives a stored-value card, a card agreement, and a welcome letter at his or her home address.

**Confirmation statements.** If the State desires, confirmation statements are provided to participants after we receive enrollment information (this feature is generally not utilized if confirmation statements are generated through the State's enrollment solution).





**Reimbursement checks.** Reimbursement checks are provided after every scheduled processing.

**Explanation of benefits for claims** (approved for payment, denied, pended for additional information). We send an EOB with each reimbursement check. Participants who choose to have their reimbursements deposited directly into their bank accounts are mailed an EOB. If the State provides a file with participant email addresses, we can also provide email notification of payment.

**Letters to participants requesting additional information.** This letter is sent to those participants who have submitted an ineligible claim or when additional information is needed to process a claim. It explains why the claim cannot be reimbursed at this time.

**Quarterly account statements.** On a quarterly basis, participants receive statements that indicate their account balances and activity. The statement for the fourth quarter of the plan year includes the participant's year-end account balance. Instead of a paper statement, we can send participants an email that tells them to check the web application for information regarding account activity and balances.

We can provide a monthly account statement; however, the State would pay for the additional eight mailings per year. Our optional communication services include:

**“Welcome kit” for each current participant.** This kit is available if the State of Michigan is not using our stored-value cards. Each kit contains instructions for submitting claims for payment, an initial supply of claim forms, and information regarding contacting ADP's solution center. A confirmation statement is also provided so participants can review their elections.

**Enrollment guide.** In addition to the enrollment brochure, this communication also includes enrollment forms, claim forms, a direct deposit form, and an ADP contact card. These enrollment guides are provided for the State to distribute.

24) Provide distribution ready materials to employer for distribution to employees

**Contractor Response:** The following communications are provided to the State of Michigan for distribution:

- Participant brochure.
- Claim form (original provided for copy and distribution).
- Enrollment posters.
- Enrollment guide (optional service).

ADP provides the following communications directly to the State's participants as a standard component of our solution:

- Enrollment materials via the web application.
- Stored-value card welcome kit.
- Confirmation statements.
- Reimbursement checks.
- Explanations of benefits for claims.
- Letters to participants requesting additional information.
- Quarterly account statements.
- “Welcome kit” for each current participant.



## 25) Flyers, brochures, stuffers, mail-outs and posters

**Contractor Response:** ADP is willing and able to support the State of Michigan in developing an effective communications and enrollment campaign. ADP has developed a number of materials in a variety of different media to communicate the benefits of participation. We are also experienced in developing communication plans that are focused on targeting audiences.

For example, we recently worked to develop a communications plan for a client with a decentralized population. We started by identifying the audience and evaluating what communications had been effective in the past. We then looked for opportunities to gather an audience at each location. We discovered that each facility had a cafeteria, and most employees went into the cafeteria at least once each day to get coffee or to eat lunch. The cafeterias were equipped with television monitors that were traditionally used for watching news programs or displaying other information.

Our solution was to loop contents of our FSA commercial, coupled with the detailed “talking head” multimedia presentation, through these monitors several times a day for a few weeks just prior to and during the open enrollment period. The end result was a participation percentage of nearly 30 percent – a staggering number for an employer with nearly 80 percent of employees in blue-collar positions.

In addition to our standard participant communications described above, ADP can also:

- Assist with employee meetings.
- Assist with multimedia campaigns (brochures, emails, prizes for various enrollment milestones).

## 26) Creation of a Michigan specific Plan Booklet for enrollees (SPD), in conjunction with the State

**Contractor Response:** ADP can provide templates for all of your plan documents for FSA plans for no additional charge. Through our client web site, we can provide a questionnaire that allows our clients to enter their plan design parameters online. We issue a plan document and summary plan description based on the information provided on the questionnaire. All plan documents are provided during implementation.

## 27) Reimbursement/Claim Forms

**Contractor Response:** Claim forms are designed with each client’s name at the top of the form. A logo may also be added to the form. An original is provided for the State of Michigan to copy and distribute to your participants. Claim forms can also be obtained on our participant web site.

## 28) Evidence of Medical Need Forms

**Contractor Response:** As part of our standard service, ADP will provide assistance to the State of Michigan for the development of a customized brochure. The State will produce these brochures as is the current process.

## 29) Direct Deposit Forms

**Contractor Response:** Participant direct deposit information can be sent via a data feed, manually entered from an enrollment form, or entered online. Once the information is in the FSA administration system, ADP prenotes the employee’s bank account to help ensure that the account is set up. This setup process takes approximately ten days from the next reimbursement cycle.

## 30) Training of Employee Benefits Division Staff

**Contractor Response:** We will provide training to clients during implementation. Further training is not required due to the fact that all administration and processing is occurring in an outsourced model.



*As an optional service, ADP's experienced, knowledgeable FSA associates are available to conduct employee meetings. They consult with employers and benefit managers on a daily basis, and they are able to answer any questions employees may have regarding flexible spending accounts. ADP also provides communication tools that describe the enrollment process and answer many questions concerning FSA account enrollments to facilitate the State's enrollment meetings.*

31) 24-hour, interactive voice response system for member account balances and claim status

**Contractor Response:** *An IVR system is available virtually 24 hours a day via a toll-free telephone number. Our IVR system currently provides these services in real time:*

- *Participants' account balance(s).*
- *Last reimbursement amount and date.*
- *Total reimbursements.*
- *Participants' most recent contributions.*
- *Year-to-date contributions.*
- *Ability to opt out of the IVR and speak with a CSR during regular business hours. CSRs answer participants' questions regarding account status, claims, reimbursements, eligible expenses, and the FSA plans in which they are enrolled. CSRs are available Monday through Friday from 8:00 a.m. to 8:00 p.m. Eastern time (except ADP-designated holidays).*

32) Toll-free telephone number for potential enrollees to obtain information regarding eligibility of claims and general plan provisions.

**Contractor Response:** *Potential enrollees in the State of Michigan's FSA plan can contact the FSA solution center and speak to a CSR for information regarding eligibility of claims and general plan provisions.*

33) Toll-free telephone number for enrolled participants to obtain information about, claim status inquiries, claim appeals, account balance and general plan provisions.

**Contractor Response:** *As stated above, an IVR system is available virtually 24 hours a day via a toll-free telephone number. Our IVR system currently provides these services in real time:*

- *Participants' account balance(s).*
- *Last reimbursement amount and date.*
- *Total reimbursements.*
- *Participants' most recent contributions.*
- *Year-to-date contributions.*
- *Ability to opt out of the IVR and speak with a CSR during regular business hours. CSRs answer participants' questions regarding account status, claims, reimbursements, eligible expenses, and the FSA plans in which they are enrolled. CSRs are available Monday through Friday from 8:00 a.m. to 8:00 p.m. Eastern time (except ADP-designated holidays).*

34) Provide participant web-access with the ability to view account balances, claim status, view transaction history, print necessary forms and obtain general plan provision information.

**Contractor Response:** *Our participant web application provides participants with the following information:*





- Account summary.
- Claims details.
- Contribution details.
- Payment details.
- General information.
- Answers to frequently asked questions.
- Eligible and ineligible items for reimbursement.

Participants can also download claim forms and access a calculation worksheet, which will assist them with estimating their health care and/or dependent care expenses – as well as provide the tax savings realized by participation in an FSA program. In addition, participants can send an email message directly to our solution center staff from the web site. We respond to email messages within 24 hours.

We are currently developing web enrollment capabilities for our FSA solution.

### 1.102 Out of Scope

Activities regarding the actual enrollment processing and participant eligibility are out of scope.

**Contractor Response:** ADP acknowledges that activities regarding the actual enrollment processing and participant eligibility are out of scope for this project.

Our clients provide employee eligibility information. Our standard service requires that our clients also provide us with the participants who have enrolled in the program.

However, please be aware that if the State chooses to separate FSA enrollment from enrollment for other benefits, we can provide enrollment forms and establish enrollment procedures.

### 1.103 Technical Environment

#### **Eligibility**

Participant information will be maintained by the Contractor. The Contractor must have the capabilities to accept electronic data transfer, and to administer membership information in compliance within the latest HIPAA privacy and security regulations. The data format for active employees is attached under Appendix B.

**Contractor Response:** Our clients provide employee eligibility information. Our standard service requires that our clients also provide us with the participants who have enrolled in the program.

Our FSA administration system has been designed internally specifically for FSA administration. Plan eligibility and account balances are maintained continuously for all participants. The system maintains hire and termination dates, eligibility begin and end dates, plan begin and end dates, and leave of absence begin and end dates.

Account balances are kept for:

- Contributions minus payments.
- Goal amounts minus payments.

A detailed history record is kept for each participant. This record contains every transaction that has affected the account balance. Payments for dependent care accounts are made according to the balance in the account. The Uniform Coverage Rule is followed for health care accounts.



*We prefer to receive enrollments and changes electronically. Our standard file format for the information can be downloaded to our system (please refer to **Exhibit 3**). If information cannot be provided in the standard format, our associates are able to work with data in most formats.*

*There are some instances where information regarding changes cannot be provided electronically. In these instances, we use forms we have created to collect information from the appropriate State of Michigan contact. There are additional annual per-participant charges for data entry services.*

*We are currently developing web enrollment capabilities for our FSA solution.*

*ADP ensures compliance with all HIPAA regulations related to privacy, data security, and HIPAA certificates:*

- **Privacy.** ADP does not display the employee's or dependent's Social Security number on printed materials or on our web site. As a result of the privacy legislation, ADP now displays only the last four digits of the Social Security number for identification purposes.
- **Data security.** Enrollment information is submitted electronically to plan carriers in the HIPAA-compliant 834 standard format on a recurring weekly schedule. Premium payment information is submitted electronically to plan carriers in the HIPAA-compliant 820 standard format on a monthly schedule.
- **HIPAA certificates.** As an optional service within our COBRA administration solution, ADP can produce HIPAA certificates of coverage.

*ADP FSA Services is not considered a "covered entity" with respect to HIPAA regulations. However, in some cases, ADP may be considered a "business associate" with respect to your health FSA plan. If ADP is considered to be a "business associate" under HIPAA, we shall comply with the EDI requirements applicable to business associates. However, as a general rule, the EDI transaction standards do not apply to typical FSA data transmissions – and thus we will not need to send data in EDI-specified formats.*

*ADP is compliant with all privacy obligations of "business associates" under the HIPAA regulations. ADP's internal privacy policies meet or exceed accepted industry standards and all applicable federal requirements – including the HIPAA regulations.*

### **Claim Information**

Maintenance of detailed claim information is necessary to facilitate claims review, appeals and to produce reports to be submitted to the State for use in effectively administering the program.

**Contractor Response:** *We retain all claims-related documentation for a minimum of seven years. All claims and supporting documentation is imaged into DocuTREEV, an electronic document management system. We also use a service that stores the hard copies off-site.*

*Following all daily processing and related transmissions, all internal data files are backed up. As an ongoing and continual process, file back-ups are taken nightly, weekly, monthly, and quarterly.*

*ADP's backup policies require that a backup of the system be performed before any new software release is implemented to ensure that the system can be recovered.*

*ADP has established specific internal standards that dictate which data files are to be retained and the corresponding retention period for each file. These internal standards may only be changed when authorized in writing by the ADP Benefit Services operations support department. The internal standards are audited and reviewed for compliance on an annual basis by the ADP Benefits Services disaster recovery department.*



Data collection on behalf of the State program is not to be distributed to any party without the written consent of the State and is not to be used by the Contractor for any purposes without express, written approval by the State. All data identifying specific enrollees or their dependents are highly confidential and are to be treated and secured according to the latest HIPAA privacy and security regulations. Specifically, the State requires that electronic transmission of identifiable data be protected by passwords and a File Transfer Protocol site be used for retrieval.

**Contractor Response:** *System security and confidentiality of information are maintained by limiting access to the system via passwords. Only individuals whose job responsibilities require access to the system have a password issued – access to participant data is limited to the FSA associates and other management personnel. The password and security level allow us to prevent unauthorized transactions and provide the necessary audit trail.*

*Our system has two levels of security: a login code and a security code to gain access to the system. The security code login determines a level of security within the system that the user has (e.g., inquiry, update, etc.,). Current security procedures have been reviewed by external audit teams from IBM, Federated Department Stores, Monsanto, and our own auditors. All have found the system to be secure.*

*We operate in a batch mode with system edits that prevent the entry of improper data into the system and provide for a review of records before they are released for processing.*

*Our CSRs must verify the caller's identity before discussing any participant-specific data. We use confidentiality and nondisclosure agreements with some of our current clients, and we are willing to explore this possibility with you. We will provide a sample agreement upon being named a finalist.*

*ADP FSA Services is not considered a "covered entity" with respect to HIPAA regulations. However, in some cases, ADP may be considered a "business associate" with respect to your health FSA plan. If ADP is considered to be a "business associate" under HIPAA, we shall comply with the EDI requirements applicable to business associates. However, as a general rule, the EDI transaction standards do not apply to typical FSA data transmissions – and thus we will not need to send data in EDI-specified formats.*

*ADP is compliant with all privacy obligations of "business associates" under the HIPAA regulations. ADP's internal privacy policies meet or exceed accepted industry standards and all applicable federal requirements – including the HIPAA regulations.*

*To support ongoing FSA claims processing, we receive payroll information electronically on a schedule determined by the payroll provider – typically each time a payroll is processed. A specific file layout has been designed for your system.*

*The following methods have been used for data communications at ADP:*

- *Advantis Network for AS/400 to host transmissions using a Sterling Connect Direct.*
- *IBM's netview FTP.*
- *Network Job Entry (NJE).*
- *Remote Job Entry (RJE).*
- *Internet FTP server to server.*
- *Email attachment through Internet.*

*Each of the methods listed above is available on direct, leased-line communications. Some of these methods are available on dial-up access. We will work with you to establish a standard format, media, and method of electronic transfer. In addition to the data communications method listed above, we have also utilized ISDN as a transport mechanism.*

*In addition, the enrollment manager component of ADP's client/administrator FSA administration web site supports the following functionality:*



- *Enter data:*
  - *Import files. This tool is used to upload a client's Excel (XLS) or CSV file into the system.*
  - *Enter new employee data. Clients can use ADP's participant data entry tool to enter employee information. All of the information a client enters may be saved, reviewed, and updated during several visits to this site.*
  - *Modify employee information. Clients can use this tool to review or edit the information entered by ADP or the client (via the file import wizard or the "enter new participant information" options).*
- *Extract data:*
  - *Save a copy of a client's final enrollment history file to a PC – select this option and decide where to save the file.*
  - *Access an enrollment summary report – create a detail report that lists all participants and their spending account elections.*
  - *Access a participant summary report – create a report that shows the elections entered for a single participant.*

### **Contract/State Interface**

The following are additional Contractor requirements related to the necessary systems interface between the selected Contractor and the State:

Capability to accept the State's electronic enrollment files in the file format outlined in Appendix B and process change transactions to maintain up-to-date information for claim certification.

**Contractor Response:** *We prefer to receive enrollments and changes electronically. Although our standard file format for the information can be downloaded to our system (please refer to **Exhibit 3**), we will work with the State of Michigan accept information in other reasonable formats).*

*All eligibility data loads from the State of Michigan are imported into the FSA administration system. System edits are applied to ensure that no data inconsistencies exist (such as eligibility date greater than termination date). We also edit the amount received to ensure that it matches the expected amount.*

*Payroll interface reconciliations (enrollment versus actual payroll deductions) are typically performed by the client's payroll systems for deduction collections in arrears. ADP can provide the State a report that outlines any differences between the expected and actual contribution amount. This report is itemized by participant.*

*ADP begins processing the file as soon as it is received. FSA files are processed within 24 hours of receipt.*

*In addition, the enrollment manager component of ADP's client/administrator FSA administration web site supports the following functionality:*

- *Enter data:*
  - *Import files. This tool is used to upload a client's Excel (XLS) or CSV file into the system.*
  - *Enter new employee data. Clients can use ADP's participant data entry tool to enter employee information. All of the information a client enters may be saved, reviewed, and updated during several visits to this site.*
  - *Modify employee information. Clients can use this tool to review or edit the information entered by ADP or the client (via the file import wizard or the "enter new participant information" options).*



■ *Extract data:*

- *Save a copy of a client's final enrollment history file to a PC – select this option and decide where to save the file.*
- *Access an enrollment summary report – create a detail report that lists all participants and their spending account elections.*
- *Access a participant summary report – create a report that shows the elections entered for a single participant.*

A staff of information systems professionals to provide timely programming required to implement system changes and produce reports.

**Contractor Response:** *ADP's FSA administration system has been developed internally and is considered to be proprietary. ADP associates are responsible for providing all system maintenance, upgrades/enhancements, and ad hoc reporting.*

*ADP does not anticipate any customized programming charges as long as the State of Michigan and the State's carriers submit data in ADP's standard format.*

*As part of the implementation phase, we will work with the State of Michigan and the State's carriers to determine the scope of any customized programming requirements and applicable pricing.*

*We can provide customized ad hoc reporting – depending upon the nature of the reports. Our standard reports meet the needs of most of our clients. Ad hoc report fees are charged on a time-and-expense basis depending on the complexity and format of the requested report.*

Capability and willingness to use the State of Michigan SSL Message Center, or to provide a similar secure system, for all administrative communications concerning individual participants, including transport of electronic files containing confidential information.

**Contractor Response:** *We receive payroll information electronically on a schedule determined by the payroll provider – typically each time a payroll is processed. A specific file layout has been designed for your system.*

*The following methods have been used for data communications at ADP:*

- *Advantis Network for AS/400 to host transmissions using a Sterling Connect Direct.*
- *IBM's netview FTP.*
- *Network Job Entry (NJE).*
- *Remote Job Entry (RJE).*
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*Each of the methods listed above is available on direct, leased-line communications. Some of these methods are available on dial-up access. We will work with you to establish a standard format, media, and method of electronic transfer. In addition to the data communications method listed above, we have also utilized ISDN as a transport mechanism.*

*In addition, the enrollment manager component of ADP's client/administrator FSA administration web site supports the following functionality:*



- *Enter data:*
  - *Import files. This tool is used to upload a client's Excel (XLS) or CSV file into the system.*
  - *Enter new employee data. Clients can use ADP's participant data entry tool to enter employee information. All of the information a client enters may be saved, reviewed, and updated during several visits to this site.*
  - *Modify employee information. Clients can use this tool to review or edit the information entered by ADP or the client (via the file import wizard or the "enter new participant information" options).*
- *Extract data:*
  - *Save a copy of a client's final enrollment history file to a PC – select this option and decide where to save the file.*
  - *Access an enrollment summary report – create a detail report that lists all participants and their spending account elections.*
  - *Access a participant summary report – create a report that shows the elections entered for a single participant.*

### **Electronic Transmission of Identifiable Information**

Communication involving any and all identifiable participant information must be protected using passwords and a File Transfer Protocol site for retrieval.

**Contractor Response:** *ADP FSA Services is not considered a "covered entity" with respect to HIPAA regulations. However, in some cases, ADP may be considered a "business associate" with respect to your health FSA plan. If ADP is considered to be a "business associate" under HIPAA, we shall comply with the EDI requirements applicable to business associates. However, as a general rule, the EDI transaction standards do not apply to typical FSA data transmissions – and thus we will not need to send data in EDI-specified formats.*

*ADP is compliant with all privacy obligations of "business associates" under the HIPAA regulations. ADP's internal privacy policies meet or exceed accepted industry standards and all applicable federal requirements – including the HIPAA regulations.*

*To support ongoing FSA claims processing, we receive payroll information electronically on a schedule determined by the payroll provider – typically each time a payroll is processed. A specific file layout has been designed for your system.*

*The following methods have been used for data communications at ADP:*

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*In addition, the enrollment manager component of ADP's client/administrator FSA administration web site supports the following functionality:*





- *Enter data:*
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  - *Access an enrollment summary report – create a detail report that lists all participants and their spending account elections.*
  - *Access a participant summary report – create a report that shows the elections entered for a single participant.*

#### 1.104 Work and Deliverable

The Contractor must meet the following requirements:

##### Plan Design

- 1) The Contractor will be asked to provide the plan design shown in Appendix A. The Contractor is asked to provide a bid based on administration, excluding enrollment activities, of the Medical and Dependent Care Flexible Spending Accounts Plan. This will include, but is not limited to producing brochures promoting the FSA program, assisting the State of Michigan with customized employee communications, electronically interfacing with the State's payroll system with both inbound and outbound data transfer, processing claims received from participants, providing monthly, quarterly and year-end reporting and providing exceptional customer service for both the State of Michigan benefits personnel and program participants.

**Contractor Response:** ADP can support the plan design provisions listed in Appendix A. We provide the following participant communications as part of our standard solution:

**Participant brochures.** The enrollment brochure provides plan details and answers to frequently asked questions about FSA programs.

**Claim forms.** Claim forms are designed with each client's name at the top of the form. A logo may also be added to the form. An original is provided for the State of Michigan to copy and distribute to your participants. Claim forms can also be obtained on our participant web site.

**Enrollment posters.** Enrollment posters remind employees of the benefits of the FSA plans and the enrollment period.

**Enrollment materials via the web application.** Enrollment materials for participants and clients are also available via the web application.

- *Participant:* Comprehensive enrollment materials include an interactive presentation that describes FSA plan details such as how to file a claim. A savings calculator to determine the tax savings of FSA plan participation is also available.
- *Client:* Our clients can access tools and training to assist with enrollment and ongoing administration.



**Stored-value card welcome kit.** If the State offers stored-value cards, each participant receives a stored-value card, a card agreement, and a welcome letter at his or her home address.

**Confirmation statements.** If the State desires, confirmation statements are provided to participants after we receive enrollment information (this feature is generally not utilized if confirmation statements are generated through the State's enrollment solution).

**Reimbursement checks.** Reimbursement checks are provided after every scheduled processing.

**Explanation of benefits for claims** (approved for payment, denied, pending for additional information). We send an EOB with each reimbursement check. Participants who choose to have their reimbursements deposited directly into their bank accounts are mailed an EOB. If the State provides a file with participant email addresses, we can also provide email notification of payment.

**Letters to participants requesting additional information.** This letter is sent to those participants who have submitted an ineligible claim or when additional information is needed to process a claim. It explains why the claim cannot be reimbursed at this time.

**Quarterly account statements.** On a quarterly basis, participants receive statements that indicate their account balances and activity. The statement for the fourth quarter of the plan year includes the participant's year-end account balance. Instead of a paper statement, we can send participants an email that tells them to check the web application for information regarding account activity and balances.

We can provide a monthly account statement; however, the State would pay for the additional eight mailings per year.

Our optional communication services include:

**"Welcome kit" for each current participant.** This kit is available if the State of Michigan is not using our stored-value cards. Each kit contains instructions for submitting claims for payment, an initial supply of claim forms, and information regarding contacting ADP's solution center. A confirmation statement is also provided so participants can review their elections.

**Enrollment guide.** In addition to the enrollment brochure, this communication also includes enrollment forms, claim forms, a direct deposit form, and an ADP contact card. These enrollment guides are provided for the State to distribute.

ADP is willing and able to support the State of Michigan in developing an effective communications and enrollment campaign. ADP has developed a number of materials in a variety of different media to communicate the benefits of participation. We are also experienced in developing communication plans that are focused on targeting audiences.

For example, we recently worked to develop a communications plan for a client with a decentralized population. We started by identifying the audience and evaluating what communications had been effective in the past. We then looked for opportunities to gather an audience at each location. We discovered that each facility had a cafeteria, and most employees went into the cafeteria at least once each day to get coffee or to eat lunch. The cafeterias were equipped with television monitors that were traditionally used for watching news programs or displaying other information.

Our solution was to loop contents of our FSA commercial, coupled with the detailed "talking head" multimedia presentation, through these monitors several times a day for a few weeks just prior to and during the open enrollment period. The end result was a participation percentage of nearly 30 percent – a staggering number for an employer with nearly 80 percent of employees in blue-collar positions.

In addition to the standard communications described above, ADP can also:

- Assist with employee meetings.
- Assist with multimedia campaigns (brochures, emails, prizes for various enrollment milestones).





*Customized communications are billed on a time-and-expense basis.*

*We import the payroll data sent by you (or your payroll provider) on a regular basis and keep a current record of each participant's account (we will work with the State of Michigan accept information in other reasonable formats). We typically do not transmit eligibility data to outside sources or clients. Typical protocol involves the client transmitting this data to ADP.*

*When a participant's stored-value card is swiped by the merchant, this serves as an electronic claim for reimbursement. The MCC determines if the purchase is made at an eligible merchant. If automated substantiation requirements are not met, ADP's system automatically generates a letter to the participant to request additional documentation regarding the purchase.*

*Claims that are submitted via mail or fax are simultaneously imported into ADP's claims processing system and our imaging system using OCR technology. Before claims information is processed, claims are scrutinized for compliance with IRS regulations, and a quality check is performed to ensure that the data was imported correctly. Our dedicated claims processors look closely at the documentation – paying particular attention to the service type and the date services were performed. The system then automatically determines whether this claim was previously reimbursed through the participant's insurance company.*

*Claims information is entered into the database using the following criteria:*

- *Participant Social Security number.*
- *Plan type.*
- *Plan year.*
- *Date of service.*
- *Date claim was received.*
- *Type of expense (e.g., medical, dental, vision, prescription, etc.).*
- *Requested amount to be reimbursed.*

*During this process, the FSA administration system compares each claim entered with all prior entries to identify claims that have been previously submitted. We process claims and reimbursements daily.*

*Claims that are submitted via mail or fax are typically processed within 48 hours of receipt. Each participant can elect to be reimbursed through a reimbursement check sent to his or her home address or direct deposit. It is our policy to pay claims only after having the necessary funding in place. To facilitate daily reimbursements, ADP requires direct-debit access to a client-owned bank account.*

*ADP can provide management reports in virtually any format. Standard management reports include account activity statements, transaction summary reports, aggregate reports, reimbursement reconciliation reports, payroll deduction reports, and financial summary reports.*

*Our standard method is to provide electronic reports via the Internet. We can produce hard copy reports if required.*

**Summary account statement.** *Lists all participants enrolled in a plan, their payroll and annual contribution amounts, and other account totals for a specified time period and year-to-date. The summary account statement for the end of the runout period lists any account balances that were forfeited. This report is produced on a quarterly or monthly basis.*

**Distribution and adjustment report.** *Lists all participants who received a benefit and includes transactions processed by reimbursement check, direct deposit, and stored-value card. This report is produced on a frequency to be determined by the State – typically weekly or monthly.*

**Forfeiture report.** *Lists the amount of forfeiture for each participant. This report is produced annually.*



*These reports are also available:*

- *Contribution summary.*
- *Payment summary.*
- *Organization census.*
- *Detail account statement (for individual participant information).*
- *Plan utilization.*
- *Enrollment confirmation.*
- *Participant analysis.*
- *Employer contribution report.*
- *Transaction history report.*
- *Check listing.*

*CSRs answer participants' questions regarding account status, claims, reimbursements, eligible expenses, and the FSA plans in which they are enrolled. CSRs are available Monday through Friday from 8:00 a.m. to 8:00 p.m. Eastern time (except ADP-designated holidays). An IVR system is available virtually 24 hours a day via a toll-free telephone number.*

*CSRs are available during our regular business hours to assist both the State of Michigan HR administrators and individual participants. Trained backup CSRs are available if needed. Our CSRs are well versed in the unique aspects of your plan, are familiar with the State of Michigan organization and your employees, and immediately resolve any issues that may arise.*

*Our robust case management system provides broad call tracking support to our solution center. The system tracks all events – telephone calls, faxes, letters, and system-generated activity. We have built our case management system around four key values:*

- *Speed: Resolving cases in a timely manner.*
- *Accountability: Knowing who is accountable for a service item during all stages of the process.*
- *Simplicity: Analyzing the process to eliminate hand-offs and reduce turnaround time.*
- *Documentation: Ensuring that all issues, inquiries, and questions (including answers given) are well documented within the case management system.*

*When a CSR receives a call, the caller's record is retrieved from the case management database. The CSR uses drop-down menus to record the nature of the call and then notes the details of the conversation. The system always date- and time-stamps the record – whether the case is closed during the initial call or pending for further action.*

*If a case requires additional follow-up, it can be saved in the CSR's pending file or forwarded to another case manager for action. The system tracks the case's progress and status (open or closed). If a case is open beyond the standard time frame for resolution, the CSR's supervisor is notified.*

*The case management system monitors open cases based on their assignment to individual associates. Cases are dispatched to the appropriate department for resolution (Tier 2 research, accounting, etc.). Cases are returned to the solution center after the issue is resolved. Each department is responsible for monitoring the case management queue and closing cases on a timely basis. The case "clock" begins as soon as the case is dispatched.*



*Our service goal is to resolve 80 percent of all issues during the first call. We use a call resolution report to closely monitor the percentage of calls that are resolved during the participant's first contact with the solution center.*

*All information accessed by our administration team is obtained from a single central database in a real-time environment, which ensures that all associates have access to the most up-to-date information – including claim detail. Our service teams also have access to a case management system, which our CSRs use to assign participant calls to other team members for research and resolution.*

*The customer service team to which the State is assigned depends on the administrative complexity of your account as determined during implementation. A service delivery manager is assigned to each client account, and he or she acts as the point of escalation for the customer service team.*

*The team of account specialists handles the majority of your daily issues and inquiry resolution. The customer service teams are carefully composed of account specialists who have a variety of skills in order to provide the State with the high-quality customer service you deserve. Each team member becomes familiar with your account to ensure continuity of service and rapid issue resolution. An extensive operational support structure that is designed to ensure the success of our customer service teams in delivering exceptional service is in place.*

*Should the State find if necessary, you may always contact your service delivery manager to discuss a matter that you believe requires management consideration.*

- 2) The program will meet federal requirements for use of employee pre-tax compensation for payment of qualified Medical and Dependent Care expenses/services under IRC Section 125.

**Contractor Response:** *ADP is in full compliance with all federal laws. We regularly receive updated IRS communications regarding changes in the regulations that pertain to Section 125 plans. In addition, ADP has a compliance officer who is responsible for notifying our administrative groups of any regulatory activities that would impact our services. If any changes would affect your plans, your FSA client service team would notify you and assist with any actions that need to be taken. We will also work with your communications staff to prepare updated HR communications for your participants.*

*To ensure that your plans are administered according to your specifications, we build your specific business rules and plan specifications into the administration system.*

- 3) Eligibility will include current active State employees.

**Contractor Response:** *Confirmed. Our clients provide employee eligibility information.*

- 4) Account balances for these plans will be funded entirely by employee salary reductions, i.e., the State will not be contributing to these plans, nor will the State be reimbursing expenses outside the plan perimeters. Administrative costs for the plan, however will be paid by the State. Fees in association with the administration of the debit card may be paid by the State, the participant or a combination of both.

**Contractor Response:** *Confirmed.*

- 5) The effective date of the contract will be September 6, 2006, with an expected date of plan year commencement of January 1, 2007. During the initial period, it is expected that the Contractor, in coordination with the State, will develop and test data interfaces with the State payroll (HRMN) system, and develop, in conjunction with the State, customized employee communication materials for the plans.

**Contractor Response:** *Confirmed.*

### **Administrative Services**

Administrative services must include, but not limited to, the following:



- 1) Ability to accept eligibility and account information by secure electronic data interchange (EDI) in HIPAA compliant format.

**Contractor Response:** *ADP FSA Services is not considered a “covered entity” with respect to HIPAA regulations. However, in some cases, ADP may be considered a “business associate” with respect to your health FSA plan. If ADP is considered to be a “business associate” under HIPAA, we shall comply with the EDI requirements applicable to business associates. However, as a general rule, the EDI transaction standards do not apply to typical FSA data transmissions – and thus we will not need to send data in EDI-specified formats.*

*ADP is compliant with all privacy obligations of “business associates” under the HIPAA regulations. ADP’s internal privacy policies meet or exceed accepted industry standards and all applicable federal requirements – including the HIPAA regulations.*

*To support ongoing FSA claims processing, we receive payroll information electronically on a schedule determined by the payroll provider – typically each time a payroll is processed. A specific file layout has been designed for your system.*

*The following methods have been used for data communications at ADP:*

- *Advantis Network for AS/400 to host transmissions using a Sterling Connect Direct.*
- *IBM’s netview FTP.*
- *Network Job Entry (NJE).*
- *Remote Job Entry (RJE).*
- *Internet FTP server to server.*
- *Email attachment through Internet.*

*Each of the methods listed above is available on direct, leased-line communications. Some of these methods are available on dial-up access. We will work with you to establish a standard format, media, and method of electronic transfer. In addition to the data communications method listed above, we have also utilized ISDN as a transport mechanism.*

*In addition, the enrollment manager component of ADP’s client/administrator FSA administration web site supports the following functionality:*

- *Enter data:*
  - *Import files. This tool is used to upload a client’s Excel (XLS) or CSV file into the system.*
  - *Enter new employee data. Clients can use ADP’s participant data entry tool to enter employee information. All of the information a client enters may be saved, reviewed, and updated during several visits to this site.*
  - *Modify employee information. Clients can use this tool to review or edit the information entered by ADP or the client (via the file import wizard or the “enter new participant information” options).*
- *Extract data:*
  - *Save a copy of a client’s final enrollment history file to a PC – select this option and decide where to save the file.*
  - *Access an enrollment summary report – create a detail report that lists all participants and their spending account elections.*
  - *Access a participant summary report – create a report that shows the elections entered for a single participant.*



- 2) Ability to administer claims and account administration in accordance with the plan design, consistent with the requirements of IRC Section 125.

**Contractor Response:** ADP is in full compliance with all federal laws. We regularly receive updated IRS communications regarding changes in the regulations that pertain to Section 125 plans. In addition, ADP has a compliance officer who is responsible for notifying our administrative groups of any regulatory activities that would impact our services. If any changes would affect your plans, your FSA client service team would notify you and assist with any actions that need to be taken. We will also work with your communications staff to prepare updated HR communications for your participants.

*To ensure that your plans are administered according to your specifications, we build your specific business rules and plan specifications into the administration system.*

*Claims that are reimbursed via the stored-value card have different claims substantiation procedures. When a participant's stored-value card is swiped by the merchant, this serves as an electronic claim for reimbursement. The MCC determines if the purchase is made at an eligible merchant. If automated substantiation requirements are not met, ADP's system automatically generates a letter to the participant to request additional documentation regarding the purchase.*

*Claims that are submitted via mail or fax are simultaneously imported into ADP's claims processing system and our imaging system using OCR technology. Before claims information is processed, claims are scrutinized for compliance with IRS regulations, and a quality check is performed to ensure that the data was imported correctly. Our dedicated claims processors look closely at the documentation – paying particular attention to the service type and the date services were performed. The system then automatically determines whether this claim was previously reimbursed through the participant's insurance company.*

*Claims information is entered into the database using the following criteria:*

- *Participant Social Security number.*
- *Plan type.*
- *Plan year.*
- *Date of service.*
- *Date claim was received.*
- *Type of expense (e.g., medical, dental, vision, prescription, etc.,).*
- *Requested amount to be reimbursed.*

*During this process, the FSA administration system compares each claim entered with all prior entries to identify claims that have been previously submitted. We process claims and reimbursements daily.*

*Our FSA administration system has been designed internally specifically for FSA administration. Plan eligibility and account balances are maintained continuously for all participants. The system maintains hire and termination dates, eligibility begin and end dates, plan begin and end dates, and leave of absence begin and end dates.*

*Account balances are kept for:*

- *Contributions minus payments.*
- *Goal amounts minus payments.*

*A detailed history record is kept for each participant. This record contains every transaction that has affected the account balance. Payments for dependent care accounts are made according to the balance in the account. The Uniform Coverage Rule is followed for health care accounts.*





*Employee contribution records (not funds) are sent to ADP on a periodic basis (typically with each payroll processing). Participant funds are held by the employer. ADP direct-debits the client's account only after claims are processed and reimbursements need to be paid to participants. At that time, ADP sends a daily reimbursement report to the client. This report documents reimbursement activity for manual claims and stored-value card transactions.*

*After receipt of payment, ADP mails reimbursement checks to participants or funds are sent via EFT directly into participants' bank accounts. Since stored-value card transactions are paid and FSA balances are updated at the time of service, reimbursement checks are not required for these transactions.*

*The most common reimbursement process is for ADP to direct-debit the amount required to reimburse each day's manual claims and stored-value card transactions from the client's bank account. Clients often use a zero-balance account that automatically drafts the exact reimbursement amount from another interest-bearing account.*

3) Confidentiality of all data by Contractor.

**Contractor Response:** *System security and confidentiality of information are maintained by limiting access to the system via passwords. Only individuals whose job responsibilities require access to the system have a password issued – access to participant data is limited to the FSA associates and other management personnel. The password and security level allow us to prevent unauthorized transactions and provide the necessary audit trail.*

*Our system has two levels of security: a login code and a security code to gain access to the system. The security code login determines a level of security within the system that the user has (e.g., inquiry, update, etc.). Current security procedures have been reviewed by external audit teams from IBM, Federated Department Stores, Monsanto, and our own auditors. All have found the system to be secure.*

*We operate in a batch mode with system edits that prevent the entry of improper data into the system and provide for a review of records before they are released for processing.*

*Our CSRs must verify the caller's identity before discussing any participant-specific data. We use confidentiality and nondisclosure agreements with some of our current clients, and we are willing to explore this possibility with you. We will provide a sample agreement upon being named a finalist.*

*Our database separates logically both client and participant data. Participants access the web or IVR using a unique personal identifier and a password. First-time users of the system must establish a profile and must follow our security requirements with respect to passwords and user identification. Our system contains built-in controls that identify potential duplicate records. ADP personnel are notified accordingly.*

4) Maintenance of records for auditing and management information reporting and analysis.

**Contractor Response:** *We retain all claims-related documentation for a minimum of seven years. All claims and supporting documentation is imaged into DocuTREEV, an electronic document management system. We also use a service that stores the hard copies off-site.*

*Following all daily processing and related transmissions, all internal data files are backed up. As an ongoing and continual process, file back-ups are taken nightly, weekly, monthly, and quarterly.*

*ADP's backup policies require that a backup of the system be performed before any new software release is implemented to ensure that the system can be recovered.*

*ADP has established specific internal standards that dictate which data files are to be retained and the corresponding retention period for each file. These internal standards may only be changed when authorized in writing by the ADP Benefit Services operations support department. The internal standards are audited and reviewed for compliance on an annual basis by the ADP Benefits Services disaster recovery department.*

*In general, ADP does not permit its clients to directly audit its systems and operations. This is because:*



- A client audit subjects every client's confidential payroll, HR, and benefits administration data to potential unauthorized disclosure.
- Client audits tend to disrupt the normal operations of our processing centers, which jeopardizes our ability to deliver timely service.

*If only 1 percent of our clients audited us each year, we would be hosting auditors 365 days per year in every one of our payroll processing facilities. This is not to imply that we do not welcome our clients at our processing centers. Clients and prospective clients often arrange to visit us; we are happy to provide them with a two-hour walk-through of our operations and access to their printed reports as appropriate.*

*In lieu of permitting clients to audit us directly, ADP has retained a nationally recognized public accounting firm to perform SAS 70 Type II reviews for most of our solutions. ADP's SAS 70 reports are dated on one of two dates: March 31 or September 30. Clients with a fiscal year-end of June 30 find the March 31 reports most useful; clients with a fiscal year-end of December 31 find the September 30 reports most useful. In addition, all SAS 70s are updated (reperformed) every year. The quality, frequency, and timing of our SAS 70 reports eliminates the need for clients to perform their own audits of ADP processing and systems. Finally, unlike some other service providers, ADP does not charge a fee to clients for the SAS 70 reports.*

- 5) Monthly, quarterly and annual reporting, on an accurate, timely basis, of plan activity and experience data to the State as outlined in Section 1.302.

**Contractor Response:** *ADP can provide management reports in virtually any format. Standard management reports include account activity statements, transaction summary reports, aggregate reports, reimbursement reconciliation reports, payroll deduction reports, and financial summary reports. Our standard method is to provide electronic reports via the Internet. We can produce hard copy reports if required.*

**Summary account statement.** *Lists all participants enrolled in a plan, their payroll and annual contribution amounts, and other account totals for a specified time period and year-to-date. The summary account statement for the end of the runout period lists any account balances that were forfeited. This report is produced on a quarterly or monthly basis.*

**Distribution and adjustment report.** *Lists all participants who received a benefit and includes transactions processed by reimbursement check, direct deposit, and stored-value card. This report is produced on a frequency to be determined by the State of Michigan – typically weekly or monthly.*

**Forfeiture report.** *Lists the amount of forfeiture for each participant. This report is produced annually.*

*These reports are also available:*

- Contribution summary.
- Payment summary.
- Organization census.
- Detail account statement (for individual participant information).
- Plan utilization.
- Enrollment confirmation.
- Participant analysis.
- Employer contribution report.
- Transaction history report.
- Check listing.



**Financial Arrangements**

- 1) Competitive administrative fees.

**Contractors Response:** ADP's pricing information has been provided as Article 1, Attachment A.

- 2) Ability to accept fund transfers from the State.

**Contractor Response:** Employee contribution records (not funds) are sent to ADP on a periodic basis (typically with each payroll processing). Participant funds are held by the employer. ADP direct-debits the client's account only after claims are processed and reimbursements need to be paid to participants. At that time, ADP sends a daily reimbursement report to the client. This report documents reimbursement activity for manual claims and stored-value card transactions.

After receipt of payment, ADP mails reimbursement checks to participants or funds are sent via EFT directly into participants' bank accounts. Since stored-value card transactions are paid and FSA balances are updated at the time of service, reimbursement checks are not required for these transactions.

The most common reimbursement process is for ADP to direct-debit the amount required to reimburse each day's manual claims and stored-value card transactions from the client's bank account. Clients often use a zero-balance account that automatically drafts the exact reimbursement amount from another interest-bearing account.

ADP is capable of working with the State of Michigan to set up an alternate funding method. We are able to set up a separate account that the State would prefund with a mutually agreed-upon amount. ADP would then debit this account for stored-value card transactions, direct deposits, and reimbursement checks.

- 3) Willingness to accept Performance Standard Guarantees as outlined in Section 1.702.

**Contractor Response:** ADP's proposed service level agreement for the State of Michigan has been provided as **Exhibit 1**.

**Participant Services**

Customer service activities to include, but not limited to the following:

- 1) Access, at a minimum, for extended hours on business days.

**Contractor Response:** CSRs are available Monday through Friday from 8:00 a.m. to 8:00 p.m. Eastern time (except ADP-designated holidays). We provide a toll-free telephone number for participants to reach CSRs via IVR technology.

Participants also have inquiry capability through our web site, which is included as part of our standard services.

- 2) A single, front-end, toll-free telephone number with touch-tone routing (if necessary) for member services, with TDD capabilities.

**Contractor Response:** CSRs answer participants' questions regarding account status, claims, reimbursements, eligible expenses, and the FSA plans in which they are enrolled. CSRs are available Monday through Friday from 8:00 a.m. to 8:00 p.m. Eastern time (except ADP-designated holidays). An IVR system is available virtually 24 hours a day via a toll-free telephone number.

Our solution center associates have been designated as CSR Is, IIs, or IIIs:



- *CSR Is and IIs handle inbound calls and field basic question by leveraging our hypertext knowledgebase and the FSA administration system. These tools provides detailed information that describe each client's plans. CSR Is and IIs also use the case management system to track all incoming calls and provide updated information regarding actions that have been taken to date and actions that are still outstanding.*
- *CSR IIIs leverage the case management system, hypertext knowledgebase, and client-specific applications to field the more difficult questions and escalated situations.*

*This arrangement keeps the influx of new calls moving as rapidly as possible. We provide high-quality responses to routine questions – while focusing additional time, resources, and expertise on the more complex inquiries. CSRs have access to all available resources in order to answer the level of questions to which they are assigned.*

*Hearing-impaired employees may use the TDD telephone number (published in employee communications) to call the solution center and leave a printed inquiry. The TDD supervisor receives the inquiry and identifies the appropriate associate to research the issue. The CSR responds to the employee's question using the TDD (printed response).*

*ADP offers bilingual CSRs as an optional service for clients with a specific need for Spanish-speaking representatives. In the vast majority of circumstances, as a standard service, ADP also utilizes the services of AT&T's Language Line for any translation assistance our clients' participants may require. The fees for a designated bilingual service would be developed and presented based on a specific process analysis.*

- 3) 24-hour, interactive voice response system with a user-friendly menu that members find easy to understand and utilize to include information regarding claim status, account balances and general plan provisions, with TDD capabilities.

**Contractor Response:** *An IVR system is available virtually 24 hours a day via a toll-free telephone number. Our IVR system currently provides these services in real time:*

- *Participants' account balance(s).*
- *Last reimbursement amount and date.*
- *Total reimbursements.*
- *Participants' most recent contributions.*
- *Year-to-date contributions.*
- *Ability to opt out of the IVR and speak with a CSR during regular business hours.*

*As stated above, hearing-impaired employees may use the TDD telephone number (published in employee communications) to call the solution center and leave a printed inquiry. The TDD supervisor receives the inquiry and identifies the appropriate associate to research the issue. The CSR responds to the employee's question using the TDD (printed response).*

*ADP offers bilingual CSRs as an optional service for clients with a specific need for Spanish-speaking representatives. In the vast majority of circumstances, as a standard service, ADP also utilizes the services of AT&T's Language Line for any translation assistance our clients' participants may require. The fees for bilingual service would be developed and presented based on a specific process analysis.*

- 4) Customer service representatives should have access to a comprehensive, on-line claim tracking through an electronic claim imaging system, or equivalent, to assist members with claim inquiries.

**Contractor Response:** *ADP uses a customized OCR solution for our claims department. OCR technology works by taking scanned forms and reading/recognizing the characters in specific fields, which eliminates the errors that can occur when data is manually keyed by claims representatives. OCR technology vastly improves the accuracy of the claim information that ADP inputs and reduces adjudication turnaround time.*



*ADP has document-imaging technology that saves and stores claims and receipts. This technology improves the ability of the solution center to service the State of Michigan's participants by viewing the claims information online and providing real-time answers.*

*All information accessed by our administration team is obtained from a single central database in a real-time environment, which ensures that all associates have access to the most up-to-date information – including claim detail. Our service teams also have access to a case management system, which our CSRs use to assign participant calls to other team members for research and resolution.*

- 5) Customer service representatives should have access to a client specific knowledge-based system and/or assignment of a State dedicated customer service team (first-call resolution).

**Contractor Response:** *As stated above, all information accessed by our administration team is obtained from a single central database in a real-time environment, which ensures that all associates have access to the most up-to-date information – including claim detail. Our service teams also have access to a case management system, which our CSRs use to assign participant calls to other team members for research and resolution.*

*The majority of our clients are handled in a team environment; however, specific associates are dedicated to claims processing and customer service duties. A service delivery manager is designated to support each client. He or she interfaces with all key operating areas to ensure that issues are resolved promptly. We encourage our clients to work directly with their assigned service delivery manager and account specialists.*

*The customer service teams are carefully composed of account specialists who have a variety of skills in order to provide the State of Michigan with the high-quality customer service you deserve. Each team member becomes familiar with your account to ensure continuity of service and rapid issue resolution. An extensive operational support structure that is designed to ensure the success of our customer service teams in delivering exceptional service is in place.*

- 6) Provide detail of customer service representative training program.

**Contractor Response:** *WOW training is ADP's proprietary customer service soft-skill training. Our approach to customer service differs from other FSA administrators. We strive to make our clients' participants feel valued by offering the personal touch and ensuring that participants receive the right answer the first time they call. Our goal is not to just resolve their problems – but to “wow” them in the process. We do not focus our CSRs on a specific talk time or how many calls they take within an hour – we want them to focus on your participants and resolving their questions. We strive to be viewed as an extension of the State of Michigan's HR department.*

*Our training program for FSA CSRs is rigorous for all levels. We build on a base of strong customer service skills and integrate plan-specific knowledge, analytical skill, and system navigational skill. CSRs complete a minimum of four weeks of training prior to taking any calls independently. During training, written and verbal assessments are administered on a daily basis to assess an individual's capabilities. Customer service personnel also participate in role-playing situations, which helps them gain realistic experience and bolsters their confidence. No CSR begins answering participants' questions before satisfactorily completing both a final written and oral exam.*

*Training consists of several core modules, plus additional position-specific sessions. Examples of core modules include:*

- *Our corporate philosophy.*
- *Telephone skill training.*
- *General and HR benefit information.*
- *Basic system training (Intranet, Microsoft Office suite, email, etc.,).*



*Position-specific training includes:*

- *Advanced system training (hypertext reference system, FSA administration system, and case management system).*
- *Compliance testing.*
- *Claim dispute resolution.*
- *Client-specific eligibility/enrollment procedures.*
- *Performance expectations.*

*Our designated trainer provides much of the training. Trainees take a written test on plan-specific knowledge. They are tested orally on how they integrate the various skills. Call simulation is a vital part of assessing a trainee's readiness.*

*On an ongoing basis, training is customized to the needs and goals of the individual. We evaluate CSRs' performance via:*

- *Live call monitoring to rate courtesy, accuracy, and follow-up.*
- *Reviewing our case management system to assess call and case management documentation.*
- *Attendance and timeliness.*

*Feedback is a critical part of our solution center career development standards, and CSRs receive immediate feedback regarding the results of call monitoring and case management assessments. We provide monthly feedback regarding communication skills and teamwork/initiative.*

*Employees are encouraged through monetary incentives and recognition programs to continue their education with industry course work such as the CEBS examinations. We also offer an education assistance program to support employees who are seeking to continue their formal education.*

- 7) Provide a customer service representative monitoring system to insure quality and accuracy of individual calls.

**Contractor Response:** *CSR performance is managed through a number of formal and informal programs, including:*

- *Weekly monitoring by supervisors and the operational management team (in person and "blinded").*
- *Training and retraining programs that result in certification.*
- *Protocols that require certain behaviors under certain call conditions.*
- *Financial incentives for meeting performance standards for which we have fees at risk.*
- *Annual performance reviews that include quarterly progress assessments.*
- *Career path options to Tier 2 resource and/or team leader positions after exceptional customer service, benefits knowledge, and required technical expertise is demonstrated.*
- *Reviews of call recordings with teams of CSRs to assist them in making objective judgments regarding the quality of their delivery.*
- *Client test calls.*

*Aggregate monitoring results may be shared with the State. As an optional service, ADP can provide remote monitoring capabilities to the State, which allow you to monitor live calls from your location.*



- 8) Customized participant communications (with all communication subject to the State's approval), including flyers, brochures, stuffers, mail-outs, posters, claim kits and articles for inclusion in regular State newsletters.

**Contractor Response:** *We provide the following participant communications as part of our standard solution:*

**Participant brochures.** *The enrollment brochure provides plan details and answers to frequently asked questions about FSA programs.*

**Claim forms.** *Claim forms are designed with each client's name at the top of the form. A logo may also be added to the form. An original is provided for The State to copy and distribute to your participants. Claim forms can also be obtained on our participant web site.*

**Enrollment posters.** *Enrollment posters remind employees of the benefits of the FSA plans and the enrollment period.*

**Enrollment materials via the web application.** *Enrollment materials for participants and clients are also available via the web application.*

- *Participant: Comprehensive enrollment materials include an interactive presentation that describes FSA plan details such as how to file a claim. A savings calculator to determine the tax savings of FSA plan participation is also available.*
- *Client: Our clients can access tools and training to assist with enrollment and ongoing administration.*

**Stored-value card welcome kit.** *If the State offers stored-value cards, each participant receives a stored-value card, a card agreement, and a welcome letter at his or her home address.*

**Confirmation statements.** *If the State desires, confirmation statements are provided to participants after we receive enrollment information (this feature is generally not utilized if confirmation statements are generated through the State's enrollment solution).*

**Reimbursement checks.** *Reimbursement checks are provided after every scheduled processing.*

**Explanation of benefits for claims** *(approved for payment, denied, pended for additional information).* *We send an EOB with each reimbursement check. Participants who choose to have their reimbursements deposited directly into their bank accounts are mailed an EOB. If the State provides a file with participant email addresses, we can also provide email notification of payment.*

**Letters to participants requesting additional information.** *This letter is sent to those participants who have submitted an ineligible claim or when additional information is needed to process a claim. It explains why the claim cannot be reimbursed at this time.*

**Quarterly account statements.** *On a quarterly basis, participants receive statements that indicate their account balances and activity. The statement for the fourth quarter of the plan year includes the participant's year-end account balance. Instead of a paper statement, we can send participants an email that tells them to check the web application for information regarding account activity and balances.*

*We can provide a monthly account statement; however, the State would pay for the additional eight mailings per year.*

*Our optional communication services include:*

**"Welcome kit" for each current participant.** *This kit is available if the State of Michigan is not using our stored-value cards. Each kit contains instructions for submitting claims for payment, an initial supply of claim forms, and information regarding contacting ADP's solution center. A confirmation statement is also provided so participants can review their elections.*





**Enrollment guide.** In addition to the enrollment brochure, this communication also includes enrollment forms, claim forms, a direct deposit form, and an ADP contact card. These enrollment guides are provided for the State to distribute.

ADP is willing and able to support the State of Michigan in developing an effective communications and enrollment campaign. ADP has developed a number of materials in a variety of different media to communicate the benefits of participation. We are also experienced in developing communication plans that are focused on targeting audiences.

For example, we recently worked to develop a communications plan for a client with a decentralized population. We started by identifying the audience and evaluating what communications had been effective in the past. We then looked for opportunities to gather an audience at each location. We discovered that each facility had a cafeteria, and most employees went into the cafeteria at least once each day to get coffee or to eat lunch. The cafeterias were equipped with television monitors that were traditionally used for watching news programs or displaying other information.

Our solution was to loop contents of our FSA commercial, coupled with the detailed “talking head” multimedia presentation, through these monitors several times a day for a few weeks just prior to and during the open enrollment period. The end result was a participation percentage of nearly 30 percent – a staggering number for an employer with nearly 80 percent of employees in blue-collar positions.

In addition to the standard communications described above, ADP can also:

- Assist with employee meetings.
- Assist with multimedia campaigns (brochures, emails, prizes for various enrollment milestones).

Customized communications are billed on a time-and-expense basis.

- 9) Provide member statements including account balance and claim status clearly outlining those claims that need additional documentation and/or participant involvement.

**Contractor Response:** During processing, claims are reviewed for proper documentation, compliance, and completeness. If additional information is needed or if the claim is not in compliance, a written notification is sent to the participant with an explanation of why the claim was denied or what additional information is necessary to complete the process.

An EOB is printed on each reimbursement check. The EOB indicates the participant’s available balance at the time of processing, claims paid to date, and balance of claims pending. The top portion of the check lists the claims paid by detail item and amount.

If a participant is reimbursed via direct deposit, he or she is mailed an EOB that includes this information and indicates the deposit transaction has been completed.

If the participant uses email notification, he or she is notified via email to check the web site for his or her current EOB. Participants must contact the solution center to initially set up email notification. Given the confidential nature of the information being communicated, we do not email the actual EOB.

We can customize EOB statements to your specifications. If the customization is substantial, there will be an additional fee for this service. The cost will vary according to the level of customization requested.

As a standard component of ADP’s FSA administration solution, we create and mail statements that detail account balances and activity directly to participants’ homes each quarter – regardless of the amount of activity in the accounts. Quarterly statements are typically sent within two weeks following the end of the quarter.

Clients may also choose to have ADP send a generic email message to participants to notify them that quarterly statements can be viewed on ADP’s FSA web site.



*We can add text to the statements regarding plan rules and approaching claims submittal deadlines. The statement also shows the telephone number that participants should call if they have questions regarding this statement.*

*We also provide a statement to a participant upon request. Requests for participant statements are processed within a 24- to 48-hour time frame.*

- 10) Provide participant web-access with the ability to view account balances, claim status, view transaction history, print necessary forms and obtain general plan provision information.

**Contractor Response:** *Our participant web application provides participants with the following information:*

- *Account summary.*
- *Claims details.*
- *Contribution details.*
- *Payment details.*
- *General information.*
- *Answers to frequently asked questions.*
- *Eligible and ineligible items for reimbursement.*

*Participants can also download claim forms and access a calculation worksheet, which will assist them with estimating their health care and/or dependent care expenses – as well as provide the tax savings realized by participation in an FSA program. In addition, participants can send an email message directly to our solution center staff from the web site. We respond to email messages within 24 hours.*

- 11) Provide claim eligibility and general plan information to prospective participants during open enrollment.

**Contractor Response:** *As part of ADP's standard communications services, we provide participant brochures. The enrollment brochure provides plan details and answers to frequently asked questions about FSA programs.*

*As an optional communication service, ADP can provide enrollment guides for the State of Michigan. In addition to the enrollment brochure, this communication also includes enrollment forms, claim forms, a direct deposit form, and an ADP contact card. These enrollment guides are provided for the State to distribute.*

- 12) Provide participants with clear explanations of rejected claims.

**Contractor Response:** *During processing, claims are reviewed for proper documentation, compliance, and completeness. If additional information is needed or if the claim is not in compliance, a written notification is sent to the participant with an explanation of why the claim was denied or what additional information is necessary to complete the process.*

### **Account Management**

- 1) An assigned account representative, and assigned service representatives, extremely responsive to inquiries, requests and issues related to the State.

**Contractor Response:** *Upon completion of implementation, the State's account is assigned to a specific team of customer service account specialists.*





*The customer service team to which the State of Michigan is assigned depends on the administrative complexity of your account as determined during implementation. A service delivery manager is assigned to each client account, and he or she acts as the point of escalation for the customer service team.*

*The team of account specialists handles the majority of your daily issues and inquiry resolution. The customer service teams are carefully composed of account specialists who have a variety of skills in order to provide the State with the high-quality customer service you deserve. Each team member becomes familiar with your account to ensure continuity of service and rapid issue resolution. An extensive operational support structure, which is designed to ensure the success of our customer service teams in delivering exceptional service, is in place.*

*Should the State of Michigan find if necessary, you may always contact your service delivery manager to discuss a matter that you believe requires management consideration.*

- 2) An account representative familiar with the State's plans to keep the State's involvement in claim resolution to a minimum.

**Contractor Response:** *As stated above, each team member becomes familiar with your account to ensure continuity of service and rapid issue resolution. An extensive operational support structure, which is designed to ensure the success of our customer service teams in delivering exceptional service, is in place.*

*Several different controls ensure that we accurately process participant reimbursements in a timely manner. Claims are date-stamped when they are received and hand-delivered to our claims processing unit. After the claims are scrutinized for compliance with IRS regulations, the information is entered into the database for processing.*

*The FSA administration system compares each claim entered with all prior entries to identify claims that have been previously submitted. This process restricts the entry of duplicate claims. The system has built-in controls that match the information imported into the database with each participant's expected information and warn of any plan breaches.*

*If a claim is suspected to be fraudulent, a CSR contacts the participant to request additional supporting documentation. If we continue to suspect attempted fraud, we contact you. A decision is then made regarding how to proceed. Appropriate additional follow-up with the service provider is conducted at your direction.*

- 3) Conduct an annual employee satisfaction survey of the State's specific plan participants.

**Contractor Response:** *ADP could accommodate this for the State of Michigan as a customized service.*

## 1.2 Roles and Responsibilities

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

The State and Contractor agree that the following personnel are Key Personnel for purposes of this Contract:

Name: TBD Upon Contract Signing  
 Name: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Name: \_\_\_\_\_

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



## 1.202 State Staff, Roles, and Responsibilities

Name:	Susan Kant	Deborah Fogg	Diane Smith
Title:	Plan Administrator	Program Manager	Office Assistant
Responsibility:	Overall responsibility for FSA program.	Responsibility for administration of FSA program.	Responsibility for daily operation of FSA program.

## 1.203 Other Roles and Responsibilities - Reserved

### 1.3 Project Plan

#### 1.301 Project Plan Management

The implementation plan will be determined at contract award. Contractor is required to supply finalized plan within five (5) working days of the contract award.

**Contractor Response:** Confirmed. ADP is able to supply a finalized implementation plan within five working days of the contract award.

#### 1.302 Reports

The State expects that the following reports will be available upon request or on a scheduled basis in electronic or paper format, at no additional cost:

- 1) Number of plan participants by plan

**Contractor Response:** The **summary account statement** lists all participants enrolled in a plan, their payroll and annual contribution amounts, and other account totals for a specified time period and year-to-date. The summary account statement for the end of the runout period lists any account balances that were forfeited. This report is produced on a quarterly or monthly basis.

- 2) Number, amount and type (new and in-process claims) of claim payments by plans.

**Contractor Response:** The **distribution and adjustment report** lists all participants who received a benefit and includes transactions processed by reimbursement check, direct deposit, and stored-value card. This report is produced on a frequency to be determined by the State – typically weekly or monthly.

- 3) Information on claims that were denied, including specific reason and any appeals made

**Contractor Response:** ADP does not offer this report as a standard service. We would work with the State of Michigan to develop a report of this nature if needed.

*We provide a letter to the participant that explains why a claim was denied*

- 4) Detail on all retention or administrative charges or expenses

**Contractor Response:** Our clients receive monthly invoices for our services. Invoices are sent via hard copy and email to each client's designated financial contact. Typically, invoices are produced on the 11<sup>th</sup> of each month, and our clients have 30 days to make payments.

*The invoice displays the monthly charges for the services included in the client's solution. The invoice also displays any pass-through items, and a list of detailed pass-through expenses is attached.*

*Each client also receives monthly operational reports that provide the detailed information to support the invoices.*



## 5) A full financial reconciliation

**Contractor Response:** *On a monthly or quarterly basis, the **summary account statement** is printed to reconcile the funds credited to participants' accounts with funds that were paid out to participants. When all claims for the year have been processed, a final report is prepared for the State of Michigan.*

*We perform our own account reconciliation. Our clients are responsible for reconciliation of the client-owned bank account used by ADP for direct debit to fund reimbursements.*

*We have offered to establish a bank account on behalf of the client. The State of Michigan would fund this account and maintain a mutually agreed-upon balance for daily direct-debits.*

## 6) Annual forfeiture reports

**Contractor Response:** *At the end of the year, we send our clients a statement that indicates each participant's forfeited amounts and the total participants for each plan.*

## 7) Performance Standard Guarantee report

**Contractor Response:** *Our solution center management reports allow both ADP and our clients to monitor/manage satisfaction. The following areas are tracked:*

- *Responsiveness.*
- *Call abandonment rates.*
- *Call volumes.*
- *Resolution turnaround times.*

## 8) The State expects to receive the Contractor's standard report package and the reports described below.

**Contractors Response:** *ADP acknowledges that the State has provided a detailed description of reporting requirements.*

**Monthly Reports**

## 1) Claim reports, showing claims paid during the month, by plan and by type (paper reimbursement vs. debit card) within 30 calendar days from the end of the month.

**Contractor Response:** *The **distribution and adjustment report** lists all participants who received a benefit and includes transactions processed by reimbursement check, direct deposit, and stored-value card. This report is produced on a frequency to be determined by the State – typically weekly or monthly. ADP also has the ability to create customized reports for our clients.*

## 2) Debit Card outstanding unsubstantiated claim status report by participant, including claim information and remediation status provided monthly and upon special request. Each unsubstantiated claim status report must be delivered with a corresponding state defined electronically downloadable detailed file.

**Contractor Response:** *ADP's standard FSA administration reports will be utilized.. ADP also has the ability to create customized reports for our clients.*

**Quarterly Reports**

## 1) Quarterly and Year-To-Date summaries of the monthly claim reports within 30 calendar days from the end of the quarter.

**Contractor Response:** *ADP's standard FSA administration reports will be utilized. ADP also has the ability to create customized reports for our clients.*



2) Performance Standard Guarantee Report within 30 days from the end of the quarter.

**Contractor Response:** *Our solution center management reports allow both ADP and our clients to monitor/manage satisfaction. The following areas are tracked:*

- *Responsiveness.*
- *Call abandonment rates.*
- *Call volumes.*
- *Resolution turnaround times.*

*These reports can be provided within 30 days from the end of the quarter*

### Annual Reports

1) Annual Reports (results through December 31) produced within 60 calendar days following the end of the claim filing period, currently April 15, 2005.

**Contractor Response:** *Following the close of each year (including the annual runout period), we release a final summary report that outlines any residual dollars in participant accounts that are forfeited for the year. This information is provided to our clients within 30 days of the end of the runout period.*

2) Annual Forfeiture report

**Contractor Response:** *At the end of the year, we send our clients a statement that indicates each participant's forfeited amounts and the total participants for each plan.*

### Management Summary

1) Full financial and enrollment experience, including the items shown in monthly and quarterly reports, summarized to an annual basis.

**Contractor Response:** *ADP has been in the FSA business since 1988 – and performs a variety of benefit administration service offerings.*

2) The State requires secure on-line or electronic reporting capability.

**Contractor Response:** *ADP can provide management reports in virtually any format. Standard management reports include account activity statements, transaction summary reports, aggregate reports, reimbursement reconciliation reports, payroll deduction reports, and financial summary reports.*

*Our standard method is to provide electronic reports via the Internet – although we frequently also provide reports on disks using report layouts as reviewed and approved by you. We can produce hard copy reports if required.*

*Our present web-based tools do not allow for ad hoc reporting via the Internet. For electronic updates, ADP can provide a standard file format that can be utilized by clients or carriers. We can create customized file exports based on the client's specific needs.*

## 1.4 Project Management

### 1.401 Issue Management

If the State notifies Contractor of any critical issues, Contractor must respond within one Business Day with an adequate and appropriate resolution and execution plan. If Contractor identifies any critical issues affecting Services, it must notify the Contract Compliance Officer within one Business Day.



**Contractor Response:** ADP will respond within one business day when the State provides notification of any critical issues. If ADP identifies any critical issues that affect our FSA administration solution, ADP will notify the contract compliance officer within one business day.

#### 1.402 Risk Management

Contractor is expected to provide a complete description of adequate risk management policies and procedures to mitigate any potential risks.

**Contractor Response:** ADP's National Account Services division is committed to maintaining a fully operational disaster recovery plan that ensures complete disaster recovery and business continuity for all of our clients. To ensure service continuity to our clients, we test the plan several times each year – we emulate a full disaster to test all systems and processes. All policies, procedures, and related systems receive continuous review and are updated when applicable.

*The purpose of the disaster recovery plan is to provide immediate response and subsequent recovery from any unplanned business interruptions.*

*Our initial backup processing center is located in Smyrna, Georgia, which is 30 minutes from our Alpharetta facility. If there were a widespread disaster that also affected our initial backup facility, our disaster recovery plan includes a number of processing centers throughout the country that could be used as our backup center.*

#### 1.403 Change Management

Administrative processes will not change without prior written approval by the Contract Administrator. If a proposed contract change is approved by the Contract Compliance Inspector, the Contract Compliance Inspector will submit a request for change to the Department of Management and Budget, Purchasing Operations Buyer, who will make recommendations to the Director of Purchasing Operations regarding ultimate approval/disapproval of change request. If the DMB Purchasing Operations Director agrees with the proposed modification, and all required approvals are obtained (including State Administrative Board), the Purchasing Operations Buyer will issue an addendum to the Contract, via a Contract Change Notice. **Vendors who provide products or services prior to the issuance of a Contract Change Notice by the DMB Purchasing Operations, risk non-payment for the out-of-scope/pricing products and/or services.**

**Contractor Response:** All changes are handled through a documented change control process.

*Effective project change control is a cornerstone of ADP's scope, schedule, and cost management processes. The primary objective of our change control process is to ensure that our clients understand the verifiable and/or potential implications of changes to project variables – such as the scope of work to be performed, level of client support, or infrastructure stability – as well as the impact of these changes on project outcomes.*

*The change control process provides the client's sponsors with immediate notification and analysis of all new work requests or changes to the project environment so that the sponsors are in a position to make informed decisions regarding the project.*

### 1.5 Acceptance

#### 1.501 CRITERIA

The State will determine Acceptance of the Services and/or Deliverables provided under this SOW based upon the completion upon the required duties in the SOW consistent with the expectation as stated within the Performance Standards and Guarantees.

**Contractor Response:** ADP acknowledges receipt of the State's criteria for acceptances of services and/or deliverables.

**1.502 FINAL ACCEPTANCE**

Acceptance is tied to adequate performance of required Services and/or delivery of the Deliverables.

**Contractor Response:** *ADP acknowledges that the State's acceptance is tied to adequate performance of required services and/or delivery of the deliverables.*

**1.6 Compensation and Payment****1.601 COMPENSATION AND PAYMENT**

All rates in this Contract will be firm for the duration of the Contract. No price changes will be permitted unless agreed to by both parties.

**Contractor Response:** *Confirmed.*

Administrative costs for the FSA program will be funded on the basis of a fixed monthly fee per participant and paid by the State. Fees association with the administration of the debit card may be paid by the State, the participant or a combination of both. Alternative fee schedules may be provided in addition to the fixed monthly fee.

**Contractor Response:** *ADP's FSA administration solution utilizes a per-participant pricing methodology – not per-account. If an associate has enrolled in both a health care and a dependent care account, the State of Michigan is billed a single per-participant fee. If an increase or decrease in participation results in a change to the per-participant cost based on our pricing schedule, the per-participant price is adjusted accordingly.*

*One stored-value card per participant is provided following enrollment. The card is mailed directly to the participant, and the mailing includes a tri-fold brochure and an agreement for the card. The fee for this initial mailing is a one-time charge of \$1.75 per card. If a card is lost or stolen, the replacement cost is \$1.75 per card. Stored-value cards are valid for three years.*

The State will hold employee payroll deductions, and will transfer funds to the Contractor, weekly, via electronic funds transfer, to cover claim reimbursements.

**Contractor Response:** *Employee contribution records (not funds) are sent to ADP on a periodic basis (typically with each payroll processing). Participant funds are held by the employer. ADP direct-debits the client's account only after claims are processed and reimbursements need to be paid to participants. At that time, ADP sends a daily reimbursement report to the client. This report documents reimbursement activity for manual claims and stored-value card transactions.*

*After receipt of payment, ADP mails reimbursement checks to participants or funds are sent via EFT directly into participants' bank accounts. Since stored-value card transactions are paid and FSA balances are updated at the time of service, reimbursement checks are not required for these transactions.*

*The most common reimbursement process is for ADP to direct-debit the amount required to reimburse each day's manual claims and stored-value card transactions from the client's bank account. Clients often use a zero-balance account that automatically drafts the exact reimbursement amount from another interest-bearing account.*

Vendor shall propose the level of performance guarantees as required in Section 1.702 providing for partial or full refund of project costs based upon the size, duration, and untimeliness of completion.

**Contractor Response:** *ADP is willing to negotiate performance guarantees that place a portion of our fees at risk should we fail to meet agreed-upon performance standards for certain service metrics.*





*Since we know that performance guarantees are an important business concern of the State of Michigan, we can incorporate discussion regarding specific performance standards into ongoing business negotiations.*

Authorized Services and Price List as follows (see Article 1, Attachment A).

1.7 Additional Terms and Conditions Specific to this SOW

**1.701 Additional Terms and Conditions Specific to this SOW**

**Project Control**

- The Vendor will provide these services under the direction and control of the Employee Benefits Division, Dept of Civil Service.

**Contractor Response:** *Confirmed.*

- Although there will be continuous liaison with the Vendor team, the Vendor director will meet quarterly during the first contract year as a minimum, with the Vendor's project manager for the purpose of reviewing progress and providing necessary guidance to the Vendor in solving problems which arise.

**Contractor Response:** *ADP will agree to quarterly service review meetings with the State of Michigan if we are awarded the contract. To limit travel expenses and minimize disruption to our other clients, we respectfully request that these meetings take place via conference call.*

- Within five (5) working days of the award of the Contract, the Vendor will submit to the Contract Compliance Officer, for final approval, an implementation plan. This final implementation plan proposed by the bidder must be in agreement with Section 1 subsection 104 and accepted by the State for Contract, and must include the following:
  - The Vendor's project organizational structure.
  - The Vendor's staffing table with names and titles of personnel assigned to the State's account, and expected percentage of their time dedicated to this contract. This must be in agreement with staffing of accepted proposal. Necessary substitutions due to change of employment status and other unforeseen circumstances may only be made with prior approval of the State.
  - The project breakdown showing sub-projects, activities and tasks, and resources required and allocated to each.
  - The time-phased plan in the form of a graphic display, showing each event, task and decision point in your implementation plan.

**Contractor Response:** *Confirmed. ADP is able to supply a finalized implementation plan within five working days of the contract award.*

**1.702 PERFORMANCE STANDARD GUARANTEES/SERVICE LEVEL AGREEMENTS**

- The State requires that a minimum of 15% of ongoing administrative fees be put at risk for the following performance standards. In addition, the State is requiring a one-time implementation guarantee, not to be included in the 15% allocated for ongoing administrative service guarantees. The final performance guarantees are subject to negotiation prior to contract award.
- All performance standard guarantees are to be evaluated and reported by the vendor, based on State of Michigan participants.
- Please indicate the percent of fees at risk and specify your measurement methodology in the following chart:



**Flexible Spending Account Service Level Agreement**

Measured Quarterly - Total Fees At Risk Annually: 15%

The following performance standards shall apply after a Settling-In Period (as defined below) to the Flexible Spending Account Services (the "Services") provided to \_\_\_\_\_ ("Client") by ADP, Inc. ("ADP").

**TERMS**

- ❑ "Performance Guarantees" and associated penalties outlined herein are for noncompliance during the contract period for services provided to Client. For the contract period, the maximum annual amount at-risk will be no more than 15% of the Standard Fees for the services provided to Client. Standard Fees are defined as the fees paid by Client to ADP, net of processing credits applied to amounts invoiced (prior to the applied penalties), for routine services provided to Client on a recurring, monthly basis. Standard Fees specifically exclude pass through expenses, implementation fees, and any other fees paid by Client to ADP which are not ongoing fees paid on a month in, month out basis to ADP. Pass through expenses are direct expenses paid for by ADP on behalf of Client and subsequently charged to Client.
- ❑ Performance will be measured and reported to Client on a monthly basis unless otherwise noted. Performance results will be calculated on a quarterly basis to determine if associated penalties apply to fees invoiced for that quarter. Penalties will be assessed within forty-five days of the end of the calendar quarter in which the penalties can be calculated. ADP will credit the penalty amount against the amount due from Client during the month the penalty is assessed. The results will be based upon cumulative performance for the quarter and each category will be assigned a weight or percentage of the total fees at risk. For example, if only one area is missed and it carries a total weight of 20%, then the actual penalty assessed would be 20% of the 15% total fees at risk.
- ❑ ADP will not be responsible for any failure to meet a Performance Guarantee because of (i) ADP's reasonable reliance on any Client direction; (ii) the failure of Client to deliver to ADP accurate data in a timely manner ("in a timely manner" is defined as 98% of all records received are free from mutually agreed upon errors); (iii) any delay or failure excused by the terms of the service agreement between ADP and Client; (iv) any change in plan design or operational issues at Client which significantly impacts ADP's operation and for which ADP is not given a minimum of thirty (30) days prior notice, or unforeseeable fluctuations in volume from month-to-month exceeding 10%, and (v) force majeure.



### **ADP** Benefit Services

- "Settling In Period" is defined as the first ninety days of operations from the date the service begins and during which the Performance Guarantees will not apply.
- For purposes of these Performance Guarantees, "Business Day" has the same meaning as set forth in the service agreement between ADP and Client.
- The credits provided hereunder to Client in a particular year will reduce by an equal amount the aggregate amount of monetary damages that are available to the Client under the Agreement.

Service Level Area	Description	Standard	Weight
<b>Claims processing turnaround time</b>	Length of time required to process reimbursement checks/direct deposit advices.	<ul style="list-style-type: none"> <li>• Maximum of 5 Business Days.</li> <li>• Claims received two Business Days prior to processing are included in the weekly reimbursement process.</li> <li>• 98% of claims will be processed according to this standard.</li> <li>• Reimbursement is subject to client funding.</li> </ul>	• 15%
<b>Processing accuracy and payment accuracy</b>	Standards for accuracy in processing requests for reimbursement.	<ul style="list-style-type: none"> <li>• Audits are embedded in the FSA administration system to ensure accuracy.</li> <li>• Manual and automated audits will be performed before claims are paid.</li> <li>• 98% of claims will be processed without errors.</li> </ul>	• 20%
<b>Loading payroll data</b>	Loading payroll information into the FSA database.	<ul style="list-style-type: none"> <li>• Payroll and employee indicative data loaded within 24 hours of receipt. Data must be in FSA Standard format or via ADP automated interface.</li> </ul>	• 20%
<b>Management reports</b>	Reports provided to clients to support the FSA process.	<ul style="list-style-type: none"> <li>• Check registers are e-mailed to clients on the day of reimbursement processing (only exception is agreed-upon change in schedule).</li> <li>• Quarterly summary account statements are sent to clients within 15 days of the last day of the quarter.</li> </ul>	• 15%
<b>Participant statements</b>	Quarterly statements provided to participants.	<ul style="list-style-type: none"> <li>• Mailed within 15 days following the last day of the quarter.</li> </ul>	• 15%
<b>Call Center service standards</b>	Metrics for handling participant calls. **Metrics are not tracked on a client-specific basis.	<ul style="list-style-type: none"> <li>• Avg. Speed to Answer of 30 seconds or less.</li> <li>• Less than 5% abandonment rate.</li> <li>• 80% of calls resolved during the first call.</li> <li>• 80% of escalated cases resolved within 48 hours.</li> </ul>	• 15%



**Article 1, Attachment A**  
Pricing

***FSA pricing summary***

<u>Recurring annual fees (Refer to Pricing details – section 1)</u>	<u>Annual cost</u>
Per-participant fee	\$264,186
Annual maintenance fee – (beginning in year 2) Includes routine changes to existing plans as well as system and web maintenance	\$1,000
Nondiscrimination testing (comprehensive pass/fail test)	Included
Enrollment brochures	Included
Optional services:	
■ Consultation fee for failed nondiscrimination tests (in addition to pass/fail test)	\$1,500
■ Enrollment guides (orders of 100)	\$0.50 each
■ Welcome kits (only if not using the stored-value card)	\$1.75 each
■ Employee meetings – 1-day presentation	Included
<b>Recurring annual total</b>	<b>\$265,186</b>
<u>One-time implementation fees (Refer to Pricing details – section 2)</u>	<u>One-time fee</u>
Implementation fee	\$2,000

Annual recurring fees**Per-participant fee per month – FSA****\$3.25**

## Includes:

- Standard enrollment forms
- Standard confirmation statements
- Standard claim forms
- Standard participant IVR and web applications
- Direct deposit
- Domestic customer service support via toll-free number
- Standard client portal
- Quarterly participant statements
- Standard client management reports (summary account statements, distribution and adjustment reports, forfeiture reports)
- Ongoing stored-value card transactions (including requests for follow-up documentation)
- Daily check processing (if ADP has direct-debit access to a client-owned account)
- Interface with Lawson
- Daily claim adjudication
- Enrollment brochures (the State of Michigan will be responsible for distributing the brochures to employees)

## Assumes:

- A single State of Michigan location for collection of fees
- Pass-through charges billed back to the State of Michigan at cost (examples of these charges include, but are not limited to: travel, meals, postage for nonstandard mailings, printing, or any other reasonably incurred client expense)
- Payroll information provided electronically if the State of Michigan has more than 50 participants
- All plan limits the same
- All covered groups with the same year
- Reimbursement checks and direct deposits mailed daily to participants' homes
- 6,774 FSA participants – ADP does not charge a separate fee for employees who utilize both dependent care and health care FSA
- All participant fees will continue for terminated employees during the grace period as well as for participants during the annual plan year runout period

**Ongoing stored-value card fulfillment (cards expire after 3 years)**

\$1.75/card

Includes:

- Welcome letter
- Cardholder agreement
- Stored-value card

**Fees for optional services**

- |  |                   |
|--|-------------------|
| ■ Consultation fee for nondiscrimination testing (in addition to pass/fail test) | \$1,500           |
| ■ Enrollment guides (orders of 100)  | \$0.50 each       |
| ■ Welcome kits for clients that do not offer stored-value cards                  | Included with SVC |
| ■ Employee meetings – 1-day presentation   | Included          |

**Pricing detail – section 2**Implementation fees

		<u>Total</u>
<b>Implementation fee – FSA</b>		<b>\$2,000</b>
Includes:		
<ul style="list-style-type: none"> <li>■ System setup</li> <li>■ Plan documents and summary plan descriptions</li> <li>■ Client web setup</li> <li>■ Client branding on participant web site</li> <li>■ Enrollment brochures</li> <li>■ Setup of AutoPay interface (for ADP payroll clients)</li> </ul>		
Assumes:		
<ul style="list-style-type: none"> <li>■ Active client role in implementation project, specification sign-off, and regular implementation conference calls</li> </ul>		
<b>Implementation fee – stored-value cards</b>	<b>\$1.75 each</b>	
Includes:		
<ul style="list-style-type: none"> <li>■ Welcome letter</li> <li>■ Cardholder agreement</li> <li>■ Stored-value card</li> </ul>		
<b>Implementation fee – optional services</b>		
<ul style="list-style-type: none"> <li>■ Branded stored-value cards</li> </ul>		<b>\$10,000-15,000 for 10,000 cards</b>



Article 1, Attachment B - Reserved





**Article 1, Attachment C**  
**Project Plan**

The keystone assumption of our proven implementation approach is that each of us – the State of Michigan and ADP – shares the responsibility of this project. ADP contributes a proven implementation approach and experienced professionals. We provide experienced project management supported by a team of your functional and technical experts who provide knowledge of the State's systems and processes. Effectively blending these resources yields a high-quality implementation – from which we can build a long-term business relationship.

The average implementation takes 60 to 90 days to complete.

Specific information regarding a typical implementation process is provided below:

<b>FSA – New client implementation process</b>	
<b>Phase 1 – Project start-up</b>	
	<ul style="list-style-type: none"> <li>■ Begin the State's communication with ADP's implementation team.</li> <li>■ Conduct the orientation call with the State.</li> </ul>
<b>Phase 2 – Analysis and design</b>	
	<ul style="list-style-type: none"> <li>■ Conduct the client requirements meeting.</li> <li>■ Obtain the State's sign-off on the client requirements document.</li> <li>■ Finalize project plan.</li> </ul>
<b>Phase 3 – Solution development</b>	
	<ul style="list-style-type: none"> <li>■ Enter service and plan data into the administration system.</li> <li>■ Audit the account setup.</li> <li>■ Finalize test file requirements.</li> </ul>
<b>Phase 4 – Testing</b>	
	<ul style="list-style-type: none"> <li>■ Receive the State's sign-off regarding administration system setup.</li> <li>■ Enter conversion data into the administration system.</li> <li>■ Conduct quality assurance for conversion data.</li> <li>■ Test the inbound and outbound data files and communications.</li> </ul>
<b>Phase 5 – Production</b>	
	<ul style="list-style-type: none"> <li>■ Begin system processing.</li> <li>■ Provide the State access to the ADP web site.</li> <li>■ Confirm with the State that the implementation is complete.</li> </ul>
<b>Phase 6 – Transition to service</b>	
	<ul style="list-style-type: none"> <li>■ Hold internal transition meeting.</li> <li>■ Complete the State's transition to the ongoing support team.</li> </ul>



To ensure the successful implementation and ongoing administration of your FSA administration solution, the State of Michigan and ADP must enter into a partnership. The State's responsibilities are outlined below.

- **Plan administrator.** The State of Michigan remains legal Plan Administrator and retains fiduciary liability. You are responsible for the final steps in an appeals process when the participant and ADP cannot satisfactorily resolve participant issues.
- **Plan documents.** The State of Michigan provides ADP with legal plan documents for each plan. If ADP's plan document is used, the State is responsible for the entry of plan provisions via the template provided at the web portal.
- **Eligibility determination.** The State of Michigan determines and enforces employees' initial and ongoing eligibility for enrollment in the plan. The State also determines and communicates qualifying event changes to ADP.
- **Enrollment information.** The State of Michigan provides ADP with enrollment information, including per-pay period election amounts and annual goal amounts. Basic demographic information must also be provided, including participants' names, addresses, and Social Security numbers.
- **Funding of reimbursements.** The State of Michigan funds all reimbursements for claim payments. In order to ensure prompt payment of reimbursements, ADP requires direct-debit access to a client-owned bank account.



**Article 1, Attachment D**

See Section 1.702 Performance Guarantees/Service Level Agreements



## **Article 2 – General Terms and Conditions**

### **2.010 Contract Structure and Administration**

#### **2.011 Definitions**

Capitalized terms used in this Contract (including its Exhibits) shall have the meanings given below, unless the context requires otherwise:

- (a) “Days” means calendar days unless otherwise specified.
- (b) “24x7x365” means 24 hours a day, seven days a week, and 365 days a year (including the 366th day in a leap year).
- (c) “Additional Service” means any Services/Deliverables within the scope of the Contract, but not specifically provided under any Statement of Work, that once added will result in the need to provide the Contractor with additional consideration. “Additional Service” does not include New Work.
- (d) “Amendment Labor Rates” means the schedule of fully loaded hourly labor rates attached as **Article 1, Attachment C**.
- (e) “Audit Period” has the meaning given in **Section 2.111**.
- (f) “Business Day,” whether capitalized or not, shall mean any day other than a Saturday, Sunday or State-recognized legal holiday (as identified in the Collective Bargaining Agreement for State employees) from 8:00am EST through 5:00pm EST unless otherwise stated.
- (g) “Incident” means any interruption in Services.
- (h) “Business Critical” means any function identified in any Statement of Work as Business Critical.
- (i) “Deliverable” means physical goods and/or commodities as required or identified by a Statement of Work
- (j) “Key Personnel” means any Personnel designated in **Article 1, Section 1.201 and/or Attachment B**, as Key Personnel.
- (k) “New Work” means any Services/Deliverables outside the scope of the Contract and not specifically provided under any Statement of Work, that once added will result in the need to provide the Contractor with additional consideration. “New Work” does not include Additional Service.
- (l) “Services” means any function performed for the benefit of the State.
- (m) “State Location” means any physical location where the State performs work. State Location may include state-owned, leased, or rented space.
- (n) “Subcontractor” means a company Contractor delegate’s performance of a portion of the Services to, but does not include independent contractors engaged by Contractor solely in a staff augmentation role.
- (o) “Work in Process” means a Deliverable that has been partially prepared, but has not been presented to the State for Approval.

#### **2.012 Attachments and Exhibits**

All Attachments and/or Exhibits attached to any, and all Statement(s) of Work, attached to, or referencing this Contract, are incorporated in their entirety into, and form part of, this Contract.

#### **2.013 Statements of Work**

- (a) The parties agree that the Services/Deliverables to be rendered by Contractor pursuant to this Contract (and any future amendments of it) will be defined and described in detail in Statements of Work or Purchase Orders (PO) executed under this Contract. Contractor shall not be obliged or authorized to commence any work to implement a Statement of Work until authorized via a PO issued against this Contract, or an amendment to this Contract (see 2.106). Contractor shall perform in accordance with this Contract, including the Statements of Work/Purchase Orders executed under it.
- (b) Unless otherwise agreed by the parties, each Statement of Work (as defined in Article 1) will include, or incorporate by reference to the appropriate Contract Article 1 Attachment containing, the following information:
  - a description of the Services to be performed by Contractor under the Statement of Work;
  - a project schedule (including the commencement and completion dates for all tasks, subtasks (for all projects of sufficient duration and complexity to warrant sub task breakdown), and Deliverables;
  - a list of the Deliverables to be provided, if any, including any particular specifications and acceptance criteria for such Deliverables, and the dates on which the Deliverables are scheduled to be completed and delivered to the State;



- all Deliverable price schedules and other charges associated with the Statement of Work, the overall fixed price for such Statement of Work and any other appropriate pricing and payment terms;
  - a specification of Contractor's and the State's respective performance responsibilities with respect to the performance or completion of all tasks, subtasks and Deliverables;
  - a listing of any Key Personnel of Contractor and/or its Subcontractors for that Statement of Work and any future Statements of Work;
  - any other information or provisions the parties agree to include.
- (c) Reserved.
- (d) The initial Statements of Work, as of the Effective Date, are attached to this Contract.

#### 2.014 Issuing Office

This Contract is issued by the Department of Management and Budget, Purchasing Operations ("PURCHASING OPERATIONS") and Department of Civil Services (collectively, including all other relevant State of Michigan departments and agencies, the "State"). PURCHASING OPERATIONS is the sole point of contact in the State with regard to all procurement and contractual matters relating to the Contract. **PURCHASING OPERATIONS is the only State office authorized to change, modify, amend, alter or clarify the prices, specifications, terms and conditions of this Contract.** The Contractor Administrator within the Purchasing Operations for this Contract is:

**Irene Pena, CPPB**

Buyer Specialist  
Purchasing Operations  
Department of Management and Budget  
Mason Bldg, 2nd Floor  
PO Box 30026  
Lansing, MI 48909  
Email: [Penai1@michigan.gov](mailto:Penai1@michigan.gov)  
Phone: (517) 241-1647

#### 2.015 Contract Compliance Inspector

Upon receipt at PURCHASING OPERATIONS of the properly executed Contract, it is anticipated that the Director of DMB Purchasing Operations, in consultation with (insert the end using agency), will direct that the person named below, or any other person so designated, be authorized to monitor and coordinate the activities for the Contract on a day-to-day basis during its term. However, monitoring of this Contract implies **no authority to change, modify, clarify, amend, or otherwise alter the prices, terms, conditions and specifications of such Contract as that authority is retained by the Purchasing Operations.** The Contract Compliance Inspector for this Contract is:

**Susan Kant**

Department of Civil Service, Employee Benefits Division  
P. O. Box 30002  
Lansing, MI 48909  
Phone: (517) 335-3068

#### 2.016 Project Manager

The following individual will oversee the project:

Name: **Deborah Fogg**

Department of Civil Service, Employee Benefits Division  
P. O. Box 30002  
Lansing, MI 48909  
Email: [Foggd@michigan.gov](mailto:Foggd@michigan.gov)  
Phone: (517) 335-2323:

2.020 Contract Objectives/Scope/Background**2.021 Background**

Descriptions of objectives, scope, and background for the Contract appear in Article 1, Statement of Work.

**2.022 Purpose**

Descriptions of objectives, scope, and background for the Contract appear in Article 1, Statement of Work.

**2.023 Objectives and Scope**

Descriptions of objectives, scope, and background for the Contract appear in Article 1, Statement of Work.

**2.024 Interpretation**

Sections 2.021 through 2.023 are intended to provide background and context for this Contract and are not intended to expand the scope of the obligations under this Contract or to alter the plain meaning of the terms and conditions of this Contract. However, to the extent the terms and conditions of this Contract are unclear or otherwise ambiguous, such terms and conditions are to be interpreted and construed in light of the provisions of this Section.

**2.025 Form, Function and Utility**

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

2.030 Legal Effect and Term**2.031 Legal Effect**

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

**2.032 Contract Term**

This Contract is for a period of September 6, 2006 through August 30, 2009. All outstanding Purchase Orders shall also expire upon the termination (cancellation for any of the reasons listed in 2.210) of the Contract, unless otherwise extended pursuant to the Contract. Absent an early termination for any reason, Purchase Orders issued but not expired, by the end of the Contract's stated term, will remain in effect for the balance of the fiscal year for which they were issued.

**2.033 Renewal(s)**

This Contract may be renewed in writing by mutual agreement of the parties not less than 30 days before its expiration. The Contract may be renewed for up to two (2) additional one (1) year periods. Successful completion of negotiations surrounding the terms of the extension, will be a pre-requisite for the exercise of any option year.



2.040 Contractor Personnel**2.041 Contractor Personnel**

- (a) **Personnel Qualifications.** All persons assigned by Contractor to the performance of Services under this Contract shall be employees of Contractor or its majority-owned (directly or indirectly, at any tier) subsidiaries (or a State-approved Subcontractor) and shall be fully qualified to perform the work assigned to them. Contractor shall include a similar provision in any subcontract entered into with a Subcontractor. For the purposes of this Contract, independent contractors engaged by Contractor solely in a staff augmentation role shall be treated by the State as if they were employees of Contractor for this Contract only; however, the State understands that the relationship between Contractor and Subcontractor is an independent contractor relationship.
- (b) **Key Personnel**
- (i) In discharging its obligations under this Contract, Contractor shall provide the named Key Personnel on the terms indicated. **Article 1, Attachment B** provides an organization chart showing the roles of certain Key Personnel, if any.
- (ii) Key Personnel shall be dedicated as defined in **Article 1, Attachment B** to the Project for its duration in the applicable Statement of Work with respect to other individuals designated as Key Personnel for that Statement of Work.
- (iii) The State will have 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, will introduce the individual to the appropriate State representatives, and will 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. Additionally, the State's request shall be based on legitimate, good faith reasons. Proposed alternative for the individual denied, shall be fully qualified for the position.
- (iv) Contractor shall not remove any Key Personnel from their assigned roles or the Contract without the prior written consent of the State. If the Contractor does remove Key Personnel without the prior written consent of the State, it shall be considered an unauthorized removal ("Unauthorized Removal"). It shall not be considered an Unauthorized Removal if Key Personnel must be replaced 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. It shall not be considered an Unauthorized Removal if Key Personnel must be replaced because of promotions or other job movements allowed by Contractor personnel policies or Collective Bargaining Agreement(s) as long as the State receives prior written notice before shadowing occurs and Contractor provides 30 days of shadowing unless parties agree to a different time period. The Contractor with the State shall review any Key Personnel replacements, and appropriate transition planning will be established. Any Unauthorized Removal may be considered by the State to be a material breach of the Contract, in respect of which the State may elect to exercise its rights under **Section 2.210**.
- (v) It is acknowledged that an Unauthorized Removal will interfere with the timely and proper completion of the 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 **Section 2.210**, the State may assess liquidated damages against Contractor as specified below.

For the Unauthorized Removal of any Key Personnel designated in the applicable Statement of Work, the liquidated damages amount shall be \$25,000.00 per individual provided Contractor identifies a replacement approved by the State pursuant to **Section 2.041** and assigns the replacement to the Project to shadow the Key Personnel s/he is replacing for a period of at least 30 days prior to such Key Personnel's removal.



If Contractor fails to assign a replacement to shadow the removed Key Personnel for at least 30 days, in addition to the \$25,000.00 liquidated damages for an Unauthorized Removal, Contractor shall pay the amount of \$833.33 per day for each day of the 30 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 liquidated damages that may be assessed per Unauthorized Removal and failure to provide 30 days of shadowing shall not exceed \$50,000.00 per individual.

(c) Re-assignment of non-Key Personnel. Prior to re-deploying to other projects, at the completion of their assigned tasks on the Project, teams of its non-Key Personnel who are performing Services on-site at State facilities or who are otherwise dedicated primarily to the Project, Contractor will give the State at least ten (10) Business Days notice of the proposed re-deployment to give the State an opportunity to object to the re-deployment if the State reasonably believes such team's Contract responsibilities are not likely to be completed and approved by the State prior to the proposed date of re-deployment.

(d) Re-assignment of Personnel at the State's Request. The State reserves the right to require the removal from the Project of Contractor personnel found, in the judgment of the State, to be unacceptable. The State's request shall be written with reasonable detail outlining the reasons for the removal request. Additionally, the State's request shall be based on legitimate, good faith reasons. Replacement personnel for the removed person shall be fully qualified for the position. If the State exercises this right, and the Contractor cannot immediately replace the removed personnel, the State agrees to an equitable adjustment in schedule or other terms that may be affected by the State's required removal. If any such incident with removed personnel results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Service will not be counted in **Section 2.076** for a time as agreed to by the parties.

(e) Staffing Levels.

(i) All staff requirements not specified in the applicable Statement of Work or State-approved project plan as State personnel will be supplied by Contractor. This includes secretarial, clerical and Contract administration support staff necessary for Contractor to perform its obligations hereunder.

(ii) Contractor shall provide sufficient personnel resources for the completion of Contract tasks indicated in Contractor's project plan approved by the State. If the level of personnel resources is insufficient to complete any Contractor Contract tasks in accordance with the Contract time schedule as demonstrated by Contractor's failure to meet mutually agreed to time schedules, Contractor shall promptly add additional qualified personnel resources to the performance of the affected tasks, at no additional charge to the State, in an amount sufficient to complete performance of Contractor's tasks in accordance with the Contract time schedule.

(f) Personnel Turnover. The Parties agree that it is in their best interests to keep the turnover rate of employees of Contractor and its Subcontractors who are performing the Services to a reasonable minimum. Accordingly, if the State determines that the turnover rate of such employees is excessive and so notifies Contractor, Contractor will meet with the State to discuss the reasons for the turnover rate and otherwise use commercially reasonable efforts to minimize such turnover rate. If requested to do so by the State, Contractor will submit to the State its proposals for reducing the turnover rate to an acceptable level. In any event, notwithstanding the turnover of personnel, Contractor remains obligated to perform the Services without degradation and in accordance with the State-approved Contract schedule.

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

## 2.042 Contractor Identification

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

**2.043 Cooperation with Third Parties**

Contractor agrees to cause its personnel and the personnel of any Subcontractors to cooperate with the State and its agents and other contractors including the State's Quality Assurance personnel, and, as reasonably requested by the State, to provide to the State's agents and other contractors with reasonable access to Contractor's Project personnel, systems and facilities to the extent they relate to activities specifically associated with this Contract and will not interfere or jeopardize the safety or operation of the systems or facilities and provided Contractor receives reasonable prior written notice of such request. The State acknowledges that Contractor's time schedule for the Contract is very specific and agrees not to unnecessarily or unreasonably interfere with, delay or otherwise impeded Contractor's performance under this Contract with such requests for access.

**2.044 Subcontracting by Contractor**

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

(b) Contractor shall not delegate any duties under this Contract to a Subcontractor unless the Department of Management and Budget, Purchasing Operations has given written consent to such delegation. The State shall have the right of prior written approval of all Subcontractors and to require Contractor to replace any Subcontractors found, in the reasonable judgment of the State, to be unacceptable. The State's request shall be written with reasonable detail outlining the reasons for the removal request. Additionally, the State's request shall be based on legitimate, good faith reasons. Replacement Subcontractor(s) for the removed Subcontractor shall be fully qualified for the position. If the State exercises this right, and the Contractor cannot immediately replace the removed Subcontractor, the State will agree to an equitable adjustment in schedule or other terms that may be affected by the State's required removal. If any such incident with a removed Subcontractor results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Work will not be counted in **Section 2.076** for a time agreed upon by the parties.

(c) In any subcontracts entered into by Contractor for the performance of the Services, Contractor shall require the Subcontractor, to the extent of the Services to be performed by the Subcontractor, to be bound to Contractor by the terms of this Contract and to assume toward Contractor all of the obligations and responsibilities that Contractor, by this Contract, assumes toward the State. The State reserves the right to receive copies of and review all subcontracts, although Contractor may delete or mask any proprietary information, including pricing, contained in such contracts before providing them to the State. The management of any Subcontractor will be the responsibility of Contractor, and Contractor shall remain responsible for the performance of its Subcontractors to the same extent as if Contractor had not subcontracted such performance. Contractor shall make all payments to Subcontractors or suppliers of Contractor. Except as otherwise agreed in writing by the State and Contractor, the State will not be obligated to direct payments for the Services other than to Contractor. The State's written approval of any Subcontractor engaged by Contractor to perform any obligation under this Contract shall not relieve Contractor of any obligations or performance required under this Contract. Attached is a list of the Subcontractors, if any, approved by the State as of the execution of this Contract, together with a copy of the applicable subcontract.

(d) Except where specifically approved in writing by the State on a case-by-case basis, Contractor shall flow down the obligations in **Sections 2.040, 2.110, 2.150, 2.160, 2.171(c), 2.172(b), 2.180, 2.260, 2.276, 2.297** in all of its agreements with any Subcontractors.

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

**2.045 Contractor Responsibility for Personnel**

Contractor shall be responsible for all acts and omissions of its employees, as well as the acts and omissions of any other personnel furnished by Contractor to perform the Services.

2.050 State Standards**2.051 Existing Technology Standards**

The Contractor will adhere to all existing standards as described within the comprehensive listing of the State's existing technology standards at [http://www.michigan.gov/dit/0,1607,7-139-30639\\_30655---,00.html](http://www.michigan.gov/dit/0,1607,7-139-30639_30655---,00.html).

**2.052 PM Methodology Standards**

The State has adopted a standard documented Project Management Methodology (PMM) for use on all Information Technology (IT) based projects. See the State's PMM website at <http://www.michigan.gov/projectmanagement>.

The Contractor shall use the State's PPM to manage this Contract. If the Contractor requires training on the PMM, those costs shall be the responsibility of the Contractor, unless otherwise stated.

**2.053 Adherence to Portal Technology Tools**

The State has adopted the following tools for its Portal Technology development efforts:

- Vignette Content Management and personalization Tool
- Inktomi Search Engine
- E-Pay Payment Processing Module
- Websphere Commerce Suite for e-Store applications

Unless otherwise stated, Contractor must use the Portal Technology Tools to implement web content management and deployment efforts. Tools used for web-based application development must work in conjunction with Vignette and Inktomi. The interaction with Vignette and Inktomi must be coordinated with DIT, Enterprise Application Services Office, e-Michigan Web Development team.

Contractors that are compelled to use alternate tools must have received an exception from DIT, Enterprise Application Services Office, e-Michigan Web Development team, before this Contract is effective.

**2.054 Acceptable Use Policy**

To the extent that Contractor has access to the State computer system, Contractor must comply with the State's Acceptable Use Policy, see <http://www.michigan.gov/dit/service/0,1607,7-179-25781-73760--,00.html>. All Contractor employees must be required, in writing, to agree to the State's Acceptable Use Policy before accessing the State system. The State reserves the right to terminate Contractor's access to the State system if a violation occurs.

2.060 Deliverables**2.061 Ordering**

(a) Any Services/Deliverables to be furnished under this Contract shall be ordered by issuance of written Purchase Orders/Blanket Purchase Order by the State after approval by the Contract Administrator or his/her designee. All orders are subject to the terms and conditions of this Contract. In the event of conflict between an order and this Contract, the Contract shall take precedence as stated in **Section 2.293**. In no event shall any additional terms and conditions contained on a Purchase Order/Blanket Purchase Order be applicable, unless specifically contained in that Purchase Order/Blanket Purchase Order's accompanying Statement of Work.

**2.062 Software - Reserved****2.63 Hardware – Reserved**

**2.64 Equipment to be New and Prohibited Products****(a) Equipment to be New**

If applicable, all equipment provided under this Contract by Contractor shall be new where Contractor has knowledge regarding whether the equipment is new or assembled from new or serviceable used parts that are like new in performance or has the option of selecting one or the other. Equipment that is assembled from new or serviceable used parts that are like new in performance is acceptable where Contractor does not have knowledge or the ability to select one or other, unless specifically agreed otherwise in writing by the State.

**(b) Prohibited Products**

The State will not accept salvage, distressed, outdated or discontinued merchandise. Shipping of such merchandise to any State agency, as a result of an order placed against the Contract, shall be considered default by the Contractor of the terms and conditions of the Contract and may result in cancellation of the Contract by the State. The brand and product number offered for all items shall remain consistent for the term of the Contract, unless Purchasing Operations has approved a change order pursuant to **Section 2.106**.

2.070 Performance**2.071 Performance, In General**

The State engages Contractor to execute the Contract and perform the Services/provide the Deliverables, and Contractor undertakes to execute and complete the Contract in its entirety in accordance with the terms and conditions of this Contract and with the participation of State representatives as specified in this Contract.

**2.072 Time of Performance**

(a) Contractor shall use commercially reasonable efforts to provide the resources necessary to complete all Services and Deliverables in accordance with the time schedules contained in the Statements of Work and other Exhibits governing the work, and with professional quality.

(b) Without limiting the generality of **Section 2.072(a)**, Contractor shall notify the State in a timely manner upon becoming aware of any circumstances that may reasonably be expected to jeopardize the timely and successful completion of any Deliverables/Services on the scheduled due dates in the latest State-approved delivery schedule and, in such event, shall inform the State of the projected actual delivery date.

(c) If Contractor believes that a delay in performance by the State has caused or will cause Contractor to be unable to perform its obligations in accordance with specified Contract time periods, Contractor shall notify the State in a timely manner and shall use commercially reasonable efforts to perform its obligations in accordance with such Contract time periods notwithstanding the State's failure. Contractor will not be in default for a delay in performance to the extent such delay is caused by the State.

**2.073 Liquidated Damages - Reserved****2.074 Bankruptcy**

If Contractor shall file for protection under the bankruptcy laws, or if an involuntary petition shall be filed against Contractor and not removed within 30 days, or if the Contractor becomes insolvent, be adjudicated bankrupt, or if it should make a general assignment for the benefit of creditors, or if a receiver shall be appointed due to its insolvency, and Contractor and/or its affiliates are unable to provide reasonable assurances that Contractor and/or its affiliates can deliver the services provided herein, the State may, without prejudice to any other right or remedy, terminate this Contract, in whole or in part, and, at its option, may take possession of the "Work in Process" and finish such Works in Process by whatever appropriate method the State may deem expedient. Contractor will fix appropriate notices or labels on the Work in Process to indicate ownership by the State. To the extent reasonably possible, materials and Work in Process shall be stored separately from other stock and marked conspicuously with labels indicating ownership by the State.





To secure the State's progress payments before the delivery of any services or materials required for the execution of Contractor's obligations hereunder, and any work which Contractor may subcontract in the support of the performance of its obligations hereunder, title shall vest in the State to the extent the State has made progress payments hereunder.

## **2.75 Time is of the Essence**

The Contractor agrees that time is of the essence in the performance of the Contractor's obligations under this Contract.

### 2.080 Delivery and Acceptance of Deliverables

#### **2.081 Delivery Responsibilities**

Unless otherwise specified by the State within an individual order, the following shall be applicable to all orders issued under this Contract.

- (a) Shipment responsibilities - Services performed/Deliverables provided under this Contract shall be delivered "F.O.B. Destination, within Government Premises." The Contractor shall have complete responsibility for providing all Services/Deliverables to all site(s) unless otherwise stated. Actual delivery dates will be specified on the individual purchase order.
- (b) Delivery locations - Services will be performed/Deliverables will be provided at every State of Michigan location within Michigan unless otherwise stated in the SOW. Specific locations will be provided by the State or upon issuance of individual purchase orders.
- (c) Damage Disputes - At the time of delivery to State Locations, the State shall examine all packages. The quantity of packages delivered shall be recorded and any obvious visible or suspected damage shall be noted at time of delivery using the shipper's delivery document(s) and appropriate procedures to record such.

Where there is no obvious or suspected damage, all deliveries to a State Location must be opened by the State and the contents inspected for possible internal damage not visible externally within 14 days of receipt. Any damage must be reported to the Contractor within five (5) days of inspection. If this inspection does not occur and damages not reported within 30 days of receipt, the cure for such damaged deliveries shall transfer to the delivery signing party.

#### **2.082 Delivery of Deliverables**

- (a) Where applicable, the Statements of Work/POs contain lists of the Deliverables to be prepared and delivered by Contractor including, for each Deliverable, the scheduled delivery date and a designation of whether the Deliverable is a document ("Written Deliverable"), a good ("Physical Deliverable") or a Service. All Deliverables shall be completed and delivered for State review and written approval and, where applicable, installed in accordance with the State-approved delivery schedule and any other applicable terms and conditions of the Contract.

#### **2.083 Testing**

- (a) Prior to delivering any of the above-mentioned Statement of Work Physical Deliverables or Services to the State, Contractor will first perform all required quality assurance activities to verify that the Physical Deliverable or Service is complete and in conformance with its specifications listed in the applicable Statement of Work or Purchase Order. Before delivering a Physical Deliverable or Service to the State, Contractor shall certify to the State that (1) it has performed such quality assurance activities, (2) it has performed any applicable testing, (3) it has corrected all material deficiencies discovered during such quality assurance activities and testing, (4) the Deliverable or Service is in a suitable state of readiness for the State's review and approval, and (5) the Deliverable/Service has all Critical Security patches/updates applied.
- (b) If a Deliverable includes installation at a State Location, then Contractor shall (1) perform any applicable testing, (2) correct all material deficiencies discovered during such quality assurance activities and testing, and (3) inform the State that the Deliverable is in a suitable state of readiness for the State's review and approval. To the extent that testing occurs at State Locations, the State shall be entitled to observe or otherwise participate in testing.



**2.084 Approval of Deliverables, In General**

- (a) All Deliverables (Physical Deliverables and Written Deliverables) and Services require formal written approval by the State, in accordance with the following procedures. Formal approval by the State requires that the Deliverable be confirmed in writing by the State to meet its specifications, which will include the successful completion of Testing as applicable in **Section 2.083**, to be led by the State with the support and assistance of Contractor. The parties acknowledge that the approval process set forth herein will be facilitated by ongoing consultation between the parties, visibility of interim and intermediate Deliverables and collaboration on key decisions.
- (b) The State's obligation to comply with any State Review Period is conditioned on the timely delivery of Deliverables/Services being reviewed.
- (c) Prior to commencement of its review or testing of a Deliverable/Service, the State may inspect the Deliverable/Service to confirm that all components of the Deliverable/Service have been delivered without material deficiencies. If the State determines that the Deliverable/Service has material deficiencies, the State may refuse delivery of the Deliverable/Service without performing any further inspection or testing of the Deliverable/Service. Otherwise, the review period will be deemed to have started on the day the State receives the Deliverable or the Service begins, and the State and Contractor agree that the Deliverable/Service is ready for use and, where applicable, certification by Contractor in accordance with **Section 2.083(a)**.
- (d) The State will approve in writing a Deliverable/Service upon confirming that it conforms to and, performs in accordance with, its specifications without material deficiency. The State may, but shall not be required to, conditionally approve in writing a Deliverable/Service that contains material deficiencies if the State elects to permit Contractor to rectify them post-approval. In any case, Contractor will be responsible for working diligently to correct within a reasonable time at Contractor's expense all deficiencies in the Deliverable/Service that remain outstanding at the time of State approval.
- (e) If, after three (3) opportunities (the original and two repeat efforts), Contractor is unable to correct all deficiencies preventing Final Acceptance of a Deliverable/Service, the State may: (i) demand that Contractor cure the failure and give Contractor additional time to cure the failure at the sole expense of Contractor; or (ii) keep the Contract in force and do, either itself or through other parties, whatever Contractor has failed to do, in which event Contractor shall bear any excess expenditure incurred by the State in so doing beyond the Contract price for such Deliverable/Service and will pay the State an additional sum equal to ten percent (10%) of such excess expenditure to cover the State's general expenses provided the State can furnish proof of such general expenses; or (iii) terminate the particular Statement of Work for default, either in whole or in part by notice to Contractor provided Contractor is unable to cure such breach. Notwithstanding the foregoing, the State shall not use, as a basis for exercising its termination rights under this Section, deficiencies discovered in a repeat State Review Period that could reasonably have been discovered during a prior State Review Period.
- (f) The State, at any time and in its reasonable discretion, may halt the testing or approval process if such process reveals deficiencies in or problems with a Deliverable/Service in a sufficient quantity or of a sufficient severity as to make the continuation of such process unproductive or unworkable. In such case, the State may stop using the Service or return the applicable Deliverable to Contractor for correction and re-delivery prior to resuming the testing or approval process.

**2.085 Process For Approval of Written Deliverables**

The State Review Period for Written Deliverables will be the number of days set forth in the applicable Statement of Work following delivery of the final version of the Deliverable (failing which the State Review Period, by default, shall be five (5) Business Days for Written Deliverables of 100 pages or less and ten (10) Business Days for Written Deliverables of more than 100. The duration of the State Review Periods will be doubled if the State has not had an opportunity to review an interim draft of the Written Deliverable prior to its submission to the State. The State agrees to notify Contractor in writing by the end of the State Review Period either stating that the Deliverable is approved in the form delivered by Contractor or describing any deficiencies that must be corrected prior to approval of the Deliverable (or at the State's election, subsequent to approval of the Deliverable). If the State delivers to Contractor a notice of deficiencies, Contractor will correct the described deficiencies and within 30 Business Days resubmit the Deliverable in a form that shows all revisions made to the original version delivered to the State. Contractor's correction efforts will be made at no additional charge.



Upon receipt of a corrected Deliverable from Contractor, the State will have a reasonable additional period of time, not to exceed the length of the original State Review Period, to review the corrected Deliverable to confirm that the identified deficiencies have been corrected.

#### **2.086 Process for Approval of Services**

The State Review Period for approval of Services is governed by the applicable Statement of Work (failing which the State Review Period, by default, shall be 30 Business Days for Services). The State agrees to notify Contractor in writing by the end of the State Review Period either stating that the Service is approved in the form delivered by Contractor or describing any deficiencies that must be corrected prior to approval of the Services (or at the State's election, subsequent to approval of the Service). If the State delivers to Contractor a notice of deficiencies, Contractor will correct the described deficiencies and within 30 Business Days resubmit the Service in a form that shows all revisions made to the original version delivered to the State. Contractor's correction efforts will be made at no additional charge. Upon implementation of a corrected Service from Contractor, the State will have a reasonable additional period of time, not to exceed the length of the original State Review Period, to review the corrected Service for conformity and that the identified deficiencies have been corrected.

#### **2.087 Process for Approval of Physical Deliverables**

The State Review Period for approval of Physical Deliverables is governed by the applicable Statement of Work (failing which the State Review Period, by default, shall be 30 continuous Business Days for a Physical Deliverable). The State agrees to notify Contractor in writing by the end of the State Review Period either stating that the Deliverable is approved in the form delivered by Contractor or describing any deficiencies that must be corrected prior to approval of the Deliverable (or at the State's election, subsequent to approval of the Deliverable). If the State delivers to Contractor a notice of deficiencies, Contractor will correct the described deficiencies and within 30 Business Days resubmit the Deliverable in a form that shows all revisions made to the original version delivered to the State. Contractor's correction efforts will be made at no additional charge. Upon receipt of a corrected Deliverable from Contractor, the State will have a reasonable additional period of time, not to exceed the length of the original State Review Period, to review the corrected Deliverable to confirm that the identified deficiencies have been corrected.

#### **2.088 Final Acceptance**

Unless otherwise stated in the Statement of Work or Purchase Order, "Final Acceptance" of each Deliverable shall occur when each Deliverable/Service has been approved by the State following the State Review Periods identified in **Sections 2.080-2.087**. Payment will be made for Deliverables installed and accepted. Upon acceptance of a Service, the State will pay for all Services provided during the State Review Period that conformed to the acceptance criteria.

#### 2.080 Delivery and Acceptance of Deliverables

#### 2.090 Financial

#### **2.091 Pricing**

##### **(a) Fixed Prices for Services/Deliverables**

Each Statement of Work/PO issued under this Contract shall specify (or indicate by reference to the appropriate Contract Exhibit) the firm, fixed prices for all Services/Deliverables, and the associated payment milestones and payment amounts. To the extent the parties agree that certain specific Services will be provided on a time and materials basis, such Services shall be provided at the Amendment Labor Rates (**Article 1, Attachment C**). The State may make progress payments to the Contractor when requested as work progresses, but not more frequently than monthly, in amounts approved by the Contract Administrator, after negotiation. Contractor must show verification of measurable progress at the time of requesting progress payments.



(b) Adjustments for Reductions in Scope of Services/Deliverables

If the scope of the Services/Deliverables under any Statement of Work issued under this Contract is subsequently reduced by the State, the parties shall negotiate an equitable reduction in Contractor's charges under such Statement of Work commensurate with the reduction in scope, using the rates in **Article 1, Attachment C**, unless specifically identified in an applicable Statement of Work.

(c) Services/Deliverables Covered

For all Services/Deliverables to be provided by Contractor (and its Subcontractors, if any) under this Contract, the State shall not be obligated to pay any amounts in addition to the charges specified in this Contract.

(d) Labor Rates

All time and material charges will be at the rates specified in **Article 1, Attachment C**.

## 2.092 Invoicing and Payment Procedures and Terms

(a) Invoicing and Payment – In General

(i) Each Statement of Work issued under this Contract shall list (or indicate by reference to the appropriate Contract Exhibit) the prices for all Services/Deliverables, equipment and commodities to be provided, and the associated payment milestones and payment amounts.

(ii) Each Contractor invoice will show details as to charges by Service/Deliverable component and location at a level of detail reasonably necessary to satisfy the State's accounting and charge-back requirements. The charges for Services billed on a time and materials basis shall be determined based on the actual number of hours of Services performed, at the applicable Labor Rates specified in **Article 1, Attachment C**. Invoices for Services performed on a time and materials basis will show, for each individual, the number of hours of Services performed during the billing period, the billable skill/labor category for such person and the applicable hourly billing rate. Prompt payment by the State is contingent on the Contractor's invoices showing the amount owed by the State minus any holdback amount to be retained by the State in accordance with **Section 2.094**.

(iii) Correct invoices will be due and payable by the State, in accordance with the State's standard payment procedure as specified in 1984 Public Act No. 279, MCL 17.51 et seq., within forty-five (45) days after receipt, provided the State determines that the invoice was properly rendered.

(b) Taxes (See Section 2.305 and Article 3, Section 3.022-3.024 for additional )

The State is exempt from Federal Excise Tax, State and Local Sales Taxes, and Use Tax with respect to the sale to and use by it of tangible personal property. Such taxes shall not be included in Contract prices as long as the State maintains such exemptions. Copies of all tax exemption certificates shall be supplied to Contractor, if requested.

(c) Out-of-Pocket Expenses

Contractor acknowledges that the out-of-pocket expenses that Contractor expects to incur in performing the Services/ providing the Deliverables (such as, but not limited to, travel and lodging, document reproduction and shipping, and long distance telephone) are included in Contractor's fixed price for each Statement of Work. Accordingly, Contractor's out-of-pocket expenses are not separately reimbursable by the State unless, on a case-by-case basis for unusual expenses, the State has agreed in advance and in writing to reimburse Contractor for such an expense at the State's current travel reimbursement rates. See [http://www.mi.gov/dmb/0,1607,7-150-9141\\_13132---,00.html](http://www.mi.gov/dmb/0,1607,7-150-9141_13132---,00.html) for current rates.

(d) Pro-ration

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

(e) Antitrust Assignment

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



(f) **Final Payment**

The making of final payment by the State to Contractor does not constitute a waiver by either party of any rights or other claims as to the other party's continuing obligations under the Contract, nor will it constitute a waiver of any claims by one party against the other arising from unsettled claims or failure by a party to comply with this Contract, including claims for Services and Deliverables not reasonably known until after acceptance to be defective or substandard. Contractor's acceptance of final payment by the State under this Contract shall constitute 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 unsettled.

**2.093 State Funding Obligation**

The State's obligation under this Contract is payable only and solely from funds appropriated for the purpose of this Contract. Contractor acknowledges and agrees that all funds for payments after the end of the current fiscal year are subject to the availability of a legislative appropriation for the purpose of this Contract. Events of non-appropriation are addressed further in **Section 2.210** of this Contract.

**2.094 Holdback - Reserved**

**2.095 Electronic Payment Availability**

Public Act 533 of 2004 requires that payments under this contract be processed by electronic funds transfer (EFT). Contractor is required to register to receive payments by EFT at the Contract & Payment Express website ([www.cpexpress.state.mi.us](http://www.cpexpress.state.mi.us)).

2.100 Contract Management

**2.101 Contract Management Responsibility**

(a) Contractor shall have overall responsibility for managing and successfully performing and completing the Services/Deliverables, subject to the overall direction and supervision of the State and with the participation and support of the State as specified in this Contract. Contractor's duties will include monitoring and reporting the State's performance of its participation and support responsibilities (as well as Contractor's own responsibilities) and providing timely notice to the State in Contractor's reasonable opinion if the State's failure to perform its responsibilities in accordance with **Article 1, Project Plan** is likely to delay the timely achievement of any Contract tasks.

(b) The Services/Deliverables will be provided by the Contractor either directly or through its affiliates, subsidiaries, subcontractors or resellers. Regardless of the entity providing the Service/Deliverable, the Contractor will act as a single point of contact coordinating these entities to meet the State's need for Services/Deliverables. Nothing in this Contract, however, shall be construed to authorize or require any party to violate any applicable law or regulation in its performance of this Contract.

**2.102 Problem and Contract Management Procedures**

Problem Management and Contract Management procedures will be governed by the Contract and the applicable Statements of Work.

**2.103 Reports and Meetings**

(a) **Reports.**

Within 30 days after the Effective Date, the parties shall determine an appropriate set of periodic reports to be issued by Contractor to the State. Such reports may include:

- (i) separately address Contractor's performance in each area of the Services;
- (ii) for each area of the Services, assess the degree to which Contractor has attained or failed to attain the pertinent objectives in that area, including on-time completion and delivery of Deliverables;
- (iii) explain the reasons for any failure to achieve on-time completion and delivery of Deliverables and include a plan for corrective action where appropriate;



- (iv) describe any circumstances that Contractor anticipates will impair or prevent on-time completion and delivery of Deliverables in upcoming reporting periods;
- (v) include plans for corrective action or risk mitigation where appropriate and describe the status of ongoing problem resolution efforts;
- (vi) provide reports setting forth a comparison of actual hours spent by Contractor (including its augmented personnel and Subcontractors) in performing the Project versus hours budgeted by Contractor.
- (vii) set forth a record of the material personnel changes that pertain to the Services and describe planned changes during the upcoming month that may affect the Services.
- (viii) include such documentation and other information may be mutually agreed to verify compliance with, and meeting the objectives of, this Contract.
- (ix) set forth an updated schedule that provides information on the status of upcoming Deliverables, expected dates of delivery (or redelivery) of such Deliverables and estimates on timing for completion of the Project.

(b) **Meetings.**

Within 30 days after the Effective Date, the parties shall determine an appropriate set of meetings to be held between representatives of the State and Contractor. Contractor shall prepare and circulate an agenda sufficiently in advance of each such meeting to give participants an opportunity to prepare for the meeting. Contractor shall incorporate into such agenda items that the State desires to discuss. At the State's request, Contractor shall prepare and circulate minutes promptly after a meeting.

#### **2.104 System Changes**

Contractor is not responsible for and not authorized to make changes to any State systems without written authorization from the State. Any changes Contractor makes to State systems with the State's approval shall be done in accordance with applicable State procedures, including security, access and configuration management procedures.

#### **2.105 Reserved**

#### **2.106 Change Requests**

The State reserves the right to request from time to time, any changes to the requirements and specifications of the Contract and the work to be performed by the Contractor under the Contract. During the course of ordinary business, it may become necessary for the State to discontinue certain business practices or create Additional Services/Deliverables. At a minimum, to the extent applicable, the State would like the Contractor to provide a detailed outline of all work to be done, including tasks necessary to accomplish the services/deliverables, timeframes, listing of key personnel assigned, estimated hours for each individual per task, and a complete and detailed cost justification.

If the State requests or directs the Contractor to perform any Services/Deliverables that are outside the scope of the Contractor's responsibilities under the Contract ("New Work"), the Contractor must notify the State promptly, and before commencing performance of the requested activities, that it believes the requested activities are New Work. If the Contractor fails to notify the State before commencing performance of the requested activities, any such activities performed before notice is given by the Contractor shall be conclusively considered to be in-scope Services/Deliverables, not New Work.

If the State requests or directs the Contractor to perform any services or provide deliverables that are consistent with and similar to the Services/Deliverables being provided by the Contractor under the Contract, but which the Contractor reasonably and in good faith believes are not included within the Statements of Work, then before performing such services or providing such deliverables, the Contractor shall notify the State in writing that it considers the services or deliverables to be an Additional Service/Deliverable for which the Contractor should receive additional compensation. If the Contractor does not so notify the State, the Contractor shall have no right to claim thereafter that it is entitled to additional compensation for performing that service or providing that deliverable. If the Contractor does so notify the State, then such a service or deliverable shall be governed by the Change Request procedure in this Section.





In the event prices or service levels are not acceptable to the State, the Additional Services or New Work shall be subject to competitive bidding based upon the specifications.

(a) Change Requests

(i) **State Requests**

If the State should require Contractor to perform New Work, Additional Services or make changes to the Services that would affect the Contract completion schedule or the amount of compensation due Contractor (a "Change"), the State shall submit a written request for Contractor to furnish a proposal for carrying out the requested Change (a "Change Request").

(ii) **Contractor Recommendations**

Contractor shall be entitled to propose a Change to the State, on its own initiative, should it be of the opinion that this would benefit the Contract.

(iii) Upon receipt of a Change Request or on its own initiative, Contractor shall examine the implications of the requested Change on the technical specifications, Contract schedule and price of the Deliverables and Services and shall submit to the State without undue delay a written proposal for carrying out the Change. Contractor's proposal will include any associated changes in the technical specifications, Contract schedule and price and method of pricing of the Services. If the Change is to be performed on a time and materials basis, the Amendment Labor Rates shall apply to the provision of such Services. If Contractor provides a written proposal and should Contractor be of the opinion that a requested Change is not to be recommended, it shall communicate its opinion to the State but shall nevertheless carry out the Change as specified in the written proposal if the State directs it to do so.

(iv) By giving Contractor written notice within a reasonable time, the State shall be entitled to accept a Contractor proposal for Change, to reject it or to reach another agreement with Contractor. Should the parties agree on carrying out a Change, a written Contract Change Notice shall be prepared and issued under this Contract, describing the Change and its effects on the Services and any affected components of this Contract (a "Contract Change Notice").

(v) No proposed Change shall be performed until the proposed Change has been specified in a duly executed Contract Change Notice issued by the Department of Management and Budget, Purchasing Operations.

(vi) If the State requests or directs Contractor to perform any activities that Contractor believes constitute a Change, Contractor must notify the State that it believes the requested activities are a Change prior to commencing the performance of the requested activities. If Contractor fails to so notify the State prior to commencing performance of the requested activities, such activities shall be considered to be performed gratuitously by Contractor, and Contractor shall not have any right thereafter to assert any claim for additional compensation or time for the performance of such activities. If Contractor commences performance of gratuitous services outside the scope of this Contract and subsequently elects to stop performing such out-of-scope services, Contractor must, at the request of the State, back out or reverse any changes resulting from such performance that would adversely affect the Contract.

## 2.107 Management Tools

Contractor will use an automated tool for planning, monitoring and tracking the Contract's progress. In addition, Contractor shall use automated project management tools as reasonably necessary to perform the Services, which tools shall include the capability to produce through the end of the Contract: (i) staffing tables with names of personnel assigned to Contract tasks, (ii) project plans showing tasks, subtasks, Deliverables and the resources required and allocated to each (including detailed plans for all Services to be performed within the next sixty (60) days, updated semi-monthly) and (iii) graphs showing critical events, dependencies and decision points during the course of the Contract. Any tool(s) used by Contractor for such purposes must produce information of a type and in a manner and format that will support reporting in compliance with the State's standard to the extent such information is described with reasonable detail in the Statements of Work and to the extent the related work is of sufficient project complexity and duration to warrant such reporting.

2.110 Records and Inspections**2.111 Records and Inspections**

- (a) **Inspection of Work Performed.** The State's authorized representatives shall at all reasonable times and with ten (10) days prior written request, have the right to enter Contractor's premises, or any other places, where the Services are being performed, and shall have access, upon reasonable request, to interim drafts of Deliverables or work-in-progress. Upon ten (10) Days prior written notice and at all reasonable times, the State's representatives shall be allowed to inspect, monitor, or otherwise evaluate the work being performed and to the extent that such access will not reasonably interfere or jeopardize the safety or operation of the systems or facilities. Contractor must provide all reasonable facilities and assistance for the State's representatives.
- (b) **Examination of Records.** Contractor agrees that the State, including its duly authorized representatives, until the expiration of seven (7) years following the creation of the material (collectively, the "Audit Period"), shall, upon 20 days prior written notice, have access to and the right to examine and copy any of Contractor's books, records, documents and papers pertinent to establishing Contractor's compliance with the Contract and with applicable laws and rules, including the State's procurement rules, regulations and procedures, and actual performance of the Contract for the purpose of conducting an audit, examination, excerpt and/or transcription but the State shall not have access to any information deemed confidential to Contractor to the extent such access would require such confidential information to become publicly available. This provision also applies to the books, records, accounts, documents and papers, in print or electronic form, of any parent, affiliated or subsidiary organization of Contractor, or any Subcontractor of Contractor performing services in connection with the Contract.
- (c) **Retention of Records.** Contractor shall maintain at least until the end of the Audit Period all pertinent financial and accounting records (including time sheets and payroll records, and information pertaining to the Contract and to the Services, equipment, and commodities provided under the Contract) pertaining to the Contract in accordance with generally accepted accounting principles and other procedures specified in this Section. Financial and accounting records shall be made available, upon request, to the State at any time during the Audit Period. If an audit, litigation, or other action involving Contractor's records is initiated before the end of the Audit Period, the records must be retained until all issues arising out of the audit, litigation, or other action are resolved or until the end of the Audit Period, whichever is later.
- (d) **Audit Resolution.** If necessary, the Contractor and the State shall meet to review each audit report promptly after issuance. The Contractor will respond to each audit report in writing within 30 days from receipt of such report, unless a shorter response time is specified in such report. The Contractor and the State shall develop, agree upon and monitor an action plan to promptly address and resolve any deficiencies, concerns, and/or recommendations in such audit report.

**2.112 Errors**

- (a) If the audit demonstrates any errors in the statements provided to the State, then the amount in error shall be reflected as a credit or debit on the next invoice and in subsequent invoices until the amount is paid or refunded in full. However, a credit or debit may not be carried for more than four (4) quarterly statements. If a balance remains after four (4) quarterly statements, then the remaining amount will be due as a payment or refund within 45 days of the last quarterly statement that the balance appeared on or termination of the contract, whichever is earlier.
- (b) In addition to other available remedies, the difference between the payment received and the correct payment amount is greater than ten percent (10%), then the Contractor shall pay all of the reasonable costs of the audit.



2.120 State Responsibilities**2.121 State Performance Obligations**

(a) Equipment and Other Resources. To facilitate Contractor's performance of the Services/Deliverables, the State shall provide to Contractor such equipment and resources as identified in the Statements of Work or other Contract Exhibits as items to be provided by the State.

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

(c) Return. Contractor shall be responsible for returning to the State any State-furnished equipment, facilities and other resources when no longer required for the Contract in the same condition as when provided by the State, reasonable wear and tear excepted.

(d) Except as otherwise provided in **Section 2.220**, the State's failure to perform its responsibilities, as set forth in this Contract shall not be deemed to be grounds for termination by Contractor. However, Contractor will not be liable for any default or delay in the performance of its obligations under this Contract to the extent such default or delay is caused by nonperformance of the State's obligations under this Contract, provided Contractor provides the State with reasonable written notice of such nonperformance and Contractor uses commercially reasonable efforts to perform notwithstanding the State's failure to perform. In addition, if the State's nonperformance of its responsibilities under this Contract materially increases the time required for Contractor's performance or Contractor's cost of performance, Contractor shall be entitled to seek an equitable extension via the Change Request process described in **Section 2.106**.

2.130 Security**2.131 Background Checks**

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

All Contractor personnel will also be expected to comply with the State's security and acceptable use policies for State IT equipment and resources. See <http://www.michigan.gov/ditservice/0,1607,7-179-25781-73760--,00.html>. Furthermore, Contractor personnel will be expected to agree to the State's security and acceptable use policies before the Contractor personnel will be accepted as a resource to perform work for the State. It is expected the Contractor will present these documents to the prospective employee before the Contractor presents the individual to the State as a proposed resource. Contractor staff will be expected to comply with all Physical Security procedures in place within the facilities where they are working.

2.140 Reserved2.150 Confidentiality**2.151 Freedom of Information**

All information in any proposal submitted to the State by Contractor and this Contract is subject to the provisions of the Michigan Freedom of Information Act, 1976 Public Act No. 442, as amended, MCL 15.231, et seq (the "FOIA").

**2.152 Confidentiality**

Contractor and the State each acknowledge that the other possesses and will continue to possess confidential information that has been developed or received by it. As used in this Section, "Confidential Information" of Contractor shall mean all non-public proprietary information of Contractor (other than Confidential Information of the State as defined below) which is marked confidential, restricted, and proprietary or with a similar designation. "Confidential Information" of the State shall mean any information which is retained in confidence by the State (or otherwise required to be held in confidence by the State pursuant to applicable federal, state and local laws and regulations) or which, in the case of tangible materials provided to Contractor by the State pursuant to its performance under this Contract, is marked as confidential, proprietary or with a similar designation by the State. In the case of information of either Contractor or the State "Confidential Information" shall exclude any information (including this Contract) that is publicly available pursuant to the Michigan FOIA.

**2.153 Protection of Confidential Information**

The State and Contractor will each use at least the same degree of care to prevent disclosing to third parties the Confidential Information of the other as it employs to avoid unauthorized disclosure, publication or dissemination of its own confidential information of like character, but in no event less than reasonable care. Neither Contractor nor the State will (i) make any use of the Confidential Information of the other except as contemplated by this Contract, (ii) acquire any right in or assert any lien against the Confidential Information of the other, or (iii) if requested to do so, refuse for any reason to promptly return the other party's Confidential Information to the other party. Each party will limit disclosure of the other party's Confidential Information to employees and Subcontractors who must have access in order to fulfill the purposes of this Contract. Disclosure to, and use by, a Subcontractor is permissible where (A) use of a Subcontractor is authorized under this Contract, (B) such disclosure is necessary or otherwise naturally occurs in connection with work that is within such Subcontractor's scope of responsibility, and (C) Contractor obligates the Subcontractor in a written Contract to maintain the State's Confidential Information in confidence. At the State's request, any employee of Contractor and of any Subcontractor having access or continued access to the State's Confidential Information may be required to execute an acknowledgment that the employee has been advised of Contractor's and the Subcontractor's obligations under this Section and of the employee's obligation to Contractor or Subcontractor, as the case may be, to protect such Confidential Information from unauthorized use or disclosure.

**2.154 Exclusions**

Notwithstanding the foregoing, the provisions of this Section will not apply to any particular information which the State or Contractor can demonstrate (i) was, at the time of disclosure to it, in the public domain; (ii) after disclosure to it, is published or otherwise becomes part of the public domain through no fault of the receiving party; (iii) was in the possession of the receiving party at the time of disclosure to it without an obligation of confidentiality; (iv) was received after disclosure to it from a third party who had a lawful right to disclose such information to it without any obligation to restrict its further disclosure; or (v) was independently developed by the receiving party without reference to Confidential Information of the furnishing party. Further, the provisions of this Section will not apply to any particular Confidential Information to the extent the receiving party is required by law to disclose such Confidential Information, provided that the receiving party (i) promptly provides the furnishing party with notice of the legal request, and (ii) assists the furnishing party in resisting or limiting the scope of such disclosure as reasonably requested by the furnishing party.

**2.155 No Implied Rights**

Nothing contained in this Section shall be construed as obligating a party to disclose any particular Confidential Information to the other party, or as granting to or conferring on a party, expressly or impliedly, any right or license to the Confidential Information of the other party.

**2.156 Remedies**

Each party acknowledges that, if it breaches (or attempts or threatens to breach) its obligations under this Section, the other party may be irreparably harmed. Accordingly, if a court of competent jurisdiction should find that a party has breached (or attempted or threatened to breach) any such obligations, the non-breaching party shall be entitled to seek an injunction preventing such breach (or attempted or threatened breach).

**2.157 Security Breach Notification**

In the event of a breach of this Section, Contractor shall take (i) prompt corrective action to cure any such deficiencies and (ii) any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations. Contractor and the State will cooperate to mitigate, to the extent practicable, the effects of any breach, intrusion, or unauthorized use or disclosure. Contractor shall report to the State in writing any use or disclosure of Confidential Information, whether suspected or actual, other than as provided for by the Contract within ten (10) days of becoming aware of such use or disclosure or such shorter time period as is reasonable under the circumstances.

**2.158 Survival**

The parties' respective obligations under this Section shall survive the termination or expiration of this Contract for any reason.

**2.159 Destruction of Confidential Information**

Promptly upon termination or cancellation of the Contract for any reason, Contractor shall certify to the State that Contractor has destroyed all State Confidential Information.

2.160 Proprietary Rights**2.161 License**

Contractor grants to the State a non-exclusive, royalty-free, site-wide, irrevocable, transferable license to use the Software and related documentation according to the terms and conditions of this Contract. For the purposes of this license, "site-wide" includes any State of Michigan office regardless of its physical location.

The State may modify the Software and may combine such with other programs or materials to form a derivative work. The State will own and hold all copyright, trademark, patent and other intellectual property rights in any derivative work, excluding any rights or interest in Software other than those granted in this Contract.

The State may copy each item of Software to multiple hard drives or networks unless otherwise agreed by the parties.

The State will make and maintain no more than one archival copy of each item of Software, and each copy will contain all legends and notices and will be subject to the same conditions and restrictions as the original. The State may also make copies of the Software in the course of routine backups of hard drive(s) for the purpose of recovery of hard drive contents.

In the event that the Contractor shall, for any reason, cease to conduct business, or cease to support the Software, the State shall have the right to convert these licenses into perpetual licenses, with rights of quiet enjoyment, but subject to payment obligations not to exceed the then current rates.

**2.162 Source Code Escrow - Reserved****2.163 Rights in Data**

(a) The State will be and remain the owner of all data made available by the State to Contractor or its agents, Subcontractors or representatives pursuant to the Contract. Contractor will not use the State's data for any purpose other than providing the Services, nor will any part of the State's data be disclosed, sold, assigned, leased or otherwise disposed of to the general public or to specific third parties or commercially exploited by or on behalf of Contractor, nor will any employee of Contractor other than those on a strictly need to know basis have access to the State's data. Contractor will not possess or assert any lien or other right against the State's data. Without limiting the generality of this Section, Contractor shall only use personally identifiable information as strictly necessary to provide the Services and shall disclose such information only to its employees who have a strict need to know such information. Contractor shall comply at all times with all laws and regulations applicable to such personally identifiable information.



(b) The State is and shall remain the owner of all State-specific data pursuant to the Contract. The State may use the data provided by the Contractor for any purpose. The State will not possess or assert any lien or other right against the Contractor's data. Without limiting the generality of this Section, the State shall only use personally identifiable information as strictly necessary to utilize the Services and shall disclose such information only to its employees who have a strict need to know such information, except as provided by law. The State shall comply at all times with all laws and regulations applicable to such personally identifiable information. Other material developed and provided to the State shall remain the State's sole and exclusive property.

#### **2.164 Ownership of Materials**

State and Contractor will continue to own their respective proprietary technologies developed before entering into the Contract. Any hardware bought through the Contractor by the State, and paid for by the State, will be owned by the State. Any software licensed through the Contractor and sold to the State, will be licensed directly to the State.

#### **2.165 Standard Software**

If applicable and necessary, all Standard Software used in performing the Services shall be provided to the State under a separate license agreement between the State and the owner (or authorized licensor) of such software. Standard Software to be licensed to the State is listed in **Exhibit C**.

#### **2.166 Pre-existing Materials for Custom Software Deliverables**

Neither Contractor nor any of its Subcontractors shall incorporate any preexisting materials (including Standard Software) into Custom Software Deliverables or use any pre-existing materials to produce Custom Software Deliverables if such pre-existing materials will be needed by the State in order to use the Custom Software Deliverables unless (i) such pre-existing materials and their owners are identified to the State in writing and (ii) such pre-existing materials are either readily commercially available products for which Contractor or its Subcontractor, as the case may be, has obtained a license (in form and substance approved by the State) in the name of the State, or are materials that Contractor or its Subcontractor, as the case may be, has the right to license to the State and has licensed to the State on terms and conditions approved by the State prior to using such pre-existing materials to perform the Services.

#### **2.167 General Skills**

Notwithstanding anything to the contrary in this Section, each party, its Subcontractors and their personnel shall be free to use and employ its and their general skills, know-how and expertise, and to use, disclose and employ any generalized ideas, concepts, know-how, methods, techniques or skills gained or learned during the course of performing the Services, so long as it or they acquire and apply the foregoing without disclosure of any confidential or proprietary information of the other party.

#### **2.170 Warranties And Representations**

#### **2.171 Warranties and Representations**

The Contractor represents and warrants:

(a) It is capable in all respects of fulfilling and shall fulfill all of its obligations under this Contract. The performance of all obligations under this Contract shall be provided in a timely, professional, and workman-like manner and shall meet the performance and operational standards required under this Contract.

(b) The Contract Appendices, Attachments and Exhibits identify the equipment and software and services necessary for the Deliverable(s) to perform and Services to operate in compliance with the Contract's requirements and other standards of performance.

(c) It is the lawful owner or licensee of any Deliverable licensed or sold to the State by Contractor or developed by Contractor under this Contract, and Contractor has all of the rights necessary to convey to the State the ownership rights or licensed use, as applicable, of any and all Deliverables. None of the Deliverables provided by Contractor to the State under neither this Contract, nor their use by the State, will infringe the patent, copyright, trade secret, or other proprietary rights of any third party.



- (d) If, under this Contract, Contractor procures any equipment, software or other Deliverable for the State (including equipment, software and other Deliverables manufactured, re-marketed or otherwise sold by Contractor under Contractor's name), then in addition to Contractor's other responsibilities with respect to such items in this Contract, Contractor shall assign or otherwise transfer to the State or its designees, or afford the State the benefits of, any manufacturer's warranty for the Deliverable.
- (e) The contract signatory has the power and authority, including any necessary corporate authorizations, necessary to enter into this Contract, on behalf of Contractor.
- (f) It is qualified and registered to transact business in all locations where required.
- (g) Neither the Contractor nor any Affiliates, nor any employee of either, has, shall have, or shall acquire, any contractual, financial, business, or other interest, direct or indirect, that would conflict in any manner or degree with Contractor's performance of its duties and responsibilities to the State under this Contract or otherwise create an appearance of impropriety with respect to the award or performance of this Agreement. Contractor shall notify the State within two (2) days of any such interest that may be incompatible with the interests of the State.
- (h) Neither Contractor nor any Affiliates, nor any employee of either has accepted or shall accept anything of value based on an understanding that the actions of the Contractor or Affiliates or employee on behalf of the State would be influenced. Contractor shall not attempt to influence any State employee by the direct or indirect offer of anything of value.
- (i) Neither Contractor nor any Affiliates, nor any employee of either has paid or agreed to pay any person, other than bona fide employees and consultants working solely for Contractor or such Affiliate, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract.
- (j) The prices proposed by Contractor were arrived at independently, without consultation, communication, or agreement with any other bidder for the purpose of restricting competition; the prices quoted were not knowingly disclosed by Contractor to any other bidder; and no attempt was made by Contractor to induce any other person to submit or not submit a proposal for the purpose of restricting competition.
- (k) All financial statements, reports, and other information furnished by Contractor to the State as part of its response to the RFP or otherwise in connection with the award of this Contract fairly and accurately represent the business, properties, financial condition, and results of operations of Contractor as of the respective dates, or for the respective periods, covered by such financial statements, reports, other information. Since the respective dates or periods covered by such financial statements, reports, or other information, there have been no material adverse change in the business, properties, financial condition, or results of operations of Contractor.
- (m) All written information furnished to the State by or behalf of Contractor in connection with this Contract, including its bid, is true, accurate, and complete, and contains no untrue statement of material fact or omits any material fact necessary to make such information not misleading.
- (n) It is not in material default or breach of any other contract or agreement that it may have with the State or any of its departments, commissions, boards, or agencies. Contractor further represents and warrants that it has not been a party to any contract with the State or any of its departments that was terminated by the State or such department within the previous five (5) years for the reason that Contractor failed to perform or otherwise breached an obligation of such contract.

#### **2.172 Software Warranties - Reserved**

#### **2.173 Equipment Warranty - Reserved**

#### **2.174 Physical Media - Reserved**

#### **2.175 DISCLAIMER**

THE FOREGOING EXPRESS WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES AND EACH PARTY EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

#### **2.176 Consequences For Breach**

In addition to any remedies available in law, if the Contractor breaches any of the warranties contained in this section, such breach may be considered as a default in the performance of a material obligation of this Contract.



2.180 Insurance**2.181 Liability Insurance****(a) Liability Insurance**

The Contractor is required to provide proof of the minimum levels of insurance coverage as indicated below. The purpose of this coverage shall be to protect the State from claims which may arise out of or result from the Contractor's performance of services under the terms of this Contract, whether such services are performed by the Contractor, or by any subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable.

The Contractor waives all rights against the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents for recovery of damages to the extent these damages are covered by the insurance policies the Contractor is required to maintain pursuant to this Contract.

All insurance coverages provided relative to this Contract/Purchase Order are PRIMARY and NON-CONTRIBUTING to any comparable liability insurance (including self-insurances) carried by the State.

The insurance shall be written for not less than any minimum coverage specified in this Contract or required by law, whichever is greater.

The insurers selected by Contractor shall have an A.M. Best rating of A or better, or as otherwise approved in writing by the State, or if such ratings are no longer available, with a comparable rating from a recognized insurance rating agency. All policies of insurance required in this Contract shall be issued by companies that have been approved to do business in the State.

See [http://www.mi.gov/cis/0,1607,7-154-10555\\_22535---.00.html](http://www.mi.gov/cis/0,1607,7-154-10555_22535---.00.html).

Where specific limits are shown, they are the minimum acceptable limits. If Contractor's policy contains higher limits, the State shall be entitled to coverage to the extent of such higher limits.

Before both parties sign the Contract or before the purchase order is issued by the State, the Contractor must furnish to the Director of Purchasing Operations, certificate(s) of insurance verifying insurance coverage ("Certificates"). The Certificate must be on the standard "accord" form or equivalent. **THE CONTRACT OR PURCHASE ORDER NO. MUST BE SHOWN ON THE CERTIFICATE OF INSURANCE TO ASSURE CORRECT FILING.** All Certificate(s) are to be prepared and submitted by the Insurance Provider. All Certificate(s) shall contain a provision indicating that coverages afforded under the policies WILL NOT BE CANCELLED, MATERIALLY CHANGED, OR NOT RENEWED without 30 days prior written notice, except for ten (10) days for non-payment of premium, having been given to the Director of Purchasing Operations, Department of Management and Budget. The notice must include the Contract or Purchase Order number affected and be mailed to: Director, Purchasing Operations, Department of Management and Budget, P.O. Box 30026, Lansing, Michigan 48909. Failure to provide evidence of coverage, may, at the State's sole option, result in this Contract's termination.

The Contractor is required to pay for and provide the type and amount of insurance checked ☒ below:

☒ 1. Commercial General Liability with the following minimum coverage:

\$2,000,000 General Aggregate Limit other than Products/Completed Operations  
\$2,000,000 Products/Completed Operations Aggregate Limit  
\$1,000,000 Personal & Advertising Injury Limit  
\$1,000,000 Each Occurrence Limit  
\$500,000 Fire Damage Limit (any one fire)

The Contractor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents as ADDITIONAL INSURED on the Commercial General Liability certificate. The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company.



- ☒ 2. If a motor vehicle is used to provide services or products under this Contract, the Contractor must have vehicle liability insurance on any auto including owned, hired and non-owned vehicles used in Contractor's business for bodily injury and property damage as required by law.

The Contractor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents as ADDITIONAL INSURED on the vehicle liability certificate. The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company.

- ☒ 3. Workers' compensation coverage must be provided in accordance with applicable laws governing the employees and employers work activities in the state of the Contractor's domicile. If a self-insurer provides the applicable coverage, proof must be provided of approved self-insured authority by the jurisdiction of domicile. For employees working outside of the state of qualification, Contractor must provide appropriate certificates of insurance proving mandated coverage levels for the jurisdictions where the employees' activities occur.

Any certificates of insurance received must also provide a list of states where the coverage is applicable.

The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company. This provision shall not be applicable where prohibited or limited by the laws of the jurisdiction in which the work is to be performed.

- ☒ 4. Employers liability insurance with the following minimum limits:

\$100,000 each accident  
\$100,000 each employee by disease  
\$500,000 aggregate disease

- ☐ 5. Employee Fidelity, including Computer Crimes, insurance naming the State as a loss payee, providing coverage for direct loss to the State and any legal liability of the State arising out of or related to fraudulent or dishonest acts committed by the employees of Contractor or its Subcontractors, acting alone or in collusion with others, in a minimum amount of one million dollars (\$1,000,000.00) with a maximum deductible of fifty thousand dollars (\$50,000.00).

- ☐ 6. Umbrella or Excess Liability Insurance in a minimum amount of ten million dollars (\$10,000,000.00), which shall apply, at a minimum, to the insurance required in Subsection 1 (Commercial General Liability) above.

- ☐ 7. Professional Liability (Errors and Omissions) Insurance with the following minimum coverage: three million dollars (\$3,000,000.00) each occurrence and three million dollars (\$3,000,000.00) annual aggregate.

- ☐ 8. Fire and Personal Property Insurance covering against any loss or damage to the office space used by Contractor for any reason under this Contract, and the equipment, software and other contents of such office space, including without limitation, those contents used by Contractor to provide the Services to the State, up to the replacement value thereof, where such office space and its contents are under the care, custody and control of Contractor. Such policy shall cover all risks of direct physical loss or damage, including without limitation, flood and earthquake coverage and coverage for computer hardware and software. The State shall be endorsed on the policy as a loss payee as its interests appear.

(b) Subcontractors

Except where the State has approved in writing a Contractor subcontract with other insurance provisions, Contractor shall require all of its Subcontractors under this Contract to purchase and maintain the insurance coverage as described in this Section for the Contractor in connection with the performance of work by those Subcontractors. Alternatively, Contractor may include any Subcontractors under Contractor's insurance on the coverage required in this Section. Subcontractor(s) shall fully comply with the insurance coverage required in this Section. Failure of Subcontractor(s) to comply with insurance requirements does not limit Contractor's liability or responsibility.





(c) Certificates of Insurance and Other Requirements

Contractor shall furnish to the Purchasing Operations certificate(s) of insurance verifying insurance coverage or providing satisfactory evidence of self-insurance as required in this Section (the "Certificates"). Before the Contract is signed, and not less than 20 days before the insurance expiration date every year thereafter, the Contractor shall provide evidence that the State and its agents, officers and employees are listed as additional insureds under each commercial general liability and commercial automobile liability policy. In the event the State approves the representation of the State by the insurer's attorney, the attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.

Contractor shall maintain all required insurance coverage throughout the term of the Contract and any extensions thereto and, in the case of claims-made Commercial General Liability policies, shall secure tail coverage for at least three (3) years following the expiration or termination for any reason of this Contract. The minimum limits of coverage specified above are not intended, and shall not be construed, to limit any liability or indemnity of Contractor under this Contract to any indemnified party or other persons. Contractor shall be responsible for all deductibles with regard to such insurance. If Contractor fails to pay any premium for required insurance as specified in this Contract, or if any insurer cancels or significantly reduces any required insurance as specified in this Contract without the State's written consent, at the State's election (but without any obligation to do so) after the State has given Contractor at least 30 days written notice, the State may pay such premium or procure similar insurance coverage from another company or companies; and at the State's election, the State may deduct the entire cost (or part thereof) from any payment due Contractor, or Contractor shall pay the entire cost (or any part thereof) upon demand by the State.

2.190 Indemnification

**2.191 Indemnification**

(a) General Indemnification

To the extent permitted by law, the Contractor shall indemnify, defend and hold harmless the State from liability, including all claims and losses, and all related costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest and penalties), accruing or resulting to any person, firm or corporation that may be injured or damaged by the Contractor in the performance of this Contract and that are attributable to the negligence or tortuous acts of the Contractor or any of its subcontractors, or by anyone else for whose acts any of them may be liable.

(b) Code Indemnification

To the extent permitted by law, the Contractor shall indemnify, defend and hold harmless the State from any claim, loss, or expense arising from Contractor's breach of the No Surreptitious Code Warranty.

(c) Employee Indemnification

In any and all claims against the State of Michigan, its departments, divisions, agencies, sections, commissions, officers, employees and agents, by any employee of the Contractor or any of its subcontractors, the indemnification obligation under the Contract shall not be limited in any way by the amount or type of damages, compensation or benefits payable by or for the Contractor or any of its subcontractors under worker's disability compensation acts, disability benefit acts or other employee benefit acts. This indemnification clause is intended to be comprehensive. Any overlap in provisions, or the fact that greater specificity is provided as to some categories of risk, is not intended to limit the scope of indemnification under any other provisions.

(d) Patent/Copyright Infringement Indemnification

To the extent permitted by law, the Contractor shall indemnify, defend and hold harmless the State from and against all losses, liabilities, damages (including taxes), and all related costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest and penalties) incurred in connection with any action or proceeding threatened or brought against the State to the extent that such action or proceeding is based on a claim that any piece of equipment, software, commodity or service supplied by the Contractor or its subcontractors, or the operation of such equipment, software, commodity or service, or the use or reproduction of any documentation provided with such equipment, software, commodity or service infringes any United States patent, copyright, trademark or trade secret of any person or entity, which is enforceable under the laws of the United States.



In addition, should the equipment, software, commodity, or service, or its operation, become or in the State's or Contractor's opinion be likely to become the subject of a claim of infringement, the Contractor shall at the Contractor's sole expense (i) procure for the State the right to continue using the equipment, software, commodity or service or, if such option is not reasonably available to the Contractor, (ii) replace or modify to the State's satisfaction the same with equipment, software, commodity or service of equivalent function and performance so that it becomes non-infringing, or, if such option is not reasonably available to Contractor, (iii) accept its return by the State with appropriate credits to the State against the Contractor's charges and reimburse the State for any losses or costs incurred as a consequence of the State ceasing its use and returning it.

Notwithstanding the foregoing, the Contractor shall have no obligation to indemnify or defend the State for, or to pay any costs, damages or attorneys' fees related to, any claim based upon (i) equipment developed based on written specifications of the State; or (ii) use of the equipment in a configuration other than implemented or approved in writing by the Contractor, including, but not limited to, any modification of the equipment by the State; or (iii) the combination, operation, or use of the equipment with equipment or software not supplied by the Contractor under this Contract.

## **2.192 Continuation of Indemnification Obligations**

The Contractor's duty to indemnify pursuant to this Section continues in full force and effect, notwithstanding the expiration or early cancellation of the Contract, with respect to any claims based on facts or conditions that occurred prior to expiration or cancellation.

## **2.193 Indemnification Procedures**

The procedures set forth below shall apply to all indemnity obligations under this Contract.

(a) After receipt by the State of notice of the action or proceeding involving a claim in respect of which it will seek indemnification, the State shall promptly notify Contractor of such claim in writing and take or assist Contractor in taking, as the case may be, any reasonable action to avoid the imposition of a default judgment against Contractor. No failure to notify Contractor shall relieve Contractor of its indemnification obligations except to the extent that Contractor can demonstrate damages attributable to such failure. Within ten (10) days following receipt of written notice from the State relating to any claim, Contractor shall notify the State in writing whether Contractor agrees to assume control of the defense and settlement of that claim (a "Notice of Election"). After notifying Contractor of a claim and prior to the State receiving Contractor's Notice of Election, the State shall be entitled to defend against the claim, at Contractor's expense, and Contractor will be responsible for any reasonable costs incurred by the State in defending against the claim during such period.

(b) If Contractor delivers a Notice of Election relating to any claim: (i) the State shall be entitled to participate in the defense of such claim and to employ counsel at its own expense to assist in the handling of such claim and to monitor and advise the State about the status and progress of the defense; (ii) Contractor shall, at the request of the State, demonstrate to the reasonable satisfaction of the State, Contractor's financial ability to carry out its defense and indemnity obligations under this Contract; (iii) Contractor shall periodically advise the State about the status and progress of the defense and shall obtain the prior written approval of the State before entering into any settlement of such claim or ceasing to defend against such claim and (iv) to the extent that any principles of Michigan governmental or public law may be involved or challenged, the State shall have the right, at its own expense, to control the defense of that portion of such claim involving the principles of Michigan governmental or public law. Notwithstanding the foregoing, the State may retain control of the defense and settlement of a claim by written notice to Contractor given within ten (10) days after the State's receipt of Contractor's information requested by the State pursuant to clause (ii) of this paragraph if the State determines that Contractor has failed to demonstrate to the reasonable satisfaction of the State Contractor's financial ability to carry out its defense and indemnity obligations under this Section. Any litigation activity on behalf of the State of Michigan, or any of its subdivisions pursuant to this Section, must be coordinated with the Department of Attorney General. In the event the insurer's attorney represents the State pursuant to this Section, the insurer's attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.

(c) If Contractor does not deliver a Notice of Election relating to any claim of which it is notified by the State as provided above, the State shall have the right to defend the claim in such manner as it may deem appropriate, at the cost and expense of Contractor. If it is determined that the claim was one against which Contractor was required to indemnify the State, upon request of the State, Contractor shall promptly reimburse the State for all such reasonable costs and expenses.

2.200 Limits of Liability and Excusable Failure**2.201 Limits of Liability**

The Contractor's liability for damages to the State shall be limited to the value of one year's fees or \$200,000 which ever is higher. The foregoing limitation of liability shall not apply to claims for infringement of United States patent, copyright, trademarks or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of this Contract calling for liquidated damages; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on this Contract.

The State's liability for damages to the Contractor shall be limited to the value of the Contract.

Neither the Contractor nor the State shall be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages. This limitation of liability shall not apply to claims for infringement of United States patent, copyright, trademark or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of this Contract calling for liquidated damages; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on this Contract.

**2.202 Excusable Failure**

Neither party will be liable for any default, damage or delay in the performance of its obligations under the Contract to the extent such default, damage or delay is caused by government regulations or requirements (executive, legislative, judicial, military or otherwise), power failure, electrical surges or current fluctuations, lightning, earthquake, war, water or other forces of nature or acts of God, delays or failures of transportation, equipment shortages, suppliers' failures, or acts or omissions of common carriers, fire; riots, civil disorders; strikes or other labor disputes, embargoes; injunctions (provided the injunction was not issued as a result of any fault or negligence of the party seeking to have its default or delay excused); or any other cause beyond the reasonable control of such party; provided the non-performing party and its Subcontractors are without fault in causing such default or delay, and such default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans or other means, including disaster recovery plans.

In such event, the non-performing party will be excused from any further performance or observance of the obligation(s) so affected for as long as such circumstances prevail and such party continues to use its commercially reasonable efforts to recommence performance or observance whenever and to whatever extent possible without delay and provided further that such party promptly notifies the other party in writing of the inception of the excusable failure occurrence, and also of its abatement or cessation.

If any of the above-enumerated circumstances substantially prevent, hinder, or delay Contractor's performance of the Services/provision of Deliverables for more than ten (10) Business Days, and the State determines that performance is not likely to be resumed within a period of time that is satisfactory to the State in its reasonable discretion, then at the State's option: (a) the State may procure the affected Services/Deliverables from an alternate source, and the State shall not be liable for payment for the unperformed Services/ Deliverables not provided under the Contract for so long as the delay in performance shall continue; (b) the State may terminate any portion of the Contract so affected and the charges payable there under shall be equitably adjusted to reflect those Services/Deliverables terminated; or (c) the State may terminate the affected Statement of Work without liability to Contractor as of a date specified by the State in a written notice of termination to Contractor, except to the extent that the State shall pay for Services/Deliverables provided through the date of termination.

Contractor will not have the right to any additional payments from the State as a result of any Excusable Failure occurrence or to payments for Services not rendered/Deliverables not provided as a result of the Excusable Failure condition. Defaults or delays in performance by Contractor which are caused by acts or omissions of its Subcontractors will not relieve Contractor of its obligations under the Contract except to the extent that a Subcontractor is itself subject to an Excusable Failure condition described above and Contractor cannot reasonably circumvent the effect of the Subcontractor's default or delay in performance through the use of alternate sources, workaround plans or other means.

**2.203 Disaster Recovery**

Contractor and the State recognize that the State provides essential services in times of natural or man-made disasters. Therefore, except as so mandated by Federal disaster response requirements, Contractor personnel dedicated to providing Services/Deliverables under this Contract will provide the State with priority service for repair and work around in the event of a natural or manmade disaster.

**2.210 Termination/Cancellation by the State**

The State may terminate this Contract without further liability or penalty to the State, its departments, divisions, agencies, offices, commissions, officers, agents and employees for any of the following reasons:

**2.211 Termination for Cause**

(a) In the event that Contractor breaches any of its material duties or obligations under this Contract (including a Chronic Failure to meet any particular SLA as defined in **Section 2.076**), which are either not capable of or subject to being cured, or are not cured within the time period specified in the written notice of breach provided by the State (such time period not to be less than 30 days), or pose a serious and imminent threat to the health and safety of any person, or the imminent loss, damage or destruction of any real or tangible personal property, the State may, having provided written notice of termination to Contractor, terminate this Contract in whole or in part, for cause, as of the date specified in the notice of termination.

(b) In the event that this Contract is terminated for cause, in addition to any legal remedies otherwise available to the State by law or equity, Contractor shall be responsible for all costs incurred by the State in terminating this Contract, including but not limited to, State administrative costs, reasonable attorneys' fees and court costs, and any reasonable additional costs the State may incur to procure the Services/Deliverables required by this Contract from other sources. Re-procurement costs shall not be considered by the parties to be consequential, indirect or incidental damages, and shall not be excluded by any other terms otherwise included in this Contract, provided such costs are not in excess of fifty percent (50%) more than the prices for such Service/Deliverables provided under this Contract.

(c) In the event the State chooses to partially terminate this Contract for cause, charges payable under this Contract will be equitably adjusted to reflect those Services/Deliverables that are terminated and the State shall pay for all Services/Deliverables for which Final Acceptance has been granted provided up to the termination date. Services and related provisions of this Contract that are terminated for cause shall cease on the effective date of the termination.

(d) In the event this Contract is terminated for cause pursuant to this Section, and it is determined, for any reason, that Contractor was not in breach of contract pursuant to the provisions of this section, that termination for cause shall be deemed to have been a termination for convenience, effective as of the same date, and the rights and obligations of the parties shall be limited to that otherwise provided in this Contract for a termination for convenience.

**2.212 Termination for Convenience**

The State may terminate this Contract for its convenience, in whole or part, if the State determines that such a termination is in the State's best interest. Reasons for such termination shall be left to the sole discretion of the State and may include, but not necessarily be limited to (a) the State no longer needs the Services or products specified in the Contract, (b) relocation of office, program changes, changes in laws, rules, or regulations make implementation of the Services no longer practical or feasible, (c) unacceptable prices for Additional Services or New Work requested by the State, or (d) falsification or misrepresentation, by inclusion or non-inclusion, of information material to a response to any RFP issued by the State. The State may terminate this Contract for its convenience, in whole or in part, by giving Contractor written notice at least 30 days prior to the date of termination. If the State chooses to terminate this Contract in part, the charges payable under this Contract shall be equitably adjusted to reflect those Services/Deliverables that are terminated. Services and related provisions of this Contract that are terminated for cause shall cease on the effective date of the termination.

**2.213 Non-Appropriation**

(a) Contractor acknowledges that, if this Contract extends for several fiscal years, continuation of this Contract is subject to appropriation or availability of funds for this Contract. If funds to enable the State to effect continued payment under this Contract are not appropriated or otherwise made available, the State shall have the right to terminate this Contract and all affected Statements of Work, in whole or in part, at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of termination to Contractor. The State shall give Contractor at least 30 days advance written notice of termination for non-appropriation or unavailability (or such time as is available if the State receives notice of the final decision less than 30 days before the funding cutoff).

(b) If funding for the Contract is reduced by law, or funds to pay Contractor for the agreed-to level of the Services or production of Deliverables to be provided by Contractor are not appropriated or otherwise made available, the State may, upon 30 days written notice to Contractor, reduce the level of the Services or the change the production of Deliverables in such manner and for such periods of time as the State may elect. The charges payable under this Contract will be equitably adjusted to reflect any equipment, services or commodities not provided by reason of such reduction.

(c) In the event the State terminates this Contract, eliminates certain Deliverables, or reduces the level of Services to be provided by Contractor pursuant to this Section, the State shall pay Contractor for all Work-in-Process performed through the effective date of the termination or reduction in level, as the case may be and as determined by the State, to the extent funds are available. For the avoidance of doubt, this Section will not preclude Contractor from reducing or stopping Services/Deliverables and/or raising against the State in a court of competent jurisdiction, any claim for a shortfall in payment for Services performed or Deliverables finally accepted before the effective date of termination.

**2.214 Criminal Conviction**

The State may terminate this Contract immediately and without further liability or penalty in the event Contractor, an officer of Contractor, or an owner of a 25% or greater share of Contractor is convicted of a criminal offense incident to the application for, or performance of, a State, public or private Contract or subcontract; convicted of a criminal offense, including any of the following: embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, attempting to influence a public employee to breach the ethical conduct standards for State of Michigan employees; convicted under State or federal antitrust statutes; or convicted of any other criminal offense which in the sole discretion of the State reflects upon Contractor's business integrity.

**2.215 Approvals Rescinded**

The State may terminate this Contract without further liability or penalty in the event any final administrative or judicial decision or adjudication disapproves a previously approved request for purchase of personal services pursuant to Constitution 1963, Article 11, § 5, and Civil Service Rule 7-1. Termination may be in whole or in part and may be immediate as of the date of the written notice to Contractor or may be effective as of the date stated in such written notice.

**2.216 Rights and Obligations Upon Termination**

(a) If this Contract is terminated by the State for any reason, Contractor shall (a) stop all work as specified in the notice of termination, (b) take any action that may be necessary, or that the State may direct, for preservation and protection of Deliverables or other property derived or resulting from this Contract that may be in Contractor's possession, (c) return all materials and property provided directly or indirectly to Contractor by any entity, agent or employee of the State, (d) in the event that the Contractor maintains title in Deliverables that is intended to be transferred to the State at the termination of the Contract, Contractor will transfer title in, and deliver to, the State, unless otherwise directed, all Deliverables intended to be transferred to the State at the termination of the Contract and which are resulting from the Contract (which shall be provided to the State on an "As-Is" basis except to the extent the amounts paid by the State in respect of such items included compensation to Contractor for the provision of warranty services in respect of such materials), and (e) take any action to mitigate and limit any potential damages, or requests for Contractor adjustment or termination settlement costs, to the maximum practical extent, including terminating or limiting as otherwise applicable those subcontracts and outstanding orders for material and supplies resulting from the terminated Contract.





(b) In the event the State terminates this Contract prior to its expiration for its own convenience, the State shall pay Contractor for all charges due for Services provided prior to the date of termination and, if applicable, as a separate item of payment pursuant to this Contract, for Work In Process, on a percentage of completion basis at the level of completion determined by the State. All completed or partially completed Deliverables prepared by Contractor pursuant to this Contract shall, at the option of the State, become the State's property, and Contractor shall be entitled to receive equitable fair compensation for such Deliverables. Regardless of the basis for the termination, the State shall not be obligated to pay, or otherwise compensate, Contractor for any lost expected future profits, costs or expenses incurred with respect to Services not actually performed for the State.

(c) Upon a good faith termination, the State shall have the right to assume, at its option, any and all subcontracts and agreements for services and deliverables provided under this Contract, and may further pursue completion of the Services/Deliverables under this Contract by replacement contract or otherwise as the State may in its sole judgment deem expedient.

## **2.217 Reservation of Rights**

Any termination of this Contract or any Statement of Work issued under it by a party shall be with full reservation of, and without prejudice to, any rights or remedies otherwise available to such party with respect to any claims arising prior to or as a result of such termination.

## **2.218 Contractor Transition Responsibilities**

In the event this contract is terminated, for convenience or cause, dissolved, voided, rescinded, nullified, expires or is otherwise rendered unenforceable, the Contractor agrees to comply with direction provided by the State to assist in the orderly transition of equipment, services, software, leases, etc. to the State or a third party designated by the State. In the event of termination or the expiration of this Contract, the Contractor agrees to make all reasonable efforts to effect an orderly transition of services within a reasonable period of time that in no event will exceed 90 days. These efforts shall include, but are not limited to, the following:

(a) Personnel - The Contractor shall work with the State, or a specified third party, to develop a transition plan setting forth the specific tasks and schedule to be accomplished by the parties, to effect an orderly transition. The Contractor shall allow as many personnel as practicable to remain on the job to help the State, or a specified third party, maintain the continuity and consistency of the services required by this Contract. In addition, during or following the transition period, in the event the State requires the Services of the Contractor's subcontractors or vendors, as necessary to meet its needs, Contractor agrees to reasonably, and with good-faith, work with the State to use the Services of Contractor's subcontractors or vendors. Contractor will notify all of Contractor's subcontractors of procedures to be followed during transition.

(b) Information - The Contractor agrees to provide reasonable detailed specifications for all Services/Deliverables needed by the State, or specified third party, to properly provide the Services/Deliverables required under this Contract. The Contractor will provide the State with asset management data generated from the inception of this Contract through the date on which this Contractor is terminated in a comma-delineated format unless otherwise requested by the State. The Contractor will deliver to the State any remaining owed reports and documentation still in Contractor's possession subject to appropriate payment by the State.

(d) Software. - The Contractor shall reasonably assist the State in the acquisition of any Contractor software required to perform the Services/use the Deliverables under this Contract. This shall include any documentation being used by the Contractor to perform the Services under this Contract. If the State transfers any software licenses to the Contractor, those licenses shall, upon expiration of the Contract, transfer back to the State at their current revision level. Upon notification by the State, Contractor may be required to freeze all non-critical changes to Deliverables/Services.

(e) Payment - If the transition results from a termination for any reason, reimbursement shall be governed by the termination provisions of this Contract. If the transition results from expiration, the Contractor will be reimbursed for all reasonable transition costs (i.e. costs incurred within the agreed period after contract expiration that result from transition operations) at the rates specified by **Article 1, Attachment C**. The Contractor will prepare an accurate accounting from which the State and Contractor may reconcile all outstanding accounts.

**2.219 State Transition Responsibilities**

In the event that this Contract is terminated, dissolved, voided, rescinded, nullified, or otherwise rendered unenforceable, the State agrees to perform the following obligations, and any others upon which the State and the Contractor agree:

- (a) Reconciling all accounts between the State and the Contractor;
- (b) Completing any pending post-project reviews.

**2.220 Termination by Contractor****2.221 Termination by Contractor**

If the State materially breaches its obligation to pay Contractor undisputed amounts due and owing under this Contract in accordance with **Section 2.090**, or if the State breaches its other obligations under this Contract to an extent that makes it impossible or commercially impractical for Contractor to perform the Services, and if the State does not cure the breach within the time period specified in a written notice of breach provided to the State by Contractor (such time period not to be less than 30 days), then Contractor may terminate this Contract, in whole or in part based on Statement of Work for cause, as of the date specified in the notice of termination; provided, however, that Contractor must discharge its obligations under **Section 2.250** before any such termination.

**2.230 Stop Work****2.231 Stop Work Orders**

The State may, at any time, by written stop work order to Contractor, require that Contractor stop all, or any part, of the work called for by the Contract for a period of up to 90 calendar days after the stop work order is delivered to Contractor, and for any further period to which the parties may agree. The stop work order shall be specifically identified as such and shall indicate that it is issued under this **Section 2.230**. Upon receipt of the stop work order, Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the stop work order during the period of work stoppage. Within the period of the stop work order, the State shall either: (a) cancel the stop work order; or (b) terminate the work covered by the stop work order as provided in **Section 2.210**.

**2.232 Cancellation or Expiration of Stop Work Order**

If a stop work order issued under this **Section 2.230** is canceled or the period of the stop work order or any extension thereof expires, Contractor shall resume work. The parties shall agree upon an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract shall be modified, in writing, accordingly, if: (a) the stop work order results in an increase in the time required for, or in Contractor's costs properly allocable to, the performance of any part of the Contract; and (b) Contractor asserts its right to an equitable adjustment within 30 calendar days after the end of the period of work stoppage; provided that, if the State decides the facts justify the action, the State may receive and act upon a Contractor proposal submitted at any time before final payment under the Contract. Any adjustment will conform to the requirements of **Section 2.106**.

**2.233 Allowance of Contractor Costs**

If the stop work order is not canceled and the work covered by the stop work order is terminated for reasons other than material breach, such termination shall be deemed to be a termination for convenience under **Section 2.212**, and the State shall allow reasonable costs resulting from the stop work order in arriving at the termination settlement. For the avoidance of doubt, the State shall not be liable to Contractor for loss of profits because of a stop work order issued under this **Section 2.230**.

**2.240 Reserved****2.250 Dispute Resolution**



**2.251 In General**

Any claim, counterclaim, or dispute between the State and Contractor arising out of or relating to the Contract or any Statement of Work shall be resolved as follows. For all Contractor claims seeking an increase in the amounts payable to Contractor under the Contract, or the time for Contractor's performance, Contractor shall submit a letter executed by Contractor's Contract Administrator or his designee certifying that (a) the claim is made in good faith, (b) the amount claimed accurately reflects the adjustments in the amounts payable to Contractor or the time for Contractor's performance for which Contractor believes the State is liable and covers all costs of every type to which Contractor is entitled from the occurrence of the claimed event, and (c) the supporting data provided with such an affidavit are current and complete to Contractor's best knowledge and belief.

**2.252 Informal Dispute Resolution**

(a) All operational disputes between the parties shall be resolved under the Contract Management procedures developed pursuant to **Section 2.100**. If the parties are unable to resolve any disputes after compliance with such processes, the parties shall meet with the Director of Purchasing Operations, DMB, or designee, for the purpose of attempting to resolve such dispute without the need for formal legal proceedings, as follows:

- (i) The representatives of Contractor and the State shall meet as often as the parties reasonably deem necessary in order to gather and furnish to each other all information with respect to the matter in issue which the parties believe to be appropriate and germane in connection with its resolution. The representatives shall discuss the problem and negotiate in good faith in an effort to resolve the dispute without the necessity of any formal proceeding.
- (ii) During the course of negotiations, all reasonable requests made by one party to another for non-privileged information reasonably related to the Contract will be honored in order that each of the parties may be fully advised of the other's position.
- (iii) The specific format for the discussions will be left to the discretion of the designated State and Contractor representatives, but may include the preparation of agreed upon statements of fact or written statements of position.
- (iv) Following the completion of this process within 60 calendar days, the Director of Purchasing Operations, DMB, or designee, shall issue a written opinion regarding the issue(s) in dispute within 30 calendar days. The opinion regarding the dispute shall be considered the State's final action and the exhaustion of administrative remedies.

(b) This **Section 2.250** will not be construed to prevent either party from instituting, and a party is authorized to institute, formal proceedings earlier to avoid the expiration of any applicable limitations period, to preserve a superior position with respect to other creditors, or pursuant to **Section 2.253**.

(c) The State will not mediate disputes between the Contractor and any other entity, except state agencies, concerning responsibility for performance of work pursuant to the Contract.

**2.253 Injunctive Relief**

The only circumstance in which disputes between the State and Contractor will not be subject to the provisions of **Section 2.252** is where a party makes a good faith determination that a breach of the terms of the Contract by the other party is such that the damages to such party resulting from the breach will be so immediate, so large or severe and so incapable of adequate redress after the fact that a temporary restraining order or other immediate injunctive relief is the only adequate remedy.

**2.254 Continued Performance**

Each party agrees to continue performing its obligations under the Contract while a dispute is being resolved except to the extent the issue in dispute precludes performance (dispute over payment shall not be deemed to preclude performance) and without limiting either party's right to terminate the Contract as provided in **Section 2.210** and **2.220**, as the case may be.

2.260 Federal and State Contract Requirements

**2.261 Nondiscrimination**

In the performance of the Contract, Contractor agrees not to discriminate against any employee or applicant for employment, with respect to his or her hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, ancestry, age, sex, height, weight, marital status, physical or mental disability. Contractor further agrees that every subcontract entered into for the performance of this Contract or any purchase order resulting from this Contract will contain a provision requiring non-discrimination in employment, as specified here, binding upon each Subcontractor. This covenant is required pursuant to the Elliot Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, *et seq.*, and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, *et seq.*, and any breach of this provision may be regarded as a material breach of the Contract.

**2.262 Unfair Labor Practices**

Pursuant to 1980 PA 278, MCL 423.231, *et seq.*, the State shall not award a Contract or subcontract to an employer whose name appears in the current register of employers failing to correct an unfair labor practice compiled pursuant to section 2 of the Act. This information is compiled by the United States National Labor Relations Board. A Contractor of the State, in relation to the Contract, shall not enter into a contract with a Subcontractor, manufacturer, or supplier whose name appears in this register. Pursuant to section 4 of 1980 PA 278, MCL 423.324, the State may void any Contract if, subsequent to award of the Contract, the name of Contractor as an employer or the name of the Subcontractor, manufacturer or supplier of Contractor appears in the register.

**2.263 Workplace Safety and Discriminatory Harassment**

In performing Services for the State, the Contractor shall comply with the Department of Civil Services Rule 2-20 regarding Workplace Safety and Rule 1-8.3 regarding Discriminatory Harassment. In addition, the Contractor shall comply with Civil Service regulations and any applicable agency rules provided to the Contractor. For Civil Service Rules, see <http://www.mi.gov/mdcs/0,1607,7-147-6877---,00.html>.

2.270 Litigation**2.271 Disclosure of Litigation**

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

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



- (i) the ability of Contractor (or a Subcontractor hereunder) to continue to perform this Contract in accordance with its terms and conditions, or
- (ii) whether Contractor (or a Subcontractor hereunder) in performing Services for the State is engaged in conduct which is similar in nature to conduct alleged in such Proceeding, which conduct would constitute a breach of this Contract or a violation of Michigan law, regulations or public policy, then Contractor shall be required to provide the State all reasonable assurances requested by the State to demonstrate that:
  - (A) Contractor and/or its Subcontractors hereunder will be able to continue to perform this Contract and any Statements of Work in accordance with its terms and conditions, and
  - (B) Contractor and/or its Subcontractors hereunder have not and will not engage in conduct in performing the Services which is similar in nature to the conduct alleged in such Proceeding.

Contractor shall make the following notifications in writing:

- (1) Within 30 days of Contractor becoming aware that a change in its ownership or officers has occurred, or is certain to occur, or a change that could result in changes in the valuation of its capitalized assets in the accounting records, Contractor shall notify the Purchasing Operations.
- (2) Contractor shall also notify the Purchasing Operations within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership or officers.
- (3) Contractor shall also notify Purchasing Operations within 30 days whenever changes to company affiliations occur.

## **2.272 Governing Law**

The Contract shall in all respects be governed by, and construed in accordance with, the substantive laws of the State of Michigan without regard to any Michigan choice of law rules that would apply the substantive law of any other jurisdiction to the extent not inconsistent with, or pre-empted by federal law.

## **2.273 Compliance with Laws**

Contractor shall comply with all applicable state, federal, and local laws and ordinances ("Applicable Laws") in providing the Services/Deliverables.

## **2.274 Jurisdiction**

Any dispute arising from the Contract shall be resolved in the State of Michigan. With respect to any claim between the parties, Contractor consents to venue in Ingham County, Michigan, and irrevocably waives any objections it may have to such jurisdiction on the grounds of lack of personal jurisdiction of such court or the laying of venue of such court or on the basis of forum non conveniens or otherwise. Contractor agrees to appoint agents in the State of Michigan to receive service of process.

### 2.280 Environmental Provision

## **2.281 Environmental Provision**

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



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

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

(c) Once the Hazardous Material has been removed or rendered harmless by the State, the affected Work shall be resumed as directed in writing by the State. Any determination by the Michigan Department of Community Health and/or the Michigan Department of Environmental Quality (whichever is applicable) that the Hazardous Material has either been removed or rendered harmless shall be binding upon the State and Contractor for the purposes of resuming the Work. If any such incident with Hazardous Material results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Work will not be counted in **Section 2.076** for a time as mutually agreed by the parties.

(d) If the Hazardous Material was brought to the site by the Contractor, or results in whole or in part from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Material, or from any other act or omission within the control of the Contractor, the Contractor shall bear its proportionate share of the delay and costs involved in cleaning up the site and removing and rendering harmless the Hazardous Material in accordance with Applicable Laws to the condition approved by applicable regulatory agency(ies). If the Contractor fails to take appropriate action pursuant to Applicable Laws and consistent with the State requirements, then the State may take appropriate action.

#### 2.290 General

#### **2.291 Amendments**

The Contract may not be modified, amended, extended, or augmented, except by a writing executed by the parties.

#### **2.292 Assignment**

(a) Neither party shall have the right to assign the Contract, or to assign or delegate any of its duties or obligations under the Contract, to any other party (whether by operation of law or otherwise), without the prior written consent of the other party; provided, however, that the State may assign the Contract to any other State agency, department, division or department without the prior consent of Contractor and Contractor may assign the Contract to an affiliate so long as such affiliate is adequately capitalized and can provide adequate assurances that such affiliate can perform the Contract. Any purported assignment in violation of this Section shall be null and void. It is the policy of the State of Michigan to withhold consent from proposed assignments, subcontracts, or novations when such transfer of responsibility would operate to decrease the State's likelihood of receiving performance on the Contract or the State's ability to recover damages.

(b) Contractor may not, without the prior written approval of the State, assign its right to receive payments due under the Contract. In the event of any such permitted assignment, Contractor shall not be relieved of its responsibility to perform any duty imposed upon it herein, and the requirement under the Contract that all payments shall be made to one entity shall continue.

**2.293 Entire Contract; Order of Precedence**

(a) The Contract, including any Statements of Work and Exhibits, to the extent not contrary to the Contract, each of which is incorporated for all purposes, constitutes the entire agreement between the parties with respect to the subject matter and supersedes all prior agreements, whether written or oral, with respect to such subject matter and as additional terms and conditions on the purchase order shall apply as limited by **Section 2.061**.

(b) In the event of any inconsistency between the terms of the Contract and a Statement of Work, the terms of the Statement of Work will take precedence (as to that Statement of Work only); provided, however, that a Statement of Work may not modify or amend the terms of **Sections 2.110 through 2.220** of the Contract, which may be modified or amended only by a formal Contract amendment.

**2.294 Headings**

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

**2.295 Relationship of the Parties (Independent Contractor Relationship)**

The relationship between the State and Contractor is that of client and independent Contractor. No agent, employee, or servant of Contractor or any of its Subcontractors shall be or shall be deemed to be an employee, agent or servant of the State for any reason. Contractor will be solely and entirely responsible for its acts and the acts of its agents, employees, servants and Subcontractors during the performance of the Contract.

**2.296 Notices**

(a) Any notice given to a party under the Contract shall be deemed effective, if addressed to such party as addressed below, upon: (i) delivery, if hand delivered; (ii) receipt of a confirmed transmission by facsimile if a copy of the notice is sent by another means specified in this Section; (iii) the third (3rd) Business Day after being sent by U.S. mail, postage pre-paid, return receipt requested; or (iv) the next Business Day after being sent by a nationally recognized overnight express courier with a reliable tracking system.

**State:**

Attention: Irene Pena, CPPB  
State of Michigan  
Purchasing Operations  
PO Box 30026  
530 West Allegan  
Lansing, MI 48909

**Contractor:**

Attention: Chris Shee  
ADP, Inc.  
5800 Woodward Parkway  
Mail Stop A425  
Alpharetta, GA 30068

Either party may change its address where notices are to be sent by giving notice in accordance with this Section.

(b) **Binding Commitments**

Representatives of Contractor identified in **Article 1**, shall have the authority to make binding commitments on Contractor's behalf within the bounds set forth in such table. Contractor may change such representatives from time to time upon written notice.

**2.297 Media Releases and Contract Distribution****(a) Media Releases**

Neither Contractor nor the State will make any news releases, public announcements or public disclosures, nor will they have any conversations with representatives of the news media, pertaining to the Contract, the Services or the Contract without the prior written approval of the other party, and then only in accordance with explicit written instructions provided by that party. In addition, neither Contractor nor the State will use the name, trademarks or other proprietary identifying symbol of the other party or its affiliates without such party's prior written consent. Prior written consent of the Contractor must be obtained from authorized representatives.

**(b) Contract Distribution**

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

**2.298 Reformation and Severability**

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

**2.299 Consents and Approvals**

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

**2.300 No Waiver of Default**

The failure of a party to insist upon strict adherence to any term of the Contract shall not be considered a waiver or deprive the party of the right thereafter to insist upon strict adherence to that term, or any other term, of the Contract.

**2.301 Survival**

Any provisions of the Contract that impose continuing obligations on the parties including the parties' respective warranty, indemnity and confidentiality obligations, shall survive the expiration or termination of the Contract for any reason. Specific references to survival in the Contract are solely for identification purposes and not meant to limit or prevent the survival of any other section.

**2.302 Covenant of Good Faith**

Each party agrees that, in its dealings with the other party or in connection with the Contract, it shall act reasonably and in good faith. Unless stated otherwise in the Contract, the parties will not unreasonably delay, condition or withhold the giving of any consent, decision or approval that is either requested or reasonably required of them in order for the other party to perform its responsibilities under the Contract.

**2.303 Permits**

Contractor shall obtain and pay any associated costs for all required governmental permits, licenses and approvals for the delivery, installation and performance of the Services. The State shall pay for all costs and expenses incurred in obtaining and maintaining any necessary easements or right of way.

**2.304 Website Incorporation**

State expressly states that it will not be bound by any content on the Contractor's website, even if the Contractor's documentation specifically referenced that content and attempts to incorporate it into any other communication, unless the State has actual knowledge of such content and has expressly agreed to be bound by it in a writing that has been manually signed by an authorized representation of the State.



**2.305 Taxes**

Vendors are expected to collect and pay all applicable federal, state, and local employment taxes, including the taxes defined in Section 3.022 for all persons involved in the resulting Contract.

The State may refuse to award a contract to any Vendor who has failed to pay any applicable State taxes. The State may refuse to accept Vendor's bid, if Vendor has any outstanding debt with the State. Prior to any award, the State will verify whether Vendor has any outstanding debt with the State.

**2.306 Prevailing Wage**

The rates of wages and fringe benefits to be paid each class of individuals employed by the Contractor, its subcontractors, their subcontractors, and all persons involved with the performance of this Contract in privity of contract with the Contractor shall not be less than the wage rates and fringe benefits established by the Michigan Department of Labor and Economic Development, Wage and Hour Bureau, schedule of occupational classification and wage rates and fringe benefits for the local where the work is to be performed. The term Contractor shall include all general contractors, prime contractors, project managers, trade contractors, and all of their contractors or subcontractors and persons in privity of contract with them.

The Contractor, its subcontractors, their subcontractors, and all persons involved with the performance of this contract in privity of contract with the Contractor shall keep posted on the work site, in a conspicuous place, a copy of all wage rates and fringe benefits as prescribed in the contract. You must also post, in a conspicuous place, the address and telephone number of the Michigan Department of Labor and Economic Development, the office responsible for enforcement of the wage rates and fringe benefits. You shall keep an accurate record showing the name and occupation of the actual wage and benefits paid to each individual employed in connection with this contract. This record shall be available to the State upon request for reasonable inspection.

If any trade is omitted from the list of wage rates and fringe benefits to be paid to each class of individuals by the Contractor, it is understood that the trades omitted shall also be paid not less than the wage rate and fringe benefits prevailing in the local where the work is to be performed.

**2.307 Call Center Disclosure**

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

**2.308 Future Bidding Preclusion**

Contractor acknowledges that, to the extent this Contract involves the creation, research, investigation or generation of a future RFP, it may be precluded from bidding on the subsequent RFP. The State reserves the right to disqualify any bidder if the State determines that the bidder has used its position (whether as an incumbent Contractor, or as a Contractor hired to assist with the RFP development, or as a Vendor offering free assistance) to gain a leading edge on the competitive RFP.

2.310 Reserved

2.320 Extended Purchasing

**2.321 MiDEAL**

Public Act 431 of 1984 permits DMB to provide purchasing services to any city, village, county, township, school district, intermediate school district, non-profit hospital, and institution of higher education, community, or junior college. A current listing of approved program members is available at:

<http://www.michigan.gov/doingbusiness/0,1607,7-146-6586-16656--,00.html>. Unless otherwise stated, it is the responsibility of the Contractor to ensure that the non-state agency is an authorized purchaser before extending the Contract pricing.





The Contractor will supply Contract Services and equipment at the established State of Michigan contract prices and terms to the extent applicable and where available. Inasmuch as these are non-state agencies, all invoices will be submitted to and payment remitted by the local unit of government on a direct and individual basis. To the extent that authorized local units of government purchase quantities of Services and/or equipment under this Contract, the quantities of Services and/or equipment purchased will be included in determining the appropriate rate wherever tiered pricing based on quantity is provided.

**2.322 State Employee Purchases - Reserved**

2.330 Federal Grant Requirements

**2.331 Federal Grant Requirements - Reserved**

**Exhibit A – Plan Design****Medical Care FSA**

Medical expenses not covered by your insurance plan may be eligible for reimbursement using your Medical Care FSA, including, but not limited to:

- prescription and medical co-payments
- eyeglasses
- orthodontia
- over-the-counter items

**Minimum Annual Deposit:** \$2 bi-weekly  
**Maximum Annual Deposit:** \$5,000 annually

**Receiving Reimbursement**

Your reimbursement will be processed within five business days from the time your properly completed and signed FSA Reimbursement Request Form is received.

**Direct Deposit**

- Enroll in Direct Deposit to expedite your reimbursement
- FSA reimbursement funds are automatically deposited into your checking or savings account
- There is not fee for this service
- You don't have to wait for postal service delivery of your reimbursement (however, you will receive notification that the claim has been processed).

**Processing Claims for Debit Card Transactions**

The IRS requires all FSA expenses be substantiated by an independent third-party review of the required supporting documentation. Recent IRS guidance permits this review to be conducted electronically when certain expenses are paid with a debit card that is used in conjunction with an FSA. Generally, this applies to prescriptions and known co-payment amounts. However, some expenses that fall into any of these categories may still require documentation be submitted for further review. All expenses that fall outside these categories require documentation be submitted.

The IRS guidance requires FSA customers to keep the required documentation for a minimum of one year and submit immediately upon request. Any customer who refuses to comply with such request or who uses his/her card for unqualified expenses may experience any or all of the following actions:

- suspension of card privileges
- offset to paper claim reimbursements (automatic substitution)
- salary deduction of unqualified or unsubstantiated expenses (as permitted by law)
- tax consequences at the end of the calendar year

**Automatic Substitution for Debit Card Receipts**

The IRS requires documentation of all Flexible Spending Account transactions. Documentation has already been provided for prescriptions and for standard co-payments. You will continue to be notified in writing that documentation is needed/required to validate your debit card transactions (e.g., original receipts, substitute receipts, medical needs letter or payments, etc.)

**Automatic Adjudication**

Automatic adjudication is a procedure in which certain Debit Card transactions are substantiated without the need of an Explanation of Benefits (EOB) or documentation. This is done by matching known co-payments from an employee's medical plan to the merchant from which service was received. If you do not participate in your employer's medical plan, automatic adjudication is not possible for co-payments.



To assist employees in knowing when documentation is needed and when it is not, you will be sent a monthly statement outlining which transactions were processed and which are outstanding.

Prescriptions at participating pharmacies are automatically adjudicated when the Debit Card is presented as a secondary payer. No further documentation is needed.

Note: if two co-payments are charged at the same time for multiple services, these items will not be automatically adjudicated (i.e., two family members visit the doctor's office at \$10 per visit, but the total amount presented for payment is \$20).

### **Whose expenses are eligible?**

Your Medical Care FSA may be used to reimburse eligible expenses incurred by:

- Yourself
- Your spouse and
- Your eligible tax dependents.

To qualify as your tax dependent, an individual must be your relative, or live with you for the entire calendar year if not your relative.

In either case, the individual must also be:

- a U.S. citizen or a resident of the U.S., Mexico or Canada and
- the recipient of at least half of their total support and/ or expenses
- during the calendar year from you

An eligible child of divorced parents is treated as a dependent of both, so either or both parents can establish a Medical Care FSA.

### **When are funds available?**

Once you sign up for a Medical Care FSA and decide how much to contribute, the maximum annual amount of reimbursement for eligible health expenses will be available throughout your period of coverage.

Since you don't have to wait for the cash to accumulate in your account, you can use it to pay for your eligible health care expenses at the start of your plan year.

### **Are prescriptions eligible for reimbursement?**

Yes, most filled prescriptions are eligible for Medical Care FSA reimbursement, as long as you properly substantiate the expense. Proper submission of the reimbursement request is needed to ensure that the drug is eligible for reimbursement. The IRS requires the complete name of all medicines and drugs be obtained and documented on pharmacy receipts (including prescription number, date(s) of service and total dollar amount). This information must be included when submitting your request for reimbursement.

### **Is orthodontic treatment reimbursable?**

Orthodontic treatment designed to treat a specific medical condition is reimbursable if the proper documentation is attached to the initial FSA Reimbursement Request Form each plan year and includes:

- A written statement from the treating dentist/orthodontist showing the type and date the service incurred, the name of the eligible individual receiving the service and the cost for the service
- A copy of the patient's contract with the dentist/orthodontist for the orthodontia treatment

Reimbursement of the full or initial payment amount may only occur during the plan year in which the braces are first installed.

**Are some expenses ineligible?**

Examples of expenses not eligible for reimbursement through your Medical Care FSA include:

- insurance premiums
- vision warranties and service contracts and
- cosmetic surgery not deemed medically necessary to alleviate, mitigate or prevent a medical condition.

**When is a Letter of Medical Need required?**

Medical care that could be deemed as provided for personal and/or cosmetic reasons will require a signed, dated and completed **Letter of Medical Need** from the attending healthcare professional. A **Letter of Medical Need** can be found by clicking the "Download Forms" button on the FSA website.

**A Letter of Medical Need must accompany the first reimbursement claim each year, even if it is for continuing service.** Examples of services that need a Letter of Medical Need include massage therapy, some Over-the-Counter drugs and medicines, and prescriptions for drugs like Accutane, Rogaine and Viagra.

**Who should complete the Letter of Medical Need form?**

The **Letter of Medical Need** should be completed by your healthcare provider (your primary care physician or the healthcare professional who provides the treatment) who will provide the medical diagnosis and treatment on the **Letter of Medical Need**.

**What should be included on the Letter of Medical Need?**

The Letter of Medical Need should include the specific diagnosis, the recommended treatment and the duration of the treatment. The healthcare professional must sign and date the **Letter of Medical Need**. You may use the **Letter of Medical Need** or any other documentation from the provider, which includes all of the required information.

**Are travel expense related to my health care reimbursable?**

Yes, if the service provided is medically necessary for vision, dental or medical care, then travel to and from the healthcare provider to obtain service is reimbursable. Submit travel expenses when you are claiming reimbursement for the provided service.

**Mileage**

Mileage may be reimbursed at a rate of \$0.XX per mile for trips to and from your healthcare provider or pharmacy.

**Parking fees and tolls**

You may seek reimbursement for parking fees and tolls to your medical appointment. To substantiate the claim you will need to provide a receipt for the toll and/or parking fee in addition to a bill or receipt from your healthcare provider.

**Expenses incurred for out-of-town healthcare services, i.e., airline fare, hotel room and rental care**

You may be reimbursed for the amounts you pay for transportation to another city if the trip is primarily for, and essential to, receiving medical services. You cannot be reimbursed for a trip or vacation taken merely for a change in environment, improvement of morale, or a general improvement of health, even if you make a trip on the advice of a doctor.

**Lodging expenses incurred during my dependent's out-of-town hospitalization**

You may be reimbursed for the cost of lodging not provided in a hospital or similar institution. The amount you include in medical expenses for lodging cannot be more than \$50 per night for each person.

Lodging is reimbursable for a person for whom transportation expenses are a medical expense because that person is traveling with the dependent receiving medical care. For example, if a parent is traveling with a sick child, up to \$100 per night can be reimbursed as a medical expense for lodging for both. Meals are not included.

**What documentation is required for reimbursement of travel expenses?**

You may calculate the mileage on the actual bill/receipt for medical care that resulted in your mileage claim. Include:

- Roundtrip mileage multiplied by \$0.XX
- The name of the provider visited.

**When do you request reimbursement?**

You may use your Medical Care FSA to reimburse eligible expenses after you have sought (and exhausted) all means of reimbursement provided by your employer and any other appropriate resource. Also keep in mind that some eligible expenses are reimbursable on the date available, not the date ordered.

**Over-the-counter Expenses**

Your Over-the-Counter (OTC) items, medicines and drugs may now be reimbursable through your Medical Care FSA! You may be reimbursed for OTCs through your Medical Care FSA if:

- the item, medicine or drug was used for a specific medical condition for you, your spouse and/or your dependent(s)
- the submitted receipt clearly states the purchase dated and name of the item, medicine or drug
- the reimbursement request is for an expense allowed by IRS regulations and
- you submit your reimbursement request in a timely and complete manner already described in this Plan Booklet.

Note: OTC items, medicines and drugs, including bulk purchases, must be used in the same plan year in which you claim reimbursement for their cost. The list of eligible OTC categories will be updated on a quarterly basis. It is your responsibility to remain informed of updates to this listing. As soon as an OTC item, medicine or drug becomes eligible under any of the categories below, it will be reimbursable retroactively to the start of the then current plan year.

New eligible OTC items, medicines and drugs are not considered a valid Life Event Change that would allow you to change your annual Medical Care FSA election or salary reduction amount. Be sure to maintain sufficient documentation to submit receipts for reimbursement. You may resubmit a copy of your receipt from your records if a rejected OTC expense becomes eligible for reimbursement later in the same plan year.

**Items requiring Special Documentation**

- botanicals/herbals
- Feminine hygiene products
- Hormones
- Minerals
- Nasal sprays for snoring
- sunscreens
- Vitamins
- Weight-loss drugs to treat a specific disease

**Ineligible OTC Expenses**

- Cosmetic
- Toiletries
- OTC items primarily for general health and well-being

**Dependent Care FSA**

Dependent care expenses, whether for a child or an elder, include any expense that allows you to work, such as:

- day care services
- in-home care
- nursery and preschool
- summer day camps

**Minimum Annual Deposit**      **\$2 bi-weekly**  
**Maximum Annual Deposit:**      **the maximum contribution depends on your tax filing status**

**Whose expenses are eligible?**

Under the Dependent Care FSA, you may be reimbursed for eligible dependent care expenses incurred by individuals residing in your household for at least eight hours a day including:

- Children 12 years or younger
- Adults/children mentally or physically incapable of self-care

**What is my maximum annual deposit?**

If you are married and filing separately, your maximum annual deposit is \$2,500

- If you are single and head of household, your maximum annual deposit is \$5,000
- If you are married and filing jointly, your maximum annual deposit is \$5,000
- If either you or your spouse earn less than \$5,000 a year, your maximum annual deposit is equal to the lower of the two incomes
- If your spouse is a full-time student or incapable of self-care, your maximum annual deposit is \$3,000 a year for one dependent and \$5,000 a year for two or more dependents

**When are my funds available?**

Once you sign up for a Dependent Care FSA and decide how much to contribute, the funds available to you depend on the actual funds in your account. Unlike a Medical Care FSA, the entire maximum annual amount is not available during plan year, but rather after your payroll deductions are received.



**Partial list of Eligible Expenses**

- After school care
- Baby-sitting fees
- Day care services
- Federal/state taxes/Workers' compensation (for in-home provider)
- In-home care/au pair services
- Nursery and preschool
- Summery day camps

**Are some expenses ineligible?**

Expenses not eligible for reimbursement through your Dependent Care FSA include:

- Books and supplies
- Child support payments or child care if you are a non-custodial parent
- health care or educational tuition costs and
- services provided by your dependent, your spouse's dependent or your child who is under age 19

**Exhibit B – File Layouts**

<b>FILE DESCRIPTION</b>			<b>Date</b> 01/19/2000	<b>Page</b> X of X
<b>User File Name</b> FSA		<b>Record</b> REC Type 1 – Control Dates		
<b>Department</b> Management & Budget	<b>Office</b> MAIN		<b>Division</b> HRS (HRMN)	
<b>File Identifier</b> ZR612D01	<b>File Media</b> Disk		<b>Record Size</b> 114	
<b>File Organization</b> <input type="checkbox"/> CSV <input checked="" type="checkbox"/> FIXED <input type="checkbox"/> OTHER		<b>Sequence</b> Record Type Code Deduction Code		<b>Remarks</b>
<b>From</b>	<b>Thru</b>	<b>Description</b>	<b>Format</b>	<b>Length</b>
1	1	RECORD-TYPE-CODE = "1"	X(1)	1
2	3	PAY PERIOD	9(2)	2
4	11	PAY START DATE (CCYYMMDD)	9(8)	8
12	19	PAY PERIOD END DATE (CCYYMMDD)	9(8)	8
20	27	PAY DATE (CCYYMMDD)	9(8)	8
28	35	FILE CREATE DATE (CCYYMMDD)	9(8)	8
36	114	FILLER	X(79)	79



<b>FILE DESCRIPTION</b>			<b>Date</b> 11/01/2002	<b>Page</b> X
<b>User File Name</b> Flex Spending Enrollment		<b>Record</b> Employee Record Type 20		
<b>Department</b> Information Technology	<b>Office</b> Enterprise Application Services	<b>Division</b> HRMN		
<b>File Identifier</b> ZB607D01	<b>File Media</b> Disk	<b>Record Size</b> 318		
<b>File Organization</b> <input type="checkbox"/> CSV <input checked="" type="checkbox"/> FIXED <input type="checkbox"/> OTHER	<b>Sequence</b>	<b>Remarks</b>		
<b>From</b>	<b>Thru</b>	<b>Description</b>	<b>Format</b>	<b>Length</b>
1	2	RECORD TYPE 20	9(2)	2
3	11	FICA NUMBER	9(9)	9
12	20	EMPLOYEE NUMBER	9(9)	9
21	50	LAST NAME	X(30)	30
51	54	SUFFIX	X(4)	4
55	69	FIRST NAME	X(15)	15
70	84	MIDDLE NAME or INITIAL	X(15)	15
85	114	ADDRESS 1	X(30)	30
115	144	ADDRESS 2	X(30)	30
145	174	ADDRESS 3	X(30)	30
175	204	ADDRESS 4	X(30)	30
205	222	CITY	X(18)	18
223	224	STATE	X(2)	2
225	234	POSTAL CODE	X(10)	10
235	242	HIRE DATE – CCYYMMDD	9(8)	8
243	243	GENDER M=MALE, F=FEMALE	X(1)	1
244	244	MARITAL STATUS M=MARRIED, S=SINGLE, W=WIDOWED, D=DIVORCED, L=LEGALLY SEPARATED	X(1)	1
245	254	ANNUAL-AMT (Contribution Amount)	9(8)V99	10
255	262	WORK LOCATION (PROCESS LEVEL)	X(8)	8
263	268	PAY CODE GM01=MEDICAL CARE, GK01=DEPENDENT CARE	X(6)	6
267	276	PLAN EFFECTIVE DATE (CCYYMMDD)	9(8)	8
277	278	ENROLLMENT STATUS(RE=Re-enroll, NE=New hire)	X(2)	2
279	280	PAYROLLS IN CALENDAR YEAR	9(2)	2
281	282	PAYROLLS WITH DEDUCTIONS	9(2)	2
283	284	EMPLOYEE STATUS (See SOM status code list)	X(2)	2
285	292	LEAVE START DATE – CCYYMMDD	9(8)	8
293	300	LEAVE RETURN DATE – N/A	9(8)	8
301	308	TERMINATION DATE – CCYYMMDD	9(8)	8
309	310	TERMINATION CODE – N/A see status	X(2)	2
311	318	BIRTH DATE	9(08)	8



<b>FILE DESCRIPTION</b>			<b>Date</b> 01/15/2003	<b>Page</b> X
<b>User File Name</b> Non-discrimination Testing File		<b>Record</b> MAIN		
<b>Department</b> Management & Budget		<b>Office</b> MAIN		<b>Division</b> HRS (HRMN)
<b>File Identifier</b> ZB608D01		<b>File Media</b> Tape		<b>Record Size</b> 200
<b>File Organization</b> <input type="checkbox"/> CSV <input checked="" type="checkbox"/> FIXED <input type="checkbox"/> OTHER		<b>Sequence</b> Employee		<b>Remarks</b> No carriage returns or line feeds. No packed or negative numbers.
<b>From</b>	<b>Thru</b>	<b>Description</b>	<b>Format</b>	<b>Length</b>
1	9	SSN	9(9)	9
10	24	LAST-NAME	X(15)	15
25	32	CURR-YR-ANN-SALARY	9(8)	8
33	40	PRIOR-YR-ANN-SALARY	9(8)	8
41	42	HOURS-WORKED-WKLY	99	2
43	44	MONTHS-WORKED-YRLY	99	2
45	45	OFFICER-CURR-YR (N)	X	1
46	46	OFFICER-PRIOR-YR (N)	X	1
47	54	DATE-OF-BIRTH (MMDDYYYY)	9(8)	8
55	62	DATE-OF-EMPLOYMENT (MMDDYYYY)	9(8)	8
63	70	DATE-OF-TERMINATION (MMDDYYYY)	9(8)	8
71	73	PCT-OWN-CURR-YR (000)	999	3
74	76	PCT-OWN-PRIOR-YR (000)	999	3
77	77	UNION-MEMBER (Y/N)	X	1
78	78	NON-RESIDENT-ALIEN (N)	X	1
79	200	FILLER (SPACES)	X(122)	122

<b>FILE DESCRIPTION</b>			<b>Date</b> 06/10/2003	<b>Page</b> X
<b>User File Name</b> Flex Spending Enrollment		<b>Record</b> Header Record Type 10		
<b>Department</b> Information Technology		<b>Office</b> Enterprise Application Services		<b>Division</b> HRMN
<b>File Identifier</b> ZB607D01		<b>File Media</b> Disk		<b>Record Size</b> 318
<b>File Organization</b> <input type="checkbox"/> CSV <input checked="" type="checkbox"/> FIXED <input type="checkbox"/> OTHER		<b>Sequence</b>		<b>Remarks</b>
<b>From</b>	<b>Thru</b>	<b>Description</b>	<b>Format</b>	<b>Length</b>
1	2	RECORD TYPE 10	9(2)	2
3	52	CLIENT ("STATE OF MICHIGAN")	X(50)	50
53	102	PROVIDER NAME - N/A	X(50)	50
103	106	CLIENT NUMBER (299)	9(4)	4
107	114	FILE TYPE ("ENROLL" or "ELIG")	X(8)	8
115	122	CREATE DATE - CCYYMMDD	9(8)	8
123	318	FILLER	X(196)	196



<b>FILE DESCRIPTION</b>			<b>Date</b> 11/01/2002	<b>Page</b> X
<b>User File Name</b> Flex Spending Enrollment		<b>Record</b> Employee Record Type 20		
<b>Department</b> Information Technology	<b>Office</b> Enterprise Application Services		<b>Division</b> HRMN	
<b>File Identifier</b> ZB607D01	<b>File Media</b> Disk		<b>Record Size</b> 318	
<b>File Organization</b> <input type="checkbox"/> CSV <input checked="" type="checkbox"/> FIXED <input type="checkbox"/> OTHER		<b>Sequence</b>		<b>Remarks</b>
<b>From</b>	<b>Thru</b>	<b>Description</b>	<b>Format</b>	<b>Length</b>
1	2	RECORD TYPE 90	9(2)	2
3	6	CLIENT NUMBER (299)	X(4)	4
7	14	TOTAL EMPLOYEE RECORDS (record type 20 count)	9(8)	8
15	22	TOTAL RECORD COUNT (header + employee + trailer)	9(8)	8
23	318	FILLER	X(296)	296