



**STATE OF MICHIGAN**  
**CENTRAL PROCUREMENT SERVICES**  
 Department of Technology, Management, and Budget  
 525 W. ALLEGAN ST., LANSING, MICHIGAN 48913  
 P.O. BOX 30026 LANSING, MICHIGAN 48909

**CONTRACT CHANGE NOTICE**

Change Notice Number **4**  
 to  
 Contract Number **190000000690**

<b>CONTRACTOR</b>	AVERTEST, LLC D.B.A. AVERHEALTH
	2916 W. Marshall Street , Suite A
	Richmond, VA 23230
	Jason Herzog
	804-767-8693
	jherzog@averhealth.com
	CV0129123

<b>STATE</b>	<b>Program Manager</b>	Amanda Doane	MDHHS
		517-282-5273	
		DoaneA@michigan.gov	
	<b>Contract Administrator</b>	Brandon Samuel	DTMB
		(517) 249-0439	
		samuelb@michigan.gov	

**CONTRACT SUMMARY**

DRUG SCREENING AND CONFIRMATION TESTING (ORAL AND URINE) AND/OR ALCOHOL TESTING FOR THE MICHIGAN DEPARTMENT OF HEALTH AND HUMAN SERVICES (MDHHS)

INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE
May 15, 2019	August 31, 2024	3 - 1 Year	August 31, 2024
PAYMENT TERMS		DELIVERY TIMEFRAME	
NET 45 1% 10		N/A	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-Card <input type="checkbox"/> PRC <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

**MINIMUM DELIVERY REQUIREMENTS**

N/A

**DESCRIPTION OF CHANGE NOTICE**

OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input type="checkbox"/>		<input type="checkbox"/>		N/A
CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE		
\$27,318,750.00				

**DESCRIPTION**

Effective November 30, 2020, the following amendment is incorporated into this Contract per the attached.

The following amendment will update the screening cut-off and confirmation cut-off levels.

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

Schedule A  
Section 1. General Requirements

#4 Screening Cut-offs

<b>Drug Class**</b>	<b>Oral Fluid Cut-Off Level</b>	<b>Urine Cut-Off Level*</b>
Amphetamines	12.5 ng/mL	500 ng/mL
Methamphetamines	12.5 ng/mL	500 ng/mL
Cocaine	3.5 ng/mL	150 ng/mL
Cannabinoids	1 ng/mL	20 ng/mL
Opiates	7.5 ng/mL	300 ng/mL
Benzodiazepines	20 ng/mL	200 ng/mL
Oxycodone	10 ng/mL	100 ng/mL
Buprenorphine	5 ng/mL	5 ng/mL
Fentanyl	2 ng/mL	2 ng/mL
Tramadol	10 ng/mL	200 ng/mL

\*For all other substances tested use recommended industry cutoff levels. All levels should be reported as “dilute” not “neat”.

\*\* The above list of substances may change due to the changing/trending popularity of substances.

#6 Confirmation Cut-offs

<b>Drug Class**</b>	<b>Oral Fluid Cut-Off Level</b>	<b>Urine Cut-Off Level*</b>
Amphetamines	6.25 ng/mL	100 ng/mL
Methamphetamines	6.25 ng/mL	50 ng/mL
Cocaine	2 ng/mL	50 ng/mL
Cannabinoids	.5 ng/mL	5 ng/mL
Opiates	3.75 ng/mL	50 ng/mL
Benzodiazepines	10 ng/mL	50 ng/mL
Oxycodone	5 ng/mL	50 ng/mL
Buprenorphine	2.5 ng/mL	5 ng/mL
Fentanyl	1 ng/mL	1 ng/mL
Tramadol	5 ng/mL	25 ng/mL

\*For all other substances tested use recommended industry cutoff levels. All levels should be reported as “dilute” not “neat”.

\*\* The above list of substances may change due to the changing/trending popularity of substances.



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**CONTRACT CHANGE NOTICE**

Change Notice Number **3**  
 to  
 Contract Number **190000000690**

<b>CONTRACTOR</b>	AVERTEST, LLC D.B.A. AVERHEALTH
	2916 W. Marshall Street , Suite A
	Richmond, VA 23230
	Jason Herzog
	804-767-8693
	jherzog@averhealth.com
	CV0129123

<b>STATE</b>	<b>Program Manager</b>	Amanda Doane	MDHHS
		517-282-5273	
		DoaneA@michigan.gov	
	<b>Contract Administrator</b>	Brandon Samuel	DTMB
		(517) 249-0439	
		samuelb@michigan.gov	

**CONTRACT SUMMARY**

DRUG SCREENING AND CONFIRMATION TESTING (ORAL AND URINE) AND/OR ALCOHOL TESTING FOR THE MICHIGAN DEPARTMENT OF HEALTH AND HUMAN SERVICES (MDHHS)

INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE
May 15, 2019	August 31, 2024	3 - 1 Year	August 31, 2024
PAYMENT TERMS		DELIVERY TIMEFRAME	
NET 45 1% 10		N/A	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-Card <input type="checkbox"/> PRC <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

**MINIMUM DELIVERY REQUIREMENTS**

N/A

**DESCRIPTION OF CHANGE NOTICE**

OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input type="checkbox"/>		<input type="checkbox"/>		N/A
CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE		
\$27,318,750.00	\$0.00	\$27,318,750.00		

**DESCRIPTION**

Effective January 29, 2020 the following amendment is incorporated into this Contract:

Section 4.2 Key Personnel  
 Myke Fowler has been identified as the Training Representative and Contractor Service Manager.

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



**STATE OF MICHIGAN**  
**CENTRAL PROCUREMENT SERVICES**  
 Department of Technology, Management, and Budget  
 525 W. ALLEGAN ST., LANSING, MICHIGAN 48913  
 P.O. BOX 30026 LANSING, MICHIGAN 48909

**CONTRACT CHANGE NOTICE**

Change Notice Number 2  
 to  
 Contract Number 190000000690

<b>CONTRACTOR</b>	AVERTEST, LLC D.B.A. AVERHEALTH
	2916 W. Marshall Street, Suite A
	Richmond, VA 23230
	Jason Herzog
	804-767-8693
	jherzog@averhealth.com
	CV0129123

<b>STATE</b>	<b>Program Manager</b>	Amanda Doane	MDHHS
		517-282-5273	
		DoaneA@michigan.gov	
	<b>Contract Administrator</b>	Brandon Samuel	DTMB
		(517) 249-0439	
		samuelb@michigan.gov	

**CONTRACT SUMMARY**

DRUG SCREENING AND CONFIRMATION TESTING (ORAL AND URINE) AND/OR ALCOHOL TESTING FOR THE MICHIGAN DEPARTMENT OF HEALTH AND HUMAN SERVICES (MDHHS)

INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE
May 15, 2019	August 31, 2024	3 - 1 Year	August 31, 2024
PAYMENT TERMS		DELIVERY TIMEFRAME	
NET 45 1% 10		N/A	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-Card <input type="checkbox"/> PRC <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

**MINIMUM DELIVERY REQUIREMENTS**

N/A

**DESCRIPTION OF CHANGE NOTICE**

OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input type="checkbox"/>		<input type="checkbox"/>		N/A
CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE		
\$27,318,750.00				

**DESCRIPTION**

Effective September 16, 2019 the Contractor's address is updated to the following:  
 2916 W. Marshall Street, Suite A  
 Richmond, VA 23230-4811

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

**STATE OF MICHIGAN**  
**CENTRAL PROCUREMENT SERVICES**  
 Department of Technology, Management, and Budget  
 525 W. ALLEGAN ST., LANSING, MICHIGAN 48913  
 P.O. BOX 30026 LANSING, MICHIGAN 48909



**CONTRACT CHANGE NOTICE**

Change Notice Number **1**  
 to  
 Contract Number **190000000690**

<b>CONTRACTOR</b>	AVERTEST, LLC D.B.A. AVERHEALTH
	1700 Bayberry Court, Suite 105
	Richmond, VA 23226
	Jason Herzog
	804-767-8693
	jherzog@averhealth.com
	CV0129123

<b>STATE</b>	<b>Program Manager</b>	Amanda Doane	MDHHS
		517-282-5273	
		DoaneA@michigan.gov	
	<b>Contract Administrator</b>	Brandon Samuel	DTMB
		(517) 249-0439	
		samuelb@michigan.gov	

**CONTRACT SUMMARY**

DRUG SCREENING AND CONFIRMATION TESTING (ORAL AND URINE) AND/OR ALCOHOL TESTING FOR THE MICHIGAN DEPARTMENT OF HEALTH AND HUMAN SERVICES (MDHHS)

INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE
May 15, 2019	August 31, 2024	3 - 1 Year	August 31, 2024
PAYMENT TERMS		DELIVERY TIMEFRAME	
Net 45 1% 10		N/A	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-Card <input type="checkbox"/> PRC <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

**MINIMUM DELIVERY REQUIREMENTS**

N/A

**DESCRIPTION OF CHANGE NOTICE**

OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input type="checkbox"/>		<input type="checkbox"/>		N/A
CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE		
\$27,318,750.00	\$0.00	\$27,318,750.00		

**DESCRIPTION**

Effective June 17, 2019, the following amendment is incorporated into this Contract per the attached.

The following amendment will update the screening cut-off and confirmation cut-off levels.

Additionally, the Contractor Service Manager / Training Representative has been identified as Matthew Leslie. He can be reached at 517-930-5055 or Mleslie@averhealth.com

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

Schedule A  
Section 1. General Requirements

#4 Screening Cut-offs

<b>DRUG**</b>	<b>ORAL FLUID CUT-OFF LEVEL*</b>	<b>URINE CUT-OFF LEVEL*</b>
Amphetamines	6ng/ml	500ng/ml
Methamphetamines	6ng/ml	500ng/ml
Cocaine	3ng/ml	150ng/ml
Cannabinoids	1 ng/ml	20ng/ml
Opiates	7ng/ml	300ng/ml
Benzodiazepines	5ng/ml	200ng/ml
Oxycodone	7ng/ml	100ng/ml
Buprenorphine	1ng/ml	5ng/ml
Fentanyl	1 ng/ml	2ng/ml
Tramadol	20ng/ml	200ng/ml

\*For all other substances tested use recommended industry cutoff levels. All levels should be reported as “dilute” not “neat”.

\*\* The above list of substances may change due to the changing/trending popularity of substances

#6 Confirmation Cut-Offs

<b>DRUG</b>	<b>ORAL FLUID CUT-OFF LEVEL*</b>	<b>URINE CUT-OFF LEVEL*</b>
Amphetamines	3ng/ml	100ng/ml
Methamphetamines	3ng/ml	50ng/ml
Cocaine	1 ng/ml	50ng/ml
Cannabinoids	.5 ng/ml	5ng/ml
Opiates	3ng/ml	50ng/ml
Benzodiazepines	1 ng/ml	50ng/ml
Oxycodone	3ng/ml	50ng/ml
Buprenorphine	1 ng/ml	5ng/ml
Fentanyl	.5 ng/ml	1ng/ml
Tramadol	10ng/ml	25ng/ml

\*For all other substances tested use recommended industry cutoff levels. All levels should be reported as “dilute” not “neat”.



**STATE OF MICHIGAN PROCUREMENT**  
 Department of Technology, Management & Budget  
 525 W. Allegan St., 1<sup>st</sup> Floor. NE, Lansing, MI 48913  
 P.O. Box 30026, Lansing, MI 48909

**NOTICE OF CONTRACT**

NOTICE OF CONTRACT NO. **19000000690**  
 between  
 THE STATE OF MICHIGAN  
 and

<b>CONTRACTOR</b>	Avertest, LLC d.b.a. Averhealth
	1700 Bayberry Court, Suite 105
	Richmond VA 23226
	Jason Herzog
	804-767-8693
	jherzog@averhealth.com
	CV0129123

<b>STATE</b>	Program Manager	Amanda Doane	DHHS
		517-282-5273	
Contract Administrator	DoaneA@michigan.gov		
	Brandon Samuel	DTMB	
	517-249-0439		
Samuelb@michigan.gov			

<b>CONTRACT SUMMARY</b>			
<b>DESCRIPTION:</b> Drug Screening and Confirmation Testing (oral and urine) and/or alcohol testing for the Michigan Department of Health and Human Services (MDHHS)			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
May 15, 2019	August 31, 2024	Three – one year	
PAYMENT TERMS		DELIVERY TIMEFRAME	
Net 45, 1% 10		N/A	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-card <input type="checkbox"/> Payment Request (PRC) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS			
N/A			
MISCELLANEOUS INFORMATION			
This Contract Agreement is awarded based on RFP 19000000633. Orders for delivery will be issued directly by Department (see Schedule A, Section 6.1 Authorizing Document). NOTE: The Contractor will be responsible for providing services on a roll out basis beginning May 15, 2019 and by September 1, 2019 will be responsible for providing services to all 83 counties.			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION			\$27,318,750.00

**FOR THE CONTRACTOR:**

**Averhealth**  
\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Authorized Agent Signature

\_\_\_\_\_  
Authorized Agent (Print or Type)

\_\_\_\_\_  
Date

**FOR THE STATE:**

\_\_\_\_\_  
Signature

**Jared Ambrosier, Director of Sourcing**  
\_\_\_\_\_  
Name & Title

**DTMB – Central Procurement Services**  
\_\_\_\_\_  
Agency

\_\_\_\_\_  
Date





# STATE OF MICHIGAN

## CONTRACT TERMS

This Contract (this “**Contract**”) is agreed to between the State of Michigan (the “**State**”) and Avertest, LLC, d.b.a. Averhealth (“**Contractor**”), a Virginia Limited Liability Company. This Contract is effective on May 15, 2019 (“**Effective Date**”), and unless earlier terminated, will expire on August 31, 2024. (NOTE: The Contractor will be responsible for providing services on a roll out basis beginning May 15, 2019 and by September 1, 2019 will be responsible for providing services to all 83 counties.)

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

### 1. Definitions.

“**Accept**” has the meaning set forth in **Section 4.2(b)**.

“**Acceptance**” has the meaning set forth in **Section 4.2(b)**.

“**Action**” has the meaning set forth in **Section 13.1**.

“**Allegedly Infringing Features**” has the meaning set forth in **Section 13.3(b)(ii)**.

“**Authorized Users**” means all Persons authorized by the State to access and use the Services through the State’s account under this Contract.

“**Availability Requirement**” has the meaning set forth in **Section 5**.

“**Business Day**” means a day other than a Saturday, Sunday or State Holiday.

“**Change Notice**” has the meaning set forth in **Section 2.2**.

“**Code**” has the meaning set forth in **Section 19**.

“**Confidential Information**” has the meaning set forth in **Section 10.1**.

“**Contract**” has the meaning set forth in the preamble.

“**Contract Administrator**” is the individual appointed by each party to (a) administer the terms of this Contract, and (B) approve and execute any Change Notices under this Contract. Each party’s Contract Administrator will be identified in the Statement of Work.

State: Brandon Samuel 525 W. Allegan St. 1 <sup>st</sup> Floor P.O. Box 30026 Lansing, MI 48909-7526 samuelb@michigan.gov 517-249-0439	Contractor: Jason Herzog 1700 Bayberry Court, Suite 105 Richmond, VA 23226 <a href="mailto:jherzog@averhealth.com">jherzog@averhealth.com</a> 804-767-8693
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“**Contractor**” has the meaning set forth in the preamble.

“**Contractor Personnel**” means all employees and agents of Contractor, all Subcontractors and all employees and agents of any Subcontractor, involved in the performance of Services.

“**Contractor Security Officer**” has the meaning set forth in **Section 2.5(a)**.

“**Contractor Service Manager**” has the meaning set forth in **Section 2.5(a)**.

“**Documentation**” means all generally available documentation relating to the Services, including all user manuals, operating manuals and other instructions, specifications, documents and materials, in any form or media, that describe any component, feature, requirement or other aspect of the Services, including any functionality, testing, operation or use thereof.

“**DR Plan**” has the meaning set forth in **Section 12(a)**.

“**Effective Date**” has the meaning set forth in the preamble.

“**Fees**” has the meaning set forth in **Section 8.1**.

“**Force Majeure Event**” has the meaning set forth in **Section 17.1**.

“**Harmful Code**” means any software, hardware or other technologies, devices or means, the purpose or effect of which is to: (a) permit unauthorized access to, or to destroy, disrupt, disable, distort, or otherwise harm or impede in any manner, any (i) computer, software, firmware, hardware, system or network, or (ii) any application or function of any of the foregoing or the integrity, use or operation of any data Processed thereby; or (b) prevent the State or any Authorized User from accessing or using the Services or Contractor Systems as intended by this Contract, and includes any virus, bug, trojan horse, worm, backdoor or other malicious computer code and any time bomb or drop dead device.

“**HIPAA**” has the meaning set forth in **Section 9.1**.

“**Hosted Services**” has the meaning set forth in **Section 2.1(a)**.

“**Incumbent Vendor**” is the Vendor providing similar Services to the State prior to the date of this Contract.

**"Intellectual Property Rights"** means any and all rights comprising or relating to: (a) patents, patent disclosures and inventions (whether patentable or not); (b) trademarks, service marks, trade dress, trade names, logos, corporate names and domain names, together with all of the goodwill associated therewith; (c) authorship rights, copyrights and copyrightable works (including computer programs) and rights in data and databases; (d) trade secrets, know-how and other confidential information; and (e) all other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection provided by applicable Law in any jurisdiction throughout the world.

**"Key Personnel"** means any Contractor Personnel identified as key personnel in this Contract or any Statement of Work.

**"Law"** means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree or other requirement or rule of any federal, state, local or foreign government or political subdivision thereof, or any arbitrator, court or tribunal of competent jurisdiction.

**"Loss"** means all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys' fees and the costs of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers. "Losses" has a correlative meaning.

**"Person"** means an individual, corporation, partnership, joint venture, limited liability company, governmental authority, unincorporated organization, trust, association or other entity.

**"Personal Health Information (PHI)"** has the meaning set forth in **Section 9.1**.

**"Personally Identifiable Information (PII)"** has the meaning set forth in **Section 9.1**.

**"Process"** means to perform any operation or set of operations on any data, information, material, work, expression or other content, including to (a) collect, receive, input, upload, download, record, reproduce, store, organize, combine, log, catalog, cross-reference, manage, maintain, copy, adapt, alter, translate or make other improvements or derivative works, (b) process, retrieve, output, consult, use, disseminate, transmit, submit, post, transfer, disclose or otherwise provide or make available, or (c) block, erase or destroy. **"Processing"** and **"Processed"** have correlative meanings.

**"RPO"** or **"Recovery Point Objective"** means the maximum amount of potential data loss in the event of a disaster.

**"RTO"** or **"Recovery Time Objective"** means the period of time to fully restore the Hosted Services in the case of a disaster.

**"Reject"** has the meaning set forth in **Section 4.2(b)**.

**"Rejection"** has the meaning set forth in **Section 4.2(b)**.

**“Reports”** includes any written test results or other scientific reports related to the Services provided.

**“Representatives”** means a party’s employees, officers, directors, consultants, legal advisors and, with respect to Contractor, Contractor’s Subcontractors.

**“RFP”** means the State’s request for proposal designed to solicit responses for Services under this Contract.

**“Service Level Agreement”** means the service level agreement attached as **Schedule B** to this Contract, setting forth Contractor’s obligations with respect to the hosting, management and operation of the Service Software.

**“Service Software”** means any and all software applications and any third-party or other software, and all new versions, updates, revisions, improvements and modifications of the foregoing, that Contractor provides remote access to and use of as part of the Services.

**“Services”** has the meaning set forth in **Section 2.1**.

**“Testing Services Data”** includes all test results, number of tests performed, number of requests for court records, number of requests for testimony, and any other data requested by the State related to the Services outlined by in **Schedule A**, the **Statement of Work**.

**“Source Code”** means the human readable source code of the Service Software to which it relates, in the programming language in which the Service Software was written, together with all related flow charts and technical documentation, including a description of the procedure for generating object code, all of a level sufficient to enable a programmer reasonably fluent in such programming language to understand, build, operate, support, maintain and develop modifications, upgrades, updates, adaptations, enhancements, new versions and other derivative works and improvements of, and to develop computer programs compatible with, the Service Software.

**“Specifications”** means the specifications for the Services set forth in the applicable Statement of Work and, to the extent consistent with and not limiting of the foregoing, the Documentation.

**“State”** has the meaning set forth in the preamble.

**“State Data”** has the meaning set forth in **Section 9.1**.

**“State Modification”** has the meaning set forth in **Section 13.2(a)**.

**“State Program Manager”** has the meaning set forth in **Section 2.8**.

**“State Systems”** means the information technology infrastructure, including the computers, software, databases, electronic systems (including database management systems) and networks, of the State or any of its designees.

“**Statement of Work**” has the meaning set forth in **Section 2.1(a)**. The Initial Statement of Work is attached as **Schedule A**, and subsequent Statements of Work shall be sequentially identified and attached as Schedule A-1, A-2, A-3, etc.

“**Subcontractor**” means any entity that performs any Services under this Contract and otherwise has the meaning set forth in **Section 2.4(a)**.

“**Support Services**” has the meaning set forth in **Section 6**.

“**Support Service Level Requirement**” has the meaning set forth in **Section 6**.

“**Term**” has the meaning set forth in the preamble.

“**Testing Services**” includes all Services and Documentation related to the provision of drug testing pursuant to this Contract, as outlined in **Schedule A, Statement of Work**.

“**Transition Period**” has the meaning set forth in **Section 7.4**.

“**Transition Responsibilities**” has the meaning set forth in **Section 7.4**.

“**User Data**” means any and all information reflecting the access or use of the Hosted Services by or on behalf of the State or any Authorized User, including any end user profile, visit, session, impression, click-through or click-stream data and any statistical or other analysis, information or data based on or derived from any of the foregoing.

“**Work Product**” means all State-specific deliverables that Contractor is required to, or otherwise does, provide to the State under this Contract including reports, project management documents, forms, templates, documents created for evidentiary purposes to demonstrate chain of custody, documents created in anticipation of or preparation for litigation, testimony, or otherwise created with the intent to provide or which has been provided to any court of competent jurisdiction, and other State-specific documents and related materials. Work Product does not include the Service Software.

## **2. Services.**

2.1 Services. Throughout the Term and at all times in connection with its actual or required performance under this Contract, Contractor will, in accordance with all terms and conditions set forth in this Contract and each applicable Statement of Work, provide to the State and its Authorized Users the following services (“**Services**”):

(a) the hosting, management and operation of the Service Software and other services for remote electronic access and use by the State and its Authorized Users (“**Hosted Services**”) as described in one or more written, sequentially numbered, statements of work referencing this Contract, including all Specifications set forth in such statements of work, which, upon their execution will be

attached as **Schedule A** to this Contract and by this reference are incorporated in and made a part of this Contract (each, a “**Statement of Work**”);

(b) maintain the Availability Requirement set forth in the Service Level Agreement attached as **Schedule B** to this Contract;

(c) provide maintenance and Support Services as set forth in the Service Level Agreement, attached as **Schedule B**;

(d) implement and maintain the security requirements set forth in **Schedule C** to this Contract;

(e) maintain a DR plan, which is attached as **Schedule D** to this Contract; and

(f) such other services as may be specified in the applicable Statement of Work, including Testing Services.

## 2.2 Change Notices.

(a) Any modifications or changes to the Services under any executed Statement of Work will be effective only if and when memorialized in a mutually agreed written change notice (“**Change Notice**”) signed by both Parties, provided, however, that for any Services provided on a limited basis (for example, on a per user, server, CPU or named-user basis, or specifically requested non-routine screening and testing), the State may, at any time, increase or decrease the number of its licenses required for use of the Services or tests ordered hereunder subject to the pricing set forth in the applicable Statement of Work.

(b) In the event the Services are customizable, a more detailed change control process may be specified in the applicable Statement of Work. In such event, the change control process set forth in such Statement of Work shall control.

2.3 Compliance with Laws. Contractor must comply with all applicable Laws as they concern this Contract, including by securing and maintaining all required and appropriate visas, work permits, business licenses and other documentation and clearances necessary for performance of the Services.

2.4 Subcontracting. Contractor will not itself, and will not permit any Person to, subcontract any Services, in whole or in part, without the State’s prior written consent, which consent may be given or withheld in the State’s sole discretion. Without limiting the foregoing:

(a) Contractor must ensure each Contractor subcontractor (including any subcontractor of a Contractor subcontractor, each, a “**Subcontractor**”) complies with all relevant terms of this Contract, including all provisions relating to State Data or other Confidential Information of the State;

(b) the State’s consent to any such Subcontractor does not relieve Contractor of its representations, warranties or obligations under this Contract;

(c) Contractor will remain responsible and liable for any and all: (i) performance required hereunder, including the proper supervision, coordination and performance of the Services; and (ii) acts and omissions of each Subcontractor (including, such Subcontractor's employees and agents, who, to the extent they are involved in providing any Services, are deemed Contractor Personnel) to the same extent as if such acts or omissions were by Contractor;

(d) any noncompliance by any Subcontractor or its employees or agents with the provisions of this Contract or any Statement of Work will constitute a breach by Contractor;

(e) prior to the provision of Services by any Subcontractor, Contractor must obtain from each such proposed Subcontractor:

- (i) the identity of such Subcontractor and the location of all its data centers, if any, that will be used in Processing any State Data, which information Contractor shall promptly disclose to the State in writing; and
- (ii) a written confidentiality and restricted use agreement, giving the State rights at least equal to those set forth in **Section 9** (State Data), **Section 10** (Confidentiality), **Section 11** (Security) and **Section 12** (Disaster Recovery) and containing the Subcontractor's acknowledgment of, and agreement to, the provisions of **Section 2.5** (Contractor Personnel), a fully-executed copy of which agreement Contractor will promptly provide to the State upon the State's request.

2.5 Contractor Personnel. Contractor will:

(a) subject to the prior written approval of the State, appoint: (i) a Contractor employee to serve as a primary contact with respect to the Services who will have the authority to act on behalf of Contractor in matters pertaining to the receipt and processing of support requests and the Support Services (the "**Contractor Service Manager**"); and (ii) a Contractor employee to respond to the State's inquiries regarding the security of the Contractor Systems who has sufficient knowledge of the security of the Contractor Systems and the authority to act on behalf of Contractor in matters pertaining thereto ("**Contractor Security Officer**"); and (iii) other Key Personnel, who will be suitably skilled, experienced and qualified to perform the Services;

(b) provide names and contact information for Contractor's Key Personnel in the Statement of Work;

(c) maintain the same Contractor Service Manager, Contractor Security Officer and other Key Personnel throughout the Term and such additional period, if any, as Contractor is required to perform the Services, except for changes in such personnel due to: (i) the State's request pursuant to **Section 2.5(d)**; or (ii) the death, disability, resignation or termination of such personnel or other circumstances outside Contractor's reasonable control;

(d) upon the reasonable written request of the State, promptly replace any Key Personnel of Contractor;

(e) reassignment of Key Personnel in violation of this Section 2.5 may result in the assessment of damages as set for in **Schedule A**, the **Statement of Work**.

2.6 Management and Payment of Contractor Personnel.

(a) Contractor is solely responsible for the payment of Contractor Personnel, including all fees, expenses and compensation to, by or on behalf of any Contractor Personnel and, if applicable, the withholding of income taxes and payment and withholding of social security and other payroll taxes, unemployment insurance, workers' compensation insurance payments and disability benefits.

(b) Contractor will ensure that no Person who has been convicted of a felony or any misdemeanor involving, in any way, theft, fraud, or bribery provides any Services or has access to any State Data, State Systems or State facilities. On a case-by-case basis, the State may request that Contractor initiate a background check on any Contractor Personnel before they may have access to State Data, State Systems or State facilities. Any request for a background check shall be initiated by the State and must be reasonably related to the type of work requested. The scope of the background check is at the discretion of the State and the results shall be used solely to determine the eligibility of Contractor Personnel to work with State Data, State Systems or in State facilities. If provided to the State, results of background checks will be promptly returned to Contractor, and will be treated as Confidential Information. All investigations will include a Michigan State Police Background check (ICHAT) and may include a National Crime Information Center (NCIC) Finger Print check. Contractor will present attestation of satisfactory completion of such tests. Contractor is responsible for all costs and expenses associated with such background checks.

2.7 Time is of the Essence. Contractor acknowledges and agrees that time is of the essence with respect to its obligations under this Contract and that prompt and timely performance of all such obligations, including all timetables and other requirements of this Contract and each Statement of Work, is **strictly required**. Late or improper completion of Testing Services pursuant to this Contract is subject to the Liquidated Damages provision of this Contract, as outlined in **Schedule A**, the **Statement of Work**.

2.8 State Program Manager. The State will appoint and, in its reasonable discretion, replace, a State employee to serve as the primary contact with respect to implementation of the Services (the "**State Program Manager**").

State: Amanda Doane 235 S. Grand Ave., Suite 510 Lansing, MI 48919 <a href="mailto:DoaneA@michigan.gov">DoaneA@michigan.gov</a> 517-282-5273
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2.9 Contractor's Program Manager (also referred to as the Contractor's Service Manager in the applicable Statement of Work). The Program Manager will monitor and coordinate the day-to-day activities of the Contract and will be named in the applicable Statement of Work.



### 3. License Grant and Restrictions.

3.1 Contractor License Grant. Contractor hereby grants to the State, exercisable by and through its Authorized Users a nonexclusive, royalty-free, irrevocable (except as provided herein) right and license during the Term and such additional periods, if any, as Contractor is required to perform Services under this Contract or any Statement of Work, to:

(a) access and use the Hosted Services, including in operation with other software, hardware, systems, networks and services, for the State's business purposes, including for Processing State Data;

(b) generate, print, copy, upload, download, store and otherwise Process all GUI, audio, visual, digital and other output, displays and other content as may result from any access to or use of the Services;

(c) prepare, reproduce, print, download and use a reasonable number of copies of the Reports, Specifications and Documentation related to the Services under this Contract; and

(d) access and use the Services for all such non-production uses and applications as may be necessary or useful for the effective use of the Hosted Services hereunder, including for purposes of analysis, development, configuration, integration, testing, training, maintenance, support and repair, which access and use will be without charge and not included for any purpose in any calculation of the State's or its Authorized Users' use of the Services, including for purposes of assessing any Fees or other consideration payable to Contractor or determining any excess use of the Hosted Services as described in **Section 3.5**.

3.2 State Ownership of Work Product. Upon full and final payment thereof, the State is and will be the sole and exclusive owner of all right, title, and interest in and to all Work Product, including all Intellectual Property Rights. In furtherance of the foregoing:

(a) Contractor will create all Work Product as work made for hire as defined in Section 101 of the Copyright Act of 1976; and

(b) to the extent any Work Product or Intellectual Property Rights do not qualify as, or otherwise fails to be, work made for hire, upon full and final payment thereof, Contractor hereby:

(i) assigns, transfers, and otherwise conveys to the State, irrevocably and in perpetuity, throughout the universe, all right, title, and interest in and to such Work Product, including all Intellectual Property Rights; and

(ii) irrevocably waives any and all claims Contractor may now or hereafter have in any jurisdiction to so-called "moral rights" or rights of *droit moral* with respect to the Work Product.

3.3 Further Actions. Contractor will, and will cause the Contractor Personnel to, take all appropriate action and execute and deliver all documents, necessary or reasonably requested by the State to effectuate any of the provisions or purposes of Section 3.2, or otherwise as may be necessary or useful for the State to prosecute, register, perfect, record, or enforce its rights in or to any Work Product or any Intellectual Property Right therein.

3.4 License Restrictions. The State will not: (a) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make the Hosted Services available to any third party, except as expressly permitted by this Contract or in any Statement of Work; or (b) use or authorize the use of the Services or Documentation in any manner or for any purpose that is unlawful under applicable Law.

3.5 Use. The State will pay Contractor the corresponding Fees set forth in the Statement of Work for all Authorized Users access and use of the Service Software. Such Fees will be Contractor's sole and exclusive remedy for use of the Service Software, including any excess use.

3.6 State License Grant. The State hereby grants to Contractor a limited, non-exclusive, non-transferable license (i) to use the State's (or individual agency's, department's or division's) name, trademarks, service marks or logos, solely in accordance with the State's specifications, and (ii) to display, reproduce, distribute and transmit in digital form the State's (or individual agency's, department's or division's) name, trademarks, service marks or logos in connection with promotion of the Services as communicated to Contractor by the State. Use of the State's (or individual agency's, department's or division's) name, trademarks, service marks or logos will be specified in the applicable Statement of Work.

#### **4. Service Preparation, Testing and Acceptance.**

4.1 Service Preparation. Promptly upon the parties' execution of a Statement of Work, Contractor will take all steps necessary to make the Services procured thereunder ready and available for the State's use in accordance with the Statement of Work and this Contract, including any applicable milestone date or dates set forth in such Statement of Work, and any Transition Plan milestone date or dates as agreed to with the Incumbent Vendor, as applicable.

##### 4.2 Hosted Services Testing and Acceptance.

(a) When Contractor notifies the State in writing that the Hosted Services are ready for use in a production environment, the State will have thirty (30) days (or such other period as may be agreed upon by the Parties in writing) from receipt of the notice to test the Hosted Services to determine whether they comply in all material respects with the requirements of this Contract and the Specifications.

(b) Upon completion of the State's testing, the State will notify Contractor of its acceptance ("**Accept**" or "**Acceptance**") or, if it has identified any noncompliance with the Specifications, rejection ("**Reject**" or "**Rejection**") of the Hosted Services. If the State Rejects the Hosted Services, the State will provide a written list of items that must be corrected. On receipt of the State's notice, Contractor will

promptly commence, at no additional cost or charge to the State, all reasonable efforts to complete, as quickly as possible and in any event within twenty (20) days (or such other period as may be agreed upon by the Parties in writing) from receipt of the State's notice, such necessary corrections, repairs and modifications to the Hosted Services to bring them into full compliance with the Specifications.

(c) If any corrective measures are required under **Section 4.2(b)**, upon completion of all such measures, Contractor will notify the State in writing and the process set forth in **Section 4.2(a)** and **Section 4.2(b)** will be repeated; provided that if the State determines that the Hosted Services, as revised, still do not comply in all material respects with the Specifications, the State may, in its sole discretion:

- (i) require the Contractor to repeat the correction, repair and modification process set forth in **Section 4.2(b)** at no additional cost or charge to the State; or
- (ii) terminate any and all of the relevant Statement of Work, this Contract and any other Statements of Work hereunder.

(d) The parties will repeat the foregoing procedure until the State Accepts the Hosted Services as part of the Services provided pursuant to the Contract. If the State does not Accept the Hosted Services, then the State may terminate the Contract as set forth in Section 7, below.

#### 4.3 Testing Services Acceptance.

(a) Testing Services may be subject to inspection, review, audit, and testing by the State within 30 calendar days of the State's notification of test results ("**State Review Period**"), unless otherwise provided in Schedule A. If the Testing Services are not fully accepted by the State, the State will notify Contractor by the end of the State Review Period that either: (a) the Testing Services are accepted, but noted deficiencies must be corrected; or (b) the Testing Services are rejected. If the State finds material deficiencies, it may: (i) reject the Testing Services without performing any further inspections; (ii) demand reperformance at no additional cost; or (iii) terminate this Contract in accordance with Section 7.1, Termination for Cause.

(b) Within 10 business days from the date of Contractor's receipt of notification of acceptance with deficiencies or rejection of any Testing Services, Contractor must cure, at no additional cost, the deficiency and deliver unequivocally acceptable Testing Services to the State. If acceptance with deficiencies or rejection of the Testing Services impacts the content or delivery of other non-completed Testing Services, the parties' respective Program Managers must determine an agreed to number of days for re-submission that minimizes the overall impact to the Contract. However, nothing herein affects, alters, or relieves Contractor of its obligations to correct deficiencies in accordance with the time response standards set forth in this Contract.

(c) If Contractor is unable or refuses to correct the deficiency within the time response standards set forth in this Contract, the State may cancel the order in whole or in part. The State, or a

third party identified by the State, may perform the Testing Services. Such inability or refusal to correct the deficiency will be deemed a material breach by Contractor, and the State may seek to terminate the Contract pursuant to Section 7, below.

**5. Service Availability.** Contractor will make the Hosted Services available, as measured over the course of each calendar month during the Term, in accordance with the provisions set forth in the Service Level Agreement, attached as **Schedule B** to this Contract (the “**Availability Requirement**”).

**6. Support and Maintenance Services.** Contractor will provide Hosted Service maintenance and support services (collectively, “**Support Services**”) in accordance with the provisions set forth in the Service Level Agreement, attached as **Schedule B** to this Contract (the “**Support Service Level Requirement**”). Contractor will provide Testing Services support in accordance with the provisions set forth in **Schedule A**, the **Statement of Work**.

## **7. Termination, Expiration and Transition.**

7.1 Termination for Cause. In addition to any right of termination set forth elsewhere in this Contract:

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

(b) If the State terminates this Contract under this **Section 7.1**, the State will issue a termination notice specifying whether Contractor must: (a) cease performance immediately, or (b) continue to perform for a specified period. If it is later determined that Contractor was not in breach of this Contract, the termination will be deemed to have been a termination for convenience, effective as of the same date, and the rights and obligations of the parties will be limited to those provided in **Section 7.2**.

(c) The State will only pay for amounts due to Contractor for Services accepted by the State on or before the date of termination, subject to the State’s right to set off any amounts owed by the Contractor for the State’s reasonable costs in terminating this Contract. Contractor must promptly reimburse to the State any Fees prepaid by the State prorated to the date of such termination. Further, Contractor must pay all reasonable costs incurred by the State in terminating this Contract for cause, including administrative costs, attorneys’ fees, court costs, transition costs, and any costs the State incurs to procure the Services from other sources.

7.2 Termination for Convenience. The State may immediately terminate this Contract in whole or in part, without penalty and for any reason, including but not limited to, appropriation or budget shortfalls. The termination notice will specify whether Contractor must: (a) cease performance immediately, or (b) continue to perform in accordance with **Section 7.4**. If the State terminates this Contract for convenience, the State will pay all reasonable costs, as determined by the State, for State approved Transition Responsibilities to the extent the funds are available.

7.3 Stop Work Order. The State may, at any time, order the Services of Contractor fully or partially stopped for its own convenience for up to ninety (90) calendar days at no additional cost to the State. The State will provide Contractor a written notice detailing such suspension (a "Stop Work Order"). Contractor must comply with the Stop Work Order upon receipt. Within 90 days, or any longer period agreed to by Contractor, the State will either: (a) issue a notice authorizing Contractor to resume work, or (b) terminate this Contract. The State will not pay for any Services, Contractor's lost profits, or any additional compensation during a stop work period.

7.4 Transition Responsibilities. Upon termination or expiration of this Contract for any reason, Contractor must, for a period of time specified by the State (not to exceed 120 calendar days; the "**Transition Period**"), provide all reasonable transition assistance requested by the State, to allow for the expired or terminated portion of the Contract to continue without interruption or adverse effect, and to facilitate the orderly transfer of the Services to the State or its designees. Such transition assistance may include but is not limited to: (a) continuing to perform the Services at the established Statement of Work rates; (b) taking all reasonable and necessary measures to transition performance of the work, including all applicable Services to the State or the State's designee; (c) taking all necessary and appropriate steps, or such other action as the State may direct, to preserve, maintain, protect, or return to the State all State Data, Documentation, and Work Product; and (d) preparing an accurate accounting from which the State and Contractor may reconcile all outstanding accounts (collectively, the "**Transition Responsibilities**"). The Term of this Contract is automatically extended through the end of the Transition Period.

7.5 Effect of Termination. Upon and after the termination or expiration of this Contract or one or more Statements of Work for any or no reason:

(a) Contractor will be obligated to perform all Transition Responsibilities specified in **Section 7.4**.

(b) All licenses granted to Contractor in State Data will immediately and automatically also terminate. Contractor must promptly return to the State all State Data not required by Contractor for its Transition Responsibilities, if any.

(c) Contractor will (i) return to the State all documents and tangible materials (and any copies) containing, reflecting, incorporating, or based on the State's Confidential Information; (ii) provide the State all Documentation and Work Product as requested by the State and in the form requested by the State; (iii) permanently erase the State's Confidential Information from its computer systems; and (iv) certify in

writing to the State that it has complied with the requirements of this **Section 7.5(c)**, in each case to the extent such materials are not required by Contractor for Transition Responsibilities, if any.

(d) Notwithstanding any provisions of this Contract or any Statement of Work to the contrary, upon the State's termination of this Contract or any Statement of Work for cause pursuant to **Section 7.1**, the State will have the right and option to continue to access and use the Hosted Services under each applicable Statement of Work, in whole and in part, for a period not to exceed one hundred and eighty (180) days from the effective date of such termination pursuant to the terms and conditions of this Contract and each applicable Statement of Work and at a reduced rate of fifty (50%) off the applicable Fees set forth in each such Statement of Work. Provided, however, subsequent contractors are strictly forbidden from accessing the Hosted Services provided by the Contractor except as necessary to effectuate the transfer of State Data pursuant to Contractor's Transition Responsibilities as set forth in Section 7.4.

7.6 Survival. The rights, obligations and conditions set forth in this **Section 7.6** and **Section 1** (Definitions), **Section 7.5** (Effect of Termination; Return of Data), **Section 9** (State Data), **Section 10** (Confidentiality), **Section 11** (Security), **Section 13** (Indemnification), **Section 14** (Limitations of Liability), **Section 15** (Contractor Representations and Warranties), **Section 16** (Insurance) and **Section 19** (Effect of Contractor Bankruptcy) and **Section 20** (General Provisions), and any right, obligation or condition that, by its express terms or nature and context is intended to survive the termination or expiration of this Contract, survives any such termination or expiration hereof.

## **8. Fees and Expenses.**

8.1 Fees. Subject to the terms and conditions of this Contract, the applicable Statement of Work, and the Service Level Agreement, the State shall pay the fees set forth in the applicable Statement of Work, subject to such increases and adjustments as may be permitted pursuant to **Section 8.2** ("Fees").

8.2 Fees during Option Years. Contractor's Fees are fixed during the initial period of the Term. Contractor may increase Fees for any renewal period by providing written notice to the State at least sixty (60) calendar days prior to the commencement of such renewal period. An increase of Fees for any renewal period may not exceed three percent (3%) of the Fees effective during the immediately preceding twelve (12) month period. No increase in Fees is effective unless made in compliance with the provisions of this **Section 8.2**.

8.3 Responsibility for Costs. Contractor is responsible for all costs and expenses incurred in or incidental to the performance of Services, including all costs of any materials supplied by Contractor, all fees, fines, licenses, bonds, or taxes required of or imposed against Contractor, and all other of Contractor's costs of doing business.

8.4 Taxes. The State is exempt from State sales tax for direct purchases and may be exempt from federal excise tax, if Services purchased under this Contract are for the State's exclusive use.

8.5 Invoices. Contractor will invoice the State for Fees in accordance with the requirements set forth in the Statement of Work, including any requirements that condition the rendering of invoices and the payment of Fees upon the successful completion of Milestones. Contractor must submit each invoice in electronic format. Each separate invoice must:

(a) clearly identify the Contract and purchase order number to which it relates, in such manner as is required by the State;

(b) list each Fee item separately;

(c) include sufficient detail for each line item to enable the State to satisfy its accounting and charge-back requirements;

(d) for Fees determined on a time and materials basis, report details regarding the number of hours performed during the billing period, the skill or labor category for such Contractor Personnel and the applicable hourly billing rates;

(e) include such other information as may be required by the State as set forth in the Statement of Work; and

(f) Itemized invoices must be submitted to InvoiceMDHHS@michigan.gov

8.6 Payment Terms. Invoices are due and payable by the State, in accordance with the State's standard payment procedures as specified in 1984 Public Act no. 279, MCL 17.51, *et seq.*, within forty-five (45) calendar days after receipt, provided the State determines that the invoice was properly rendered. The State will only disburse payments under this Contract through Electronic Funds Transfer (EFT). Contractor must register with the State at <http://www.michigan.gov/SIGMAVSS> to receive electronic fund transfer payments. If Contractor does not register, the State is not liable for failure to provide payment.

#### 8.7 State Audits of Contractor.

(a) During the Term, and for four (4) years after, Contractor must maintain complete and accurate books and records regarding its business operations relevant to the calculation of Fees and any other information relevant to Contractor's compliance with this **Section 8**. During the Term, and for four (4) years after, upon the State's request, Contractor must make such books and records and appropriate personnel, including all financial information, available during normal business hours for inspection and audit by the State or its authorized representative, provided that the State: (a) provides Contractor with at least fifteen (15) days prior notice of any audit, and (b) conducts or causes to be conducted such audit in a manner designed to minimize disruption of Contractor's normal business operations.

(b) The State may take copies and abstracts of materials audited. The State will pay the cost of such audits unless an audit reveals an overbilling or over-reporting of five percent (5%) or more, in which case Contractor shall reimburse the State for the reasonable cost of the audit. Contractor must

immediately upon written notice from the State pay the State the amount of any overpayment revealed by the audit, together with any reimbursement payable pursuant to the preceding sentence.

8.8 Payment Does Not Imply Acceptance. The making of any payment or payments by the State, or the receipt thereof by Contractor, will in no way affect the responsibility of Contractor to perform the Services in accordance with this Contract, and will not imply the State's Acceptance of any Services or the waiver of any warranties or requirements of this Contract, including any right to Service Credits.

8.9 Payment Disputes. The State may withhold from payment any and all payments and amounts the State disputes in good faith, pending resolution of such dispute, provided that the State:

- (a) timely renders all payments and amounts that are not in dispute;
- (b) notifies Contractor of the dispute prior to the due date for payment, specifying in such notice:
  - (i) the amount in dispute; and
  - (ii) the reason for the dispute set out in sufficient detail to facilitate investigation by Contractor and resolution by the parties;
- (c) works with Contractor in good faith to resolve the dispute promptly; and
- (d) promptly pays any amount determined to be payable by resolution of the dispute.

Contractor shall not withhold or delay any Hosted Services or Support Services or fail to perform any other Services or obligations hereunder by reason of the State's good faith withholding of any payment or amount in accordance with this **Section 8.9** or any dispute arising therefrom

8.10 Availability and Support Service Level Credits. Contractor acknowledges and agrees that any credits assessed under the Service Level Agreement: (a) is a reasonable estimate of and compensation for the anticipated or actual harm to the State that may arise from not meeting the Availability Requirement or the Support Service Level Requirement, which would be impossible or very difficult to accurately estimate; and (b) may, at the State's option, be credited or set off against any Fees or other charges payable to Contractor under this Contract or be payable to the State upon demand. Credits may not exceed the total amount of Fees that would be payable for the relevant service period in which the credits are assessed.

8.11 Right of Set-off. Without prejudice to any other right or remedy it may have, the State reserves the right to set off at any time any amount then due and owing to it by Contractor against any amount payable by the State to Contractor under this Contract.



## 9. State Data.

9.1 Ownership. The State's data ("**State Data**," which will be treated by Contractor as Confidential Information) includes: (a) User Data; and (b) the State's data collected, used, processed, stored, or generated in connection with the Services, including but not limited to (i) personally identifiable information ("**PII**") collected, used, processed, stored, or generated as the result of the Services, including, without limitation, any information that identifies an individual, such as an individual's social security number or other government-issued identification number, date of birth, address, telephone number, biometric data, mother's maiden name, email address, credit card information, or an individual's name in combination with any other of the elements here listed; and (ii) personal health information ("**PHI**") collected, used, processed, stored, or generated as the result of the Services, which is defined under the Health Insurance Portability and Accountability Act ("**HIPAA**") and its related rules and regulations. State Data is and will remain the sole and exclusive property of the State and all right, title, and interest in the same is reserved by the State. This **Section 9.1** survives termination or expiration of this Contract.

9.2 Contractor Use of State Data. Contractor is provided a limited license to State Data for the sole and exclusive purpose of providing the Services, including a license to collect, process, store, generate, and display State Data only to the extent necessary in the provision of the Services. Contractor must: (a) keep and maintain State Data in strict confidence, using such degree of care as is appropriate and consistent with its obligations as further described in this Contract and applicable law to avoid unauthorized access, use, disclosure, or loss; (b) use and disclose State Data solely and exclusively for the purpose of providing the Services, such use and disclosure being in accordance with this Contract, any applicable Statement of Work, and applicable law; and (c) not use, sell, rent, transfer, distribute, or otherwise disclose or make available State Data for Contractor's own purposes or for the benefit of anyone other than the State without the State's prior written consent. This **Section 9.2** survives termination or expiration of this Contract.

9.3 Backup and Extraction of State Data. Contractor will conduct, or cause to be conducted periodic back-ups of State Data at a frequency that will ensure the RPO requirements set forth in **Section 12(a)** of this Contract. All backed up State Data shall be located in the continental United States. Contractor must, within five (5) Business Days of the State's request, provide the State, without charge and without any conditions or contingencies whatsoever (including but not limited to the payment of any fees due to Contractor), an extract of State Data in the format specified by the State.

9.4 Discovery. Contractor shall immediately notify the State upon receipt of any requests which in any way might reasonably require access to State Data or the State's use of the Hosted Services. Contractor shall notify the State Program Manager by the fastest means available and also in writing. In no event shall Contractor provide such notification more than twenty-four (24) hours after Contractor receives the request. Contractor shall not respond to subpoenas, service of process, FOIA requests, and other legal requests related to the State without first notifying the State and obtaining the State's prior approval of Contractor's proposed responses. Contractor agrees to provide its completed responses to the State with adequate time for State review, revision and approval.

9.5 Loss or Compromise of Data. In the event of any act, error or omission, negligence, misconduct, or breach on the part of Contractor that compromises or is suspected to compromise the security, confidentiality, or integrity of State Data or the physical, technical, administrative, or organizational safeguards put in place by Contractor that relate to the protection of the security, confidentiality, or integrity of State Data, Contractor must, as applicable: (a) notify the State as soon as practicable but no later than twenty-four (24) hours of becoming aware of such occurrence; (b) cooperate with the State in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable law or as otherwise required by the State; (c) in the case of PII or PHI, at the State's sole election, (i) with approval and assistance from the State, notify the affected individuals who comprise the PII or PHI as soon as practicable but no later than is required to comply with applicable law, or, in the absence of any legally required notification period, within five (5) calendar days of the occurrence; or (ii) reimburse the State for any costs in notifying the affected individuals; (d) in the case of PII, provide third-party credit and identity monitoring services to each of the affected individuals who comprise the PII for the period required to comply with applicable law, or, in the absence of any legally required monitoring services, for no less than twenty-four (24) months following the date of notification to such individuals; (e) perform or take any other actions required to comply with applicable law as a result of the occurrence; (f) pay for any costs associated with the occurrence, including but not limited to any costs incurred by the State in investigating and resolving the occurrence, including reasonable attorney's fees associated with such investigation and resolution; (g) without limiting Contractor's obligations of indemnification as further described in this Contract, indemnify, defend, and hold harmless the State for any and all claims, including reasonable attorneys' fees, costs, and incidental expenses, which may be suffered by, accrued against, charged to, or recoverable from the State in connection with the occurrence; (h) be responsible for recreating lost State Data in the manner and on the schedule set by the State without charge to the State; and (i) provide to the State a detailed plan within ten (10) calendar days of the occurrence describing the measures Contractor will undertake to prevent a future occurrence. Notification to affected individuals, as described above, must comply with applicable law, be written in plain language, not be tangentially used for any solicitation purposes, and contain, at a minimum: name and contact information of Contractor's representative; a description of the nature of the loss; a list of the types of data involved; the known or approximate date of the loss; how such loss may affect the affected individual; what steps Contractor has taken to protect the affected individual; what steps the affected individual can take to protect himself or herself; contact information for major credit card reporting agencies; and, information regarding the credit and identity monitoring services to be provided by Contractor. The State will have the option to review and approve any notification sent to affected individuals prior to its delivery. Notification to any other party, including but not limited to public media outlets, must be reviewed and approved by the State in writing prior to its dissemination. This **Section 9.5** survives termination or expiration of this Contract.

9.6 HIPAA Compliance. The State and Contractor must comply with all obligations under HIPAA and its accompanying regulations, including but not limited to entering into a business associate agreement, if reasonably necessary to keep the State and Contractor in compliance with HIPAA.

9.7 ADA Compliance. The State is required to comply with the Americans with Disabilities Act of 1990 (ADA), and has adopted a formal policy regarding accessibility requirements for websites and software applications. Contractor's Service Software must comply, where relevant, with level AA of the World Wide Web Consortium (W3C) Web Content Accessibility Guidelines (WCAG) 2.0.

## **10. Confidentiality.**

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

10.2 Obligation of Confidentiality. The parties agree to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third parties other than employees, agents, or subcontractors of a party who have a need to know in connection with this Contract or to use such Confidential Information for any purposes whatsoever other than the performance of this Contract. The parties agree to advise and require their respective employees, agents, and subcontractors of their obligations to keep all Confidential Information confidential. Disclosure to the Contractor's subcontractor is permissible where: (a) the subcontractor is a Permitted Subcontractor; (b) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the Permitted Subcontractor's responsibilities; and (c) Contractor obligates the Permitted Subcontractor in a written contract to maintain the State's Confidential Information in confidence. At the State's request, any of the Contractor's Representatives may be required to execute a separate agreement to be bound by the provisions of this **Section 10.2**.

10.3 Cooperation to Prevent Disclosure of Confidential Information. Each party must use its best efforts to assist the other party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the foregoing, each party must advise the other party immediately in the event either party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Contract. Each party will cooperate with the other party in seeking injunctive or other equitable relief against any such person.

10.4 Remedies for Breach of Obligation of Confidentiality. Each party acknowledges that breach of its obligation of confidentiality may give rise to irreparable injury to the other party, which damage may be inadequately compensable in the form of monetary damages. Accordingly, a party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available, to include, in the case of the State, at the sole election of the State, the immediate termination, without liability to the State, of this Contract or any Statement of Work corresponding to the breach or threatened breach.

10.5 Surrender of Confidential Information upon Termination. Upon termination or expiration of this Contract or a Statement of Work, in whole or in part, each party must, within five (5) Business Days from the date of termination, return to the other party any and all Confidential Information received from the other party, or created or received by a party on behalf of the other party, which are in such party's possession, custody, or control. If Contractor or the State determine that the return of any Confidential Information is not feasible, such party must destroy the Confidential Information and certify the same in writing within five (5) Business Days from the date of termination to the other party.

**11. Security.** Throughout the Term and at all times in connection with its actual or required performance of the Services, Contractor will maintain and enforce an information security program including safety and physical and technical security policies and procedures with respect to its Processing of the State's Confidential Information that comply with the requirements of the State's data security policies as set forth in **Schedule C**.

**12. Disaster Recovery and Backup.** Throughout the Term and at all times in connection with its actual or required performance of the Services, Contractor will:

(a) maintain and operate a backup and disaster recovery plan to achieve a Recovery Point Objective (RPO) of no more than eight (8) hours, and a Recovery Time Objective (RTO) of no more than eight (8) hours (the "**DR Plan**"), and implement such DR Plan in the event of any unplanned interruption of the Hosted Services. Contractor's current DR Plan, revision history, and any reports or summaries relating to past testing of or pursuant to the DR Plan are attached as **Schedule D**. Contractor will actively test, review and update the DR Plan on at least an annual basis using industry best practices as guidance. Contractor will provide the State with copies of all such updates to the Plan within fifteen (15) days of its adoption by Contractor. All updates to the DR Plan are subject to the requirements of this **Section 12**;

(b) provide the State with copies of all reports resulting from any testing of or pursuant to the DR Plan promptly after Contractor's receipt or preparation. If Contractor fails to reinstate all material Hosted Services within the periods of time set forth in the DR Plan, the State may, in addition to any other remedies available under this Contract, in its sole discretion, immediately terminate this Contract as a non-curable default under **Section 7.1(a)**; and

(c) maintain any additional backup requirements set forth in the Statement of Work.

### 13. Indemnification.

13.1 General Indemnification. Contractor must defend, indemnify and hold the State, its departments, divisions, agencies, offices, commissions, officers, and employees harmless, without limitation, from and against any and all Actions, claims, Losses, liabilities, damages, costs, attorney fees, and expenses (including those required to establish the right to indemnification), arising out of or relating to:

(a) any breach by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable) of any of the promises, agreements, representations, warranties, or insurance requirements contained in this Contract;

(b) any infringement, misappropriation, or other violation of any intellectual property right or other right of any third party;

(c) any bodily injury, death, or damage to real or tangible personal property occurring wholly or in part due to action or inaction by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable); or

(d) any acts or omissions of Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable) provided that, to the extent that any Action or Losses described in this **Section 13.1** arises out of, results from, or alleges a claim that any of the Services does or threatens to infringe, misappropriate or otherwise violate any Intellectual Property Rights or other rights of any third party, Contractor's obligations with respect to such Action and Losses, if any, shall be subject to the terms and conditions of **Section 13.2(a)** through **Section 13.3(b)** and **Section 13.3**.

13.2 Infringement Indemnification By Contractor. Contractor must indemnify, defend and hold the State, and the State's agencies, departments, officers, directors, employees, agents, and contractors harmless from and against all Losses arising out of or resulting from any Action that does or is alleged to arise out of or result from a claim that any of the Services, or the State's or any Authorized User's use thereof, actually does or threatens to infringe, misappropriate or otherwise violate any Intellectual Property Right or other right of a third party, provided however, that Contractor shall have no liability or obligation for any Action or Loss to the extent that such Action or Loss arises out of or results from any:

(a) alteration or modification of the Hosted Services or Service Software by or on behalf of the State or any Authorized User without Contractor's authorization (each, a "**State Modification**"), provided that no infringement, misappropriation or other violation of third party rights would have occurred without such State Modification and provided further that any alteration or modification made by or for Contractor at the State's request shall not be excluded from Contractor's indemnification obligations hereunder unless (i) such alteration or modification has been made pursuant to the State's written specifications and (ii) the Hosted Services, as altered or modified in accordance with the State's specifications, would not

have violated such third party rights but for the manner in which the alteration or modification was implemented by or for Contractor; and

(b) use of the Hosted Services by the State or an Authorized User pursuant to this Contract in combination with any software or service not provided, authorized or approved by or on behalf of Contractor, if (i) no violation of third party rights would have occurred without such combination and (ii) such software or service is not commercially available and not standard in Contractor's or the State's industry and there are no Specifications, Documentation, or other materials indicating Contractor's specification, authorization or approval of the use of the Hosted Services in combination therewith.

### 13.3 Mitigation.

(a) If Contractor receives or otherwise learns of any threat, warning or notice alleging that all, or any component or feature, of the Services violates a third party's rights, Contractor must promptly notify the State of such fact in writing, and take all commercially reasonable actions necessary to ensure the State's continued right to access and use such Services and otherwise protect the State from any Losses in connection therewith, including investigating such allegation and obtaining a credible opinion of counsel that it is without merit.

(b) Subject to the exclusions set forth in clauses (a) and (b) of **Section 13.2**, if any of the Services or any component or feature thereof is ruled to infringe or otherwise violate the rights of any third party by any court of competent jurisdiction, or if any use of any Services or any component thereof is threatened to be enjoined, or is likely to be enjoined or otherwise the subject of an infringement or misappropriation claim, Contractor must, at Contractor's sole cost and expense:

- (i) procure for the State the right to continue to access and use the Services to the full extent contemplated by this Contract and the Specifications; or
- (ii) modify or replace all components, features and operations of the Services that infringe or are alleged to infringe ("**Allegedly Infringing Features**") to make the Services non-infringing while providing equally or more suitable features and functionality, which modified and replacement services shall constitute Services and be subject to the terms and conditions of this Contract.

(c) If neither of the remedies set forth in **Section 13.3(b)** is reasonably available with respect to the Allegedly Infringing Features then Contractor may direct the State to cease any use of any materials that have been enjoined or finally adjudicated as infringing, provided that Contractor will:

- (i) refund to the State any prepaid Fees for Services that have not been provided; and
- (ii) in any case, at its sole cost and expense, secure the right for the State to continue using the Allegedly Infringing Features for a transition period of up to six (6) months to allow the State to replace the affected Services or Allegedly Infringing Features without disruption.

(d) The remedies set forth in this **Section 13.3** are in addition to, and not in lieu of, all other remedies that may be available to the State under this Contract or otherwise, including the State's right to be indemnified pursuant to **Section 13.1** and **Section 13.2**.

13.4 Indemnification Procedure. The State will notify Contractor in writing if indemnification is sought; however, failure to do so will not relieve Contractor, except to the extent that Contractor is materially prejudiced. Contractor must, to the satisfaction of the State, demonstrate its financial ability to carry out these obligations. The State is entitled to: (i) regular updates on proceeding status; (ii) participate in the defense of the proceeding; (iii) employ its own counsel; and to (iv) retain control of the defense, at its own expense, if the State deems necessary. Contractor will not, without the State's prior written consent (not to be unreasonably withheld), settle, compromise, or consent to the entry of any judgment in or otherwise seek to terminate any claim, action, or proceeding. Any litigation activity on behalf of the State or any of its subdivisions, under this **Section 13**, must be coordinated with the Department of Attorney General. An attorney designated to represent the State may not do so until approved by the Michigan Attorney General and appointed as a Special Assistant Attorney General.

#### **14. Limitations of Liability.**

(a) The State's Disclaimer of Damages. THE STATE WILL NOT BE LIABLE, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS CONTRACT FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS AND LOST BUSINESS OPPORTUNITIES.

(b) The State's Limitation of Liability. IN NO EVENT WILL THE STATE'S AGGREGATE LIABILITY TO CONTRACTOR UNDER THIS CONTRACT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS CONTRACT, EXCEED THE MAXIMUM AMOUNT OF FEES SPECIFIED IN THE STATEMENT OF WORK.

#### **15. Contractor Representations and Warranties.**

15.1 Authority and Bid Response. Contractor represents and warrants to the State that:

(a) it is duly organized, validly existing, and in good standing as a corporation or other entity as represented under this Contract under the laws and regulations of its jurisdiction of incorporation, organization, or chartering;

(b) it has the full right, power, and authority to enter into this Contract, to grant the rights and licenses granted under this Contract, and to perform its contractual obligations;

(c) the execution of this Contract by its Representative has been duly authorized by all necessary organizational action;

(d) when executed and delivered by Contractor, this Contract will constitute the legal, valid, and binding obligation of Contractor, enforceable against Contractor in accordance with its terms;

(e) Contractor is neither currently engaged in nor will engage in the boycott of a person based in or doing business with a strategic partner as described in 22 USC 8601 to 8606;

(f) 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 to the RFP; 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;

(g) all written information furnished to the State by or for Contractor in connection with this Contract, including Contractor's bid response to the RFP, is true, accurate, and complete, and contains no untrue statement of material fact or omits any material fact necessary to make the information not misleading; and

(h) Contractor 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 within the previous five (5) years for the reason that Contractor failed to perform or otherwise breached an obligation of the contract.

15.2 Software and Service Warranties. Contractor represents and warrants to the State that:

(a) Contractor has, and throughout the Term and any additional periods during which Contractor does or is required to perform the Services will have, the unconditional and irrevocable right, power and authority, including all permits and licenses required, to provide the Services and grant and perform all rights and licenses granted or required to be granted by it under this Contract;

(b) neither Contractor's grant of the rights or licenses hereunder nor its performance of any Services or other obligations under this Contract does or at any time will: (i) conflict with or violate any applicable Law, including any Law relating to data privacy, data security or personal information; (ii) require the consent, approval or authorization of any governmental or regulatory authority or other third party; or (iii) require the provision of any payment or other consideration by the State or any Authorized User to any third party, and Contractor shall promptly notify the State in writing if it becomes aware of any change in any applicable Law that would preclude Contractor's performance of its material obligations hereunder;

(c) as accessed and used by the State or any Authorized User in accordance with this Contract and the Specifications, the Hosted Services, Documentation and all other Services and materials provided by Contractor under this Contract will not infringe, misappropriate or otherwise violate any Intellectual Property Right or other right of any third party;



(d) there is no settled, pending or, to Contractor's knowledge as of the Effective Date, threatened Action, and it has not received any written, oral or other notice of any Action (including in the form of any offer to obtain a license): (i) alleging that any access to or use of the Services or Service Software does or would infringe, misappropriate or otherwise violate any Intellectual Property Right of any third party; (ii) challenging Contractor's ownership of, or right to use or license, any software or other materials used or required to be used in connection with the performance or receipt of the Services, or alleging any adverse right, title or interest with respect thereto; or (iii) that, if decided unfavorably to Contractor, would reasonably be expected to have an actual or potential adverse effect on its ability to perform the Services or its other obligations under this Contract, and it has no knowledge after reasonable investigation of any factual, legal or other reasonable basis for any such litigation, claim or proceeding;

(e) the Service Software and Services will in all material respects conform to and perform in accordance with the Specifications and all requirements of this Contract, including the Availability and Availability Requirement provisions set forth in **Section 5**;

(f) all Specifications are, and will be continually updated and maintained so that they continue to be, current, complete and accurate and so that they do and will continue to fully describe the Hosted Services in all material respects such that at no time during the Term or any additional periods during which Contractor does or is required to perform the Services will the Hosted Services have any material undocumented feature;

(g) the Contractor Systems and Services are and will remain free of Harmful Code;

(h) Contractor will not advertise through the Hosted Services (whether with adware, banners, buttons or other forms of online advertising) or link to external web sites that are not approved in writing by the State;

(i) Contractor will perform all Services, including Testing Services, in a timely, professional and workmanlike manner with a level of care, skill, practice and judgment consistent with generally recognized industry standards and practices for similar services, using personnel with the requisite skill, experience and qualifications, and will devote adequate resources to meet Contractor's obligations (including the Availability Requirement and Support Service Level Requirements) under this Contract;

(j) During the term of this Contract, any audit rights contained in any third-party software license agreement or end user license agreement for third-party software incorporated in or otherwise used in conjunction with the Services, will apply solely to Contractor's (or its subcontractors) facilities and systems that host the Services (including any disaster recovery site), and regardless of anything to the contrary contained in any third-party software license agreement or end user license agreement, third-party software providers will have no audit rights whatsoever against State systems or networks; and

(k) Contractor acknowledges that the State cannot indemnify any third parties, including but not limited to any third-party software providers that provide software that will be incorporated in or

otherwise used in conjunction with the Services, and that notwithstanding anything to the contrary contained in any third-party software license agreement or end user license agreement, the State will not indemnify any third party software provider for any reason whatsoever.

15.3 **DISCLAIMER.** EXCEPT FOR THE EXPRESS WARRANTIES IN THIS CONTRACT, CONTRACTOR HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE UNDER OR IN CONNECTION WITH THIS CONTRACT OR ANY SUBJECT MATTER HEREOF.

**16. Insurance.**

16.1 Required Coverage.

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

Required Limits	Additional Requirements
<b>Commercial General Liability Insurance</b>	
<p><u>Minimal Limits:</u></p> <p>\$1,000,000 Each Occurrence Limit</p> <p>\$1,000,000 Personal &amp; Advertising Injury Limit</p> <p>\$2,000,000 General Aggregate Limit</p> <p>\$2,000,000 Products/Completed Operations</p> <p><u>Deductible Maximum:</u></p> <p>\$50,000 Each Occurrence</p>	<p>Contractor must have their policy endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds using endorsement CG 20 10 11 85, or both CG 2010 07 04 and CG 2037 07 04.</p>
<b>Automobile Liability Insurance</b>	
<p><u>Minimal Limits:</u></p> <p>\$1,000,000 Per Occurrence</p>	<p>Contractor must have their policy: (1) endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds; and (2) include Hired and Non-Owned Automobile coverage. .</p>

<b>Workers' Compensation Insurance</b>	
<u>Minimal Limits:</u>  Coverage according to applicable laws governing work activities.	Waiver of subrogation, except where waiver is prohibited by law.
<b>Employers Liability Insurance</b>	
<u>Minimal Limits:</u>  \$500,000 Each Accident  \$500,000 Each Employee by Disease  \$500,000 Aggregate Disease.	
<b>Privacy and Security Liability (Cyber Liability) Insurance</b>	
<u>Minimal Limits:</u>  \$5,000,000 Each Occurrence  \$5,000,000 Annual Aggregate	Contractor must have their policy: (1) endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds; and (2) cover information security and privacy liability, privacy notification costs, and regulatory defense and penalties.
<b>Professional Liability (Errors and Omissions) Insurance</b>	
<u>Minimal Limits:</u>  \$1,000,000 Each Claims-made  \$1,000,000 Annual Aggregate  <u>Deductible Maximum:</u>  \$50,000 Per Loss	
<b>Umbrella or Excess Liability Insurance</b>	
<u>Minimal Limits:</u>  \$5,000,000 General Aggregate	Contractor must have their policy endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds.

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

(c) If any of the required policies provide **claim-made** coverage, the Contractor must: (a) provide coverage with a retroactive date before the effective date of the contract or the beginning of contract work; (b) maintain coverage and provide evidence of coverage for at least three (3) years after completion of the contract of work; and (c) if coverage is canceled or not renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, the Contractor must purchase extended reporting coverage for a minimum of three (3) years after completion of work.

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

16.2 Non-waiver. This **Section 16** is not intended to and is not be construed in any manner as waiving, restricting or limiting the liability of either party for any obligations under this Contract (including any provisions hereof requiring Contractor to indemnify, defend and hold harmless the State).

## **17. Force Majeure.**

17.1 Force Majeure Events. Subject to **Section 17.2**, neither party will be liable or responsible to the other party, or be deemed to have defaulted under or breached this Contract, for any failure or delay in fulfilling or performing any term hereof, when and to the extent such failure or delay is caused by: acts of God, flood, fire or explosion, war, terrorism, invasion, riot or other civil unrest, embargoes or blockades in effect on or after the date of this Contract, national or regional emergency, or any passage of law or governmental order, rule, regulation or direction, or any action taken by a governmental or public authority, including imposing an embargo, export or import restriction, quota or other restriction or prohibition (each of the foregoing, a "**Force Majeure Event**"), in each case provided that: (a) such event is outside the reasonable control of the affected party; (b) the affected party gives prompt written notice to the other party, stating the period of time the occurrence is expected to continue; (c) the affected party uses diligent efforts to end the failure or delay and minimize the effects of such Force Majeure Event.

17.2 State Performance; Termination. In the event of a Force Majeure Event affecting Contractor's performance under this Contract, the State may suspend its performance hereunder until such time as Contractor resumes performance. The State may terminate this Contract by written notice to Contractor if a Force Majeure Event affecting Contractor's performance hereunder continues substantially uninterrupted for a period of five (5) Business Days or more. Unless the State terminates this Contract pursuant to the preceding sentence, any date specifically designated for Contractor's performance under this Contract will automatically be extended for a period up to the duration of the Force Majeure Event.

17.3 Exclusions; Non-suspended Obligations. Notwithstanding the foregoing or any other provisions of this Contract:

- (a) in no event will any of the following be considered a Force Majeure Event:
  - (i) shutdowns, disruptions or malfunctions of the Contractor Systems or any of Contractor's telecommunication or internet services other than as a result of general and widespread internet or telecommunications failures that are not limited to the Contractor Systems; or
  - (ii) the delay or failure of any Contractor Personnel to perform any obligation of Contractor hereunder unless such delay or failure to perform is itself by reason of a Force Majeure Event; and

(b) no Force Majeure Event modifies or excuses Contractor's obligations under **Section 4** (Service Availability and Service Availability Credits), **Section 5.5** (Support Service Level Credits), **Section 9** (State Data), **Section 10** (Confidentiality), **Section 11** (Security), **Section 12** (Disaster Recovery) or **Section 13** (Indemnification), or any Availability Requirement or Support Service Level Requirement.

**18. Software Escrow.** The parties may enter into a separate intellectual property escrow agreement. Such escrow agreement will govern all aspects of Source Code escrow and release. In the event of a Source Code escrow release (a "Release Event") as governed by the Source Code escrow agreement with Contractor's provider, Contractor hereby grants the State a license to use, reproduce, and create derivative works from the deposit material, provided the State may not distribute or sublicense the deposit material or make any use of it whatsoever except for such internal use as is necessary to maintain and support the Software. Copies of the deposit material created or transferred pursuant to this Contract are licensed, not sold, and the State receives no title to or ownership of any copy or of the deposit material itself. The deposit material constitutes Confidential Information of Contractor pursuant to **Section 10.1** of this Contract (provided no provision of **Section 10.5** calling for return of Confidential Information before termination of this Contract will apply to the deposit material).

**19. Effect of Contractor Bankruptcy.** All rights and licenses granted by Contractor under this Contract are and shall be deemed to be rights and licenses to "intellectual property," and the subject matter of this agreement, including the Services, is and shall be deemed to be "embodiments" of "intellectual property" for purposes of and as such terms are used in and interpreted under section 365(n) of the United States Bankruptcy Code (the "**Code**") (11 U.S.C. § 365(n) (2010)). The State has the right to exercise all rights and elections under the Code and all other applicable bankruptcy, insolvency and similar laws with respect to this Contract (including all executory Statement of Works). Without limiting the generality of the foregoing, if Contractor or its estate becomes subject to any bankruptcy or similar proceeding, subject to the State's rights of election, all rights and licenses granted to the State under this Contract will continue subject to the respective terms and conditions of this Contract, and will not be affected, even by Contractor's rejection of this Contract.

**20. General Provisions.**

20.1 Further Assurances. Each party will, upon the reasonable request of the other party, execute such documents and perform such acts as may be necessary to give full effect to the terms of this Contract.

20.2 Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in this Contract is to be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party has authority to contract for or bind the other party in any manner whatsoever.

20.3 Media Releases. News releases (including promotional literature and commercial advertisements) pertaining to this Contract or project to which it relates must not be made without the prior written approval of the State, and then only in accordance with the explicit written instructions of the State.

20.4 Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder, other than routine communications having no legal effect, must be in writing and addressed to the parties as follows (or as otherwise specified by a party in a notice given in accordance with this Section):

<b>If to State:</b> Brandon Samuel 525 W. Allegan St. 1 <sup>st</sup> Floor P.O. Box 30026 Lansing, MI 48909-7526 samuelb@michigan.gov 517-249-0439	<b>If to Contractor:</b> Jason Herzog 1700 Bayberry Court, Suite 105 Richmond, VA 23226 jherzog@averhealth.com 804-767-8693
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Notices sent in accordance with this **Section 20.4** will be deemed effectively given: (a) when received, if delivered by hand (with written confirmation of receipt); (b) when received, if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by e-mail (with confirmation of transmission), if sent during normal business hours of the recipient, and on the next business day, if sent after normal business hours of the recipient; or (d) on the fifth (5<sup>th</sup>) day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid.

20.5 Headings. The headings in this Contract are for reference only and do not affect the interpretation of this Contract.

20.6 Assignment. Contractor may not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this Contract, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without the State's prior written consent. The State has the right to terminate this Contract in its entirety or any Services or Statements of Work hereunder, pursuant to **Section 7.2**, if Contractor delegates or otherwise transfers any of its obligations or performance hereunder, whether voluntarily, involuntarily, by operation of law or otherwise, and no such

delegation or other transfer will relieve Contractor of any of such obligations or performance. For purposes of the preceding sentence, and without limiting its generality, any merger, consolidation or reorganization involving Contractor (regardless of whether Contractor is a surviving or disappearing entity) will be deemed to be a transfer of rights, obligations, or performance under this Contract for which the State's prior written consent is required. Any purported assignment, delegation, or transfer in violation of this **Section 20.6** is void.

20.7 No Third-party Beneficiaries. This Contract is for the sole benefit of the parties and nothing herein, express or implied, is intended to or will confer on any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Contract.

20.8 Amendment and Modification; Waiver. This Contract may only be amended, modified or supplemented by an agreement in writing signed by each party's Contract Administrator. No waiver by any party of any of the provisions hereof is effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Contract, no failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Contract will operate or be construed as a waiver thereof; nor will any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

20.9 Severability. If any term or provision of this Contract is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other term or provision of this Contract or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto will negotiate in good faith to modify this Contract so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

20.10 Governing Law. This Contract is governed, construed, and enforced in accordance with Michigan law, excluding choice-of-law principles, and all claims relating to or arising out of this Contract are governed by Michigan law, excluding choice-of-law principles. Any dispute arising from this Contract must be resolved in the Michigan Court of Claims. Complaints against the State must be initiated in Ingham County, Michigan. Contractor waives any objections, such as lack of personal jurisdiction or forum non conveniens. Contractor must appoint agents in Michigan to receive service of process

20.11 Equitable Relief. Each party to this Contract acknowledges and agrees that (a) a breach or threatened breach by such party of any of its obligations under this Contract would give rise to irreparable harm to the other party for which monetary damages would not be an adequate remedy and (b) in the event of a breach or a threatened breach by such party of any such obligations, the other party hereto is, in addition to any and all other rights and remedies that may be available to such party at law, at equity or otherwise in respect of such breach, entitled to equitable relief, including a temporary restraining order, an injunction, specific performance and any other relief that may be available from a court of competent jurisdiction, without any requirement to post a bond or other security, and without any requirement to

prove actual damages or that monetary damages will not afford an adequate remedy. Each party to this Contract agrees that such party will not oppose or otherwise challenge the appropriateness of equitable relief or the entry by a court of competent jurisdiction of an order granting equitable relief, in either case, consistent with the terms of this **Section 20.11**.

20.12 Nondiscrimination. Under the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, *et seq.*, the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, *et seq.*, and [Executive Directive 2019-09](#). Contractor and its subcontractors agree not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex (as defined in Executive Directive 2019-09), height, weight, marital status, partisan considerations, any mental or physical disability, or genetic information that is unrelated to the person's ability to perform the duties of a particular job or position. Breach of this covenant is a material breach of this Contract.

20.13 Unfair Labor Practice. Under 1980 PA 278, MCL 423.321, *et seq.*, the State must not award a contract or subcontract to an employer whose name appears in the current register of employers failing to correct an unfair labor practice compiled under MCL 423.322. This information is compiled by the United States National Labor Relations Board. A contractor of the State, in relation to the contract, must not enter into a contract with a subcontractor, manufacturer, or supplier whose name appears in this register. Under MCL 423.324, the State may void any contract if, after award of the contract, the contractor as an employer or the name of the subcontractor, manufacturer or supplier of the contractor appears in the register.

20.14 Schedules All Schedules and Exhibits that are referenced herein and attached hereto are hereby incorporated by reference. The following Schedules are attached hereto and incorporated herein:

<b>Schedule A</b>	Statement of Work
<b>Exhibit 1 to Schedule A</b>	Pricing
<b>Schedule B</b>	Service Level Agreement
<b>Schedule C</b>	Data Security Requirements
<b>Schedule D</b>	Disaster Recovery Plan

20.15 Counterparts. This Contract may be executed in counterparts, each of which will be deemed an original, but all of which together are deemed to be one and the same agreement and will become effective and binding upon the parties as of the Effective Date at such time as all the signatories hereto have signed a counterpart of this Contract. A signed copy of this Contract delivered by facsimile, e-mail or other means of electronic transmission (to which a signed copy is attached) is deemed to have the same legal effect as delivery of an original signed copy of this Contract.



20.16 Entire Agreement. This Contract, including all Statements of Work and other Schedules and Exhibits, constitutes the sole and entire agreement of the parties to this Contract with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. In the event of any conflict between the terms of this Contract and those of any Schedule, Exhibit or other document, the following order of precedence governs: (a) first, this Contract, excluding its Exhibits and Schedules; and (b) second, the Exhibits and Schedules to this Contract as of the Effective Date. NO TERMS ON CONTRACTORS INVOICES, WEBSITE, BROWSE-WRAP, SHRINK-WRAP, CLICK-WRAP, CLICK-THROUGH OR OTHER NON-NEGOTIATED TERMS AND CONDITIONS PROVIDED WITH ANY OF THE SERVICES, OR DOCUMENTATION HEREUNDER WILL CONSTITUTE A PART OR AMENDMENT OF THIS CONTRACT OR IS BINDING ON THE STATE OR ANY AUTHORIZED USER FOR ANY PURPOSE. ALL SUCH OTHER TERMS AND CONDITIONS HAVE NO FORCE AND EFFECT AND ARE DEEMED REJECTED BY THE STATE AND THE AUTHORIZED USER, EVEN IF ACCESS TO OR USE OF SUCH SERVICE OR DOCUMENTATION REQUIRES AFFIRMATIVE ACCEPTANCE OF SUCH TERMS AND CONDITIONS.

## Federal Provisions Addendum

The provisions in this addendum may apply if the purchase will be paid for in whole or in part with funds obtained from the federal government. If any provision below is not required by federal law for this Contract, then it does not apply and must be disregarded. If any provision below is required to be included in this Contract by federal law, then the applicable provision applies and the language is not negotiable. If any provision below conflicts with the State's terms and conditions, including any attachments, schedules, or exhibits to the State's Contract, the provisions below take priority to the extent a provision is required by federal law; otherwise, the order of precedence set forth in the Contract applies. Hyperlinks are provided for convenience only; broken hyperlinks will not relieve Contractor from compliance with the law.

### 1. Federally Assisted Construction Contracts

If this contract is a "**federally assisted construction contract**" as defined in [41 CRF Part 60-1.3](#), and except as otherwise may be provided under [41 CRF Part 60](#), then during performance of this Contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

(4) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The Contractor will comply with all provisions of [Executive Order 11246](#) of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Contractor will furnish all information and reports required by [Executive Order 11246](#) of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto,

and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in [Executive Order 11246](#) of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in [Executive Order 11246](#) of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of [Executive Order 11246](#) of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

## **2. Davis-Bacon Act (Prevailing Wage)**

- a. If applicable, the Contractor (and its Subcontractors) for **prime construction contracts** in excess of \$2,000 must comply with the Davis-Bacon Act ([40 USC 3141-3148](#)) as supplemented by Department of Labor regulations ([29 CFR Part 5](#), "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction").
- b. The Contractor (and its Subcontractors) shall pay all mechanics and laborers employed directly on the site of the work, unconditionally and at least once a week, and without subsequent deduction or rebate on any account, the full amounts accrued at time of payment, computed at wage rates not less than those stated in the advertised specifications, regardless of any contractual relationship which may be alleged to exist between the Contractor or subcontractor and the laborers and mechanics;
- c. The Contractor will post the scale of wages to be paid in a prominent and easily accessible place at the site of the work;
- d. There may be withheld from the Contractor so much of accrued payments as the contracting officer considers necessary to pay to laborers and mechanics employed by the Contractor or any Subcontractor on the work the difference between the rates of wages required by the Contract to be paid laborers and mechanics on the work and the rates of wages received by the laborers and mechanics and not refunded to the Contractor or Subcontractors or their agents.

## **3. Copeland "Anti-Kickback" Act**

If applicable, the Contractor must comply with the [Copeland "Anti-Kickback" Act \(40 USC 3145\)](#), as supplemented by Department of Labor regulations ([29 CFR Part 3](#), "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"), which prohibits the Contractor and subrecipients from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

#### **4. Contract Work Hours and Safety Standards Act**

If the Contract is **in excess of \$100,000** and **involves the employment of mechanics or laborers**, the Contractor must comply with [40 USC 3702](#) and [3704](#), as supplemented by Department of Labor regulations ([29 CFR Part 5](#)), as applicable.

#### **5. Rights to Inventions Made Under a Contract or Agreement**

If the Contract is funded by a federal “funding agreement” as defined under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

#### **6. Clean Air Act**

If this Contract is **in excess of \$150,000**, the Contractor must comply with all applicable standards, orders, and regulations issued under the Clean Air Act (42 USC 7401-7671q) and the Federal Water Pollution Control Act (33 USC 1251-1387). Violations must be reported to the federal awarding agency and the regional office of the Environmental Protection Agency.

#### **7. Debarment and Suspension**

A “contract award” (see [2 CFR 180.220](#)) must not be made to parties listed on the government-wide exclusions in the [System for Award Management](#) (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

#### **8. Byrd Anti-Lobbying Amendment**

If this Contract **exceeds \$100,000**, Contractor must file the certification required under [31 USC 1352](#).

#### **9. Procurement of Recovered Materials**

Under [2 CFR 200.322](#), a non-Federal entity that is a state agency or agency of a political subdivision of a state **and its contractors** must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at [40 CFR part 247](#) that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

# STATE OF MICHIGAN

Contract No. 190000000690

Drug Screening & Confirmation Testing (oral and urine) and/or alcohol testing for the Michigan  
Department of Health and Human Services

## SCHEDULE A STATEMENT OF WORK

This schedule identifies the anticipated requirements of the Contract. The term “Contractor” in this document refers to Averhealth.

### BACKGROUND

Substance abuse is a significant barrier to child protection, child safety, family preservation and family reunification. As a part of the array of assessments of family needs, the courts and the department use drug and/or alcohol screening to determine treatment needs, to monitor compliance with court orders, and to ensure that children can continue in or return to their homes safely. It also helps accomplish the number one strategic goal: Provide uncompromising care for the most vulnerable children in Michigan.

These services are designed for clients who are suspected by MDHHS Children’s Services Administration workers of drug and/or alcohol use or abuse and require immediate testing. The drug test list includes illegal drugs, therapeutic drugs (prescription drug pain killers, mental health meds, etc.) and designer drugs (i.e. K2, Spice, etc.)

The State of Michigan Child Protective Services (CPS) and Foster Care workers, all contracted private child welfare partners, and Third-Party Administrators (TPAs) collect samples from clients on a randomized testing schedule. TPAs are brick and mortar or mobile oral fluid collection entities that are responsible for overseeing the collection of samples for testing.

### SCOPE

The following services are included in this Contract:

- A. The Contractor must perform all required saliva/oral fluid and court-ordered urine screens (Note: court-ordered urine screens are needed on a limited basis **with** a court order).
- B. The Contractor must provide any requested testimony and/or court appearances (to include hearing or appeals), including chain of custody and/or test procedures/results on an as needed basis and providing certified copies of drug screens, if requested, up to two years after screening for any location in the state. Testimony/court appearance may include, but is not limited to, in-person, telephone, live video or any other technology as requested by the court. The Contractor must be available to testify per the court’s instruction with a 24-hour notice.
- C. The Contractor must provide Initial Testing and Gas Chromatography/Mass Spectrometry Confirmation (GC/MS) Testing or other federally approved testing methods which may include LC/MS/MS or GC/MS/MS (when initial screen indicate a positive result) for any location within the state.

- D. The Contractor must meet all federal requirements pertaining to drug testing under the Department of Health and Human Services and under these federal requirements, are subsumed College of American Pathology-Forensic Drug Testing Certification (CAP-FDT), and/or Clinical Laboratory Improvement Act (CLIA) requirements.
- E. The Contractor must ensure proper legal chain-of-custody procedures are maintained and comply with departmental procedure, state and federal law.
- F. The Contractor must also ensure complete integrity of each specimen tested and the respective results. Receiving, transfer, and handling of all specimens by laboratory personnel must be fully documented using the proper chain-of-custody.
- G. The Contractor must provide all required supplies and courier services (i.e. UPS/FedEx) to transport all specimens, test results, test materials, third party collectors, and randomization software for all referrals to and from any location throughout the state of Michigan.
- H. The Contractor must provide services to all 83 counties in the state.
- I. The Contractor must assign a solely dedicated Contractor Account Representative that resides within Michigan for the duration of the Contract.
- J. Contractor must provide an online portal which, at minimum, provides the following functionality:
  - a. request testing;
  - b. provide test results to case workers and other authorized users;
  - c. provide documentation; and
  - d. store relevant documents
- K. Contractor must provide access to the online portal at no additional charge. That is, all fees for these services must be all-encompassing, and must include access to the online portal for authorized users.
- L. The Contractor must provide Training and Training Materials.
- M. The Contractor must provide applicable reports as requested.

## REQUIREMENTS

### 1. General Requirements

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

1. Provide services describe herein for the entire State of Michigan (83 counties).
2. Ensure the minimum of substances tested include Amphetamine, Methamphetamines, Cocaine, Cannabinoids, Opiates, Oxycodone, Benzodiazepines, Buprenorphine, Tramadol, Fentanyl and other drugs indicated by client's history.
3. Provide reports that state the minimum level necessary to detect the presence of each substance, the level of substance detected, and the chain-of-custody documentation.
4. Ensure initial screening is conducted utilizing an enzyme immunoassay method. Testing must occur for the following substances utilizing the cut-off levels listed below:

<b>DRUG**</b>	<b>ORAL FLUID CUT-OFF LEVEL*</b>	<b>URINE CUT-OFF LEVEL*</b>
Amphetamines	6ng/ml	50ng/ml
Methamphetamines	6ng/ml	50ng/ml
Cocaine	3ng/ml	20ng/ml
Cannabinoids	1 ng/ml	4ng/ml
Opiates	7ng/ml	40ng/ml
Benzodiazepines	5ng/ml	20ng/ml
Oxycodone	7ng/ml	40ng/ml
Buprenorphine	1ng/ml	5ng/ml
Fentanyl	1 ng/ml	20ng/ml
Tramadol	20ng/ml	200ng/ml

\*For all other substances tested use recommended industry cutoff levels. All levels should be reported as “dilute” not “neat”.

\*\* The above list of substances may change due to the changing/trending popularity of substances

Contractor must keep up to date with technology advances and provide lower screening cut-off levels as technology advances.

5. Ensure all negative samples are retained by the laboratory for a minimum of 10 calendar days. A retention time extension may be required based upon need for any individual sample.
6. Ensure a confirmation testing of all positive test samples and confirmation testing must be conducted utilizing GC/MS or LC/MS/MS technology. The following cut-off levels must be utilized:

<b>DRUG</b>	<b>ORAL FLUID CUT-OFF LEVEL*</b>	<b>URINE CUT-OFF LEVEL*</b>
Amphetamines	3ng/ml	20ng/ml
Methamphetamines	3ng/ml	20ng/ml
Cocaine	1 ng/ml	2ng/ml
Cannabinoids	.5 ng/ml	2ng/ml
Opiates	3ng/ml	1ng/ml
Benzodiazepines	1 ng/ml	1ng/ml
Oxycodone	3ng/ml	1ng/ml
Buprenorphine	1 ng/ml	1ng/ml
Fentanyl	.5 ng/ml	.5ng/ml
Tramadol	10ng/ml	50ng/ml

\*For all other substances tested use recommended industry cutoff levels. All levels should be reported as “dilute” not “neat”.

Contractor must keep up to date with technology advances and provide lower confirmation cut-off levels as technology advances.

7. Ensure all positive samples are frozen and maintained for a minimum of 365 days by the laboratory. A retention time extension may be required based upon need for any individual sample.

8. Ensure that in situations where the source of the methamphetamine present in any specimen may come into question, a d-1-isomer differentiation is performed. This service is to be offered at no additional cost to MDHHS and performed when requested by MDHHS.
9. Ensure MDHHS assigned personnel and private agency partners may indicate the need for additional drug testing of substances not included in the 10-panel screen by writing the request on the chain of custody form prior to sealing the sample and chain of custody in the evidence bag (or TPA randomization referral). This service is to be offered at no additional cost to MDHHS and performed when requested by MDHHS.
10. Ensure notification of results via secure web-based HIPAA compliant portal accessed by MDHHS staff and private agency partners. MDHHS staff and private agency partners are to receive access to results for any case throughout the state. Results are NOT to be mailed, faxed or sent via e-mail to any worker at any time. All results must be made available through a web portal only.

At no time shall there be user fees or costs associated with access to any on-line portal system including any licensing fees. All on-line portal access for MDHHS staff and private agency partners must be at no additional cost to MDHHS.

11. Maintain FedRAMP certification.
12. Update Architecture Diagram to reflect any contract awarded and provide said diagram to the State.
13. Maintain its disaster recovery plan as required by the contract.
14. Ensure notification of testing results via web portal on Contractor letterhead to MDHHS. The Contractor must obtain approval in advance from MDHHS for any changes in the results notification system.
15. Notify MDHHS/Private Agency partners of all negative test results within 24 hours of the receipt of the specimen. The specified time frame is from receipt by the testing laboratory to the time of notification to the county ordering the tests. Positive test results must be provided within 48 hours of the lab receipt of the sample specimen.
16. Coordinate all courier services to transport all specimens, and testing materials to and from any location within the referring county. Deliveries must be made during regular working days, normally between the hours of 8:00am and 5:00pm ET unless otherwise indicated. The Contractor is responsible for the cost of all courier services provided under the Contract.
17. Provide courier services that maintain the legal chain-of-custody, throughout the State of Michigan within 24 hours of request of pick up.
18. Provide postage paid mailers/next day ground delivery services for utilization at any location that desires to use this method as an alternative to the courier services. This must be at no additional charge to MDHHS.



19. Ensure courier system provides documented, legal chain-of-custody throughout the State of Michigan which includes same day or next day ground delivery throughout Michigan.
20. Provide the following supplies (including but not limited to): sample containers, specimen donor labels, evidence bags, evidence chain-of-custody forms with seals, swabs, cups, all supplies required for same day or next day delivery, and any additional supplies necessary for referring specimens to the laboratory at no additional charge to MDHHS.
21. Ensure that all services are accessed and pre-approved through a referral authorization on the chain of custody form from the referring MDHHS/private agency staff. Referrals are valid for a maximum of six months. MDHHS/private agency staff must initiate a reauthorization for services to continue beyond the approved period.
22. Guarantee MDHHS Children's Services staff, private partners and TPAs the ability to administer saliva/oral fluids and urine (TPA's only) testing. These results must also be later verified through laboratory testing as needed.
23. Provide additional substance abuse testing processes, as available, including but not limited to: additional drugs available to test and alcohol test strips. These types of tests may be necessary in certain situations to ensure child safety and be provided to MDHHS at no additional cost.
24. Update testing processes, as needed, to ensure consistency with current substance assessment trends and technology.
25. In the event that substance abuse testing results are challenged, the Contractor's professional expert witness staff must provide the following when needed by MDHHS or requested or ordered by the court: testimony about the veracity of the drug testing process and results; and provide litigation packages. The Court will determine if in-person, telephone, or a Skype-style video conference testimony is required. The Contractor must be available with next day availability to the court, however the court requests. At no time shall the Contractor inform the court that expert testimony is not available on the date/time the court requests. All requests by the court will be honored as the court instructs. This service is to be provided to MDHHS at no additional charge.
26. Provide automated random selection of donors through a telephone system with methodology established by the Contractor and agreed in writing by MDHHS Program Manager. This methodology should be similar throughout all TPA locations.
27. Provide Third Party Administrators (TPAs)  
The Michigan Department of Health & Human Services (MDHHS) needs to assess whether caregivers are using or abusing drugs or alcohol to the extent that their ability to safely care for children is impacted. Oral fluid and urine samples must sometimes be randomly collected from parents or caregivers for evaluation by MDHHS. Children's Services workers may require that parents/caregivers submit to multiple drug screens. Collections of these screens by case workers may be time prohibitive based on their current job descriptions. As such, case workers may require caregivers to visit a TPA test site to provide a sample or to provide a sample with a Mobile TPA.

There will be limited circumstances where a court may order urine screens in lieu of oral fluid screens. Urine screens shall be available through TPA (brick and mortar locations only) testing only and only be collected when a court order has been received by the worker and verified by the CPS Program Office.

All TPA providers must be able to witness and collect urine screens from only same sex clients.

The Contractor must work with MDHHS CPS Program Office to develop and implement an approval process for court-ordered urine screens.

**The Contractor must do the following:**

- a. Locate and subcontract with at least one TPA in each county of the state of Michigan. MDHHS prefers brick and mortar TPA collection sites; however, MDHHS realizes that such entities are not available in all counties. Only when brick and mortar testing sites are unavailable or unwilling to provide the collection service can a mobile TPA be utilized. All TPA/Mobile TPAs must be approved by the MDHHS Program Manager prior to utilization.
- b. Manage and test samples collected by designated TPA/Mobile TPA collection services.
- c. Provide lab results on samples collected by a TPA/Mobile TPA directly to MDHHS or private partner case workers. At no time shall test results be available to a TPA or Mobile TPA.
- d. Must provide all sample collection supplies (including shipping) to the TPA/Mobile TPA.
- e. Ensure all TPA and Mobile TPAs will have variable hours on weekdays and weekends (with availability at least two evenings per week until 7:00 pm and one day for 5 hours on any weekend day) and shall be agreed upon by both the TPA/Mobile TPA and the County MDHHS office and approved in writing by the MDHHS Contract Administrator. Any deviation from these requirements will be approved by the MDHHS County Director and the MDHHS Contract Administrator in advance of TPA utilization.
- f. Ensure all samples collected by TPA/Mobile TPAs be shipped to the Contractor for analysis.
- g. Ensure all TPA/Mobile TPA collection staff have a minimum high school diploma or General Education Diploma.
- h. Ensure all TPA/Mobile TPA collection staff have passed an agreed upon background check prior to contact with MDHHS clients. This may include employment history, criminal history and CPS history checks and must include MDHHS Central Registry Clearance.
- i. Ensure all TPA/Mobile TPAs make the Contractor aware of any good character issues or allegations of misconduct. The Contractor must make MDHHS aware immediately of any good conduct issues with a sub-contractor.

Note: Mobile TPA sub-contractors shall receive the State of Michigan standard mileage reimbursement amount. In no case shall federal or State of Michigan premium mileage rates be paid.

**1.1. Transition**

Contractor must work with MDHHS to ensure no interruption or adverse effect on services during the transition from the present contractor and new contractor.

## 1.2. Training

- a. The Contractor must provide in-person training to support the collection of samples by MDHHS assigned personnel, private agency partners and TPAs that drug screens will be observed during sample collections. Ensure that each county will receive in-person training on an annual basis. On-line training may be provided to ensure new staff are adequately trained until the annual in-person training session can be attended. However, on-line training is not to be considered as part of any annual training requirement.
- b. The Contractor must develop or have developed a training program that meets the requirements of the applicable federal regulations.
- c. Must provide training to all TPA/Mobile TPAs on sample collection on an annual basis.
- d. Must provide training to TPA/Mobile TPAs on shipping and maintaining proper chain of custody requirements and provide the details to the MDHHS Program Manager on an annual basis.
- e. The Contractor must have qualified individuals on staff to conduct one to two-hour training programs applicable to the above regulations for services workers, supervisors, and administrators for all MDHHS, private partner and TPA staff.
- f. The Contractor may be asked to assist MDHHS personnel in preparing for and conducting training and informational programs.
- g. The Contractor must provide upon request, other materials such as brochures, pamphlets, manuals, handouts, and/or videos that can be used in training programs.
- h. The Contractor must provide for training which:
  1. addresses the ability to store testing material in a manner which ensures that tampering does not occur, and that chain-of-custody is maintained.
  2. address worker's ability to administer this testing correctly and in accordance with existing protocols and State law. This would include in-service training as procedures are updated including portal updates.

## 2. Technical Specifications

### a. **Specific Standards and/or Certifications**

#### **Enterprise IT Policies, Standards and Procedures**

All Hosted Services provided by the Contractor must comply with all applicable State IT policies and standards listed at:

[https://www.michigan.gov/dtmb/0,5552,7-358-82547\\_9347---,00.html](https://www.michigan.gov/dtmb/0,5552,7-358-82547_9347---,00.html) (IT policies are in Section 1300)

### b. **Look and Feel Standard**

All Hosted Services provided by the Contractor must adhere to the Look and Feel Standards: [www.michigan.gov/somlookandfeelstandards](http://www.michigan.gov/somlookandfeelstandards).

### c. **ADA Compliance**

The State is required to comply with the Americans with Disabilities Act of 1990 (ADA), and has adopted a formal policy regarding accessibility requirements for websites and software applications. The State is requiring that Bidder's proposed Solution, where relevant, to level AA of the World Wide Web Consortium (W3C) Web Content Accessibility Guidelines (WCAG) 2.0. Bidder may consider, where relevant, the W3C's Guidance on Applying WCAG 2.0 to Non-Web Information and Communications Technologies (WCAG2ICT) for non-web software and content. The State may require that Bidder complete a Voluntary Product Accessibility Template for WCAG 2.0 (WCAG 2.0 VPAT) or

other comparable document for the proposed Solution.  
[http://www.michigan.gov/documents/dmb/1650.00\\_209567\\_7.pdf?20151026134621](http://www.michigan.gov/documents/dmb/1650.00_209567_7.pdf?20151026134621)

d. **Federation/Single Sign-on (SSO)**

Hosted Services must be capable of supporting the State standard federated single sign on with multi-factor authentication using SAML or comparable mechanisms.

e. **End-User Operating Environment**

Below is the initial end user operating environment that must be supported by the Contractor. Contractor must keep pace with changes in standard operating environments (e.g. operating system upgrades, web browser upgrades, mobile OS upgrades).

The Hosted Services must not use any specialized or proprietary hardware, devices and/or computers. The Services will not use any plugins and will not require Java, Flash, or Silverlight.

1. **Web Browsers**

Hosted Services must run under commonly used web browsers. At a minimum, the software must support Internet Explorer v9+, Chrome v36+, Firefox v31+, Safari v5.1+, and Edge 20.1+ under the Windows and iOS operating Solutions.

2. **Mobile**

Hosted Services must utilize responsive design practices to ensure the application is accessible via a mobile device. Solution must support iOS, Android and Windows Mobile platforms for mobile devices (e.g. cellular phones and tablets). All features must be able to perform via mobile devices.

f. **Security**

Contractor must comply with the Data Security requirements set forth in Schedule C – Data Security Requirements and Schedule D – Disaster Recovery Plan.

Due to the Hosted Solution storing sensitive data, the Contractor and its Hosted Services must comply with the following, as set forth in Schedule C – Data Security Requirements:

1. Remain compliant with the NIST Special Publication 800.53 (most recent version) MOD controls. On a quarterly basis, the Contractor will review the NIST Special Publication 800.53 (most recent version) MOD for any updates or changes and implement those that apply to the Solution.
2. Be encrypted at rest and in-flight using AES 256 bit or higher encryption, including database backups. The transport layer between the client's web browser and the web server must be encrypted using TLS 1.2 connection with AES 256-bit certificate. The application model view control architecture must protect against SQL injection attacks and has internal firewall to validate database connections from the web server to the database. The Hosted Services must also have additional built-in security to validate that a jurisdiction only has access to that jurisdictions' data.
3. Provide multi-factor authentication. This level; however, does not require a hard token at contract execution. Some other method such as SMMS text with passcode, phone call with temporary passcode or other approved multi-factor authentication method must be used.
4. Remain compliant with the Health Insurance Portability and Accountability Act (HIPAA) Policies. On a quarterly basis, the Contractor will review the HIPAA policies for any updates or changes and implement those that apply.

**g. Capacity**

The Solution must automatically provide, at no additional cost, additional resources as the level of concurrent users increases without affecting performance as defined in Schedule B – SLA, Section 4.4. Software Response Time.

**h. Access Control and Audit**

1. All user activities must be tracked within the Hosted Services and accessible to administrative users via reports.
2. Hosted Services must contain full web-based user and data management capabilities for local site administration as well as remote site administration through DHHS.

**i. Data Migration**

Data migration services may be necessary.

**j. Data Retention**

If the Hosted Services will be deployed in the Contractor's cloud, or that of any Approved Subcontractor, it will have no database storage limitations, duration or maximum retention period. All Testing Services Data will be readily available for reporting and auditing purposes with no impact on pricing.

**k. System Integration**

Contractor must publish APIs through Contractor's web service to allow communication between the Hosted Services and any current or future third-party applications that may need to share data.

**3. Final Acceptance**

The State will use the following criteria to determine acceptance:

1. At a minimum through annual contract review and periodic audits MDHHS will determine if Contractor meets deliverables criteria; and if work is performed according to the Contract Specifications
2. For Hosted Services, Final Acceptance will be governed by Section 4.2 of the Contract Terms.
3. For Testing Services, Final Acceptance may, at the State's option, be governed by Section 4.3 of the Contract Terms.

**4. Staffing**

The Contractor must provide staff sufficient to adequately fulfill the terms of this Contract.

**4.1. Contractor Representative**

The Contractor has assigned Jason Herzog as Contractor Representative (Account Representative), specifically assigned to State of Michigan accounts, that will respond to State inquiries regarding the Services, answering questions related to ordering and delivery, etc. (the "Contractor Representative").

Jason Herzog can be reached at 804-767-8693 or [jherzog@averhalth.com](mailto:jherzog@averhalth.com)

#### 4.2. Key Personnel

The Contractor must appoint the following individuals who will be directly responsible for the day-to-day operations of the Contract (“Key Personnel”). Key Personnel must be specifically assigned to the State account, be knowledgeable on the contractual requirements, and respond to State inquiries within 24 hours.

- a. Jason Herzog - Account Representative – The Contractor must assign at least one solely dedicated Account Representative to handle the State of Michigan’s drug screen testing administration. This person must be extremely knowledgeable regarding the State’s drug screening testing contract and be available to the State’s Program Coordinator or Administrator daily, during regular business hours, via various media links.
- b. TBD (located in Michigan) - Training Representative – The Contractor must assign at least one solely dedicated Training Representative to train all MDHHS child welfare staff, private partner staff and TPA staff at least annually and as often as each county requests if more than annually. This person must have a presence in Michigan for the entire duration of the contract.
- c. TBD (located in Michigan) - Contractor Service Manager – The Contractor must assign at least one solely dedicated Contractor Service Manager to serve as a primary contact with respect to the Services who will have the authority to act on behalf of Contractor in matters pertaining to the receipt and processing of support requests and the Support Services. This person must have the responsibility, on behalf of the Contractor, to handle the day-to-day operations of the State of Michigan’s drug screen testing contract. This person must be the Contractor’s lead in resolving conflicts with clients/providers, investigating billing and payment concerns, and providing monthly and quarterly statistics. This person must have a presence in Michigan for the entire duration of the contract.
- d. Jeff Herr (Richmond, VA) - Contractor Security Officer – The Contractor must assign at least one solely dedicated Contractor Security Officer to respond to inquiries regarding the security of the Contractor’s systems who has sufficient knowledge of the security of the Contractor Systems.

**Note: The Account Representative, the Training Representative and the Contractor Service Manager may be the same individual.**

The Contractor must notify the DTMB Contract Administrator and MDHHS Contract Administrator at least 30 calendar days before removing or assigning a new Contractor Representative.

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

Contractor will not remove any Key Personnel from their assigned roles on this Contract without the prior written consent of the State. The Contractor’s removal of Key Personnel without the prior written consent of the State is an unauthorized removal (“Unauthorized Removal”). An Unauthorized Removal does not include replacing Key Personnel for reasons beyond the reasonable control of Contractor, including illness, disability, leave of absence, personal

emergency circumstances, resignation, or for cause termination of the Key Personnel's employment. Any Unauthorized Removal may be considered by the State to be a material breach of this Contract, in respect of which the State may elect to terminate this Contract for cause under Termination for Cause in the Standard Terms. It is further acknowledged that an Unauthorized Removal will interfere with the timely and proper completion of this Contract, to the loss and damage of the State, and that it would be impracticable and extremely difficult to fix the actual damage sustained by the State as a result of any Unauthorized Removal. Therefore, Contractor and the State agree that in the case of any Unauthorized Removal in respect of which the State does not elect to exercise its rights under Termination for Cause, Contractor will issue to the State the corresponding credits set forth below (each, an "Unauthorized Removal Credit"):

(i) For the Unauthorized Removal of any Key Personnel designated in the applicable Statement of Work, the credit amount will be \$25,000.00 per individual if Contractor identifies a replacement approved by the State and assigns the replacement to shadow the Key Personnel who is leaving for a period of at least 30 calendar days before the Key Personnel's removal.

(ii) If Contractor fails to assign a replacement to shadow the removed Key Personnel for at least 30 calendar days, in addition to the \$25,000.00 credit specified above, Contractor will credit the State \$833.33 per calendar day for each day of the 30 calendar-day shadow period that the replacement Key Personnel does not shadow the removed Key Personnel, up to \$25,000.00 maximum per individual. The total Unauthorized Removal Credits that may be assessed per Unauthorized Removal and failure to provide 30 calendar days of shadowing will not exceed \$50,000.00 per individual.

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

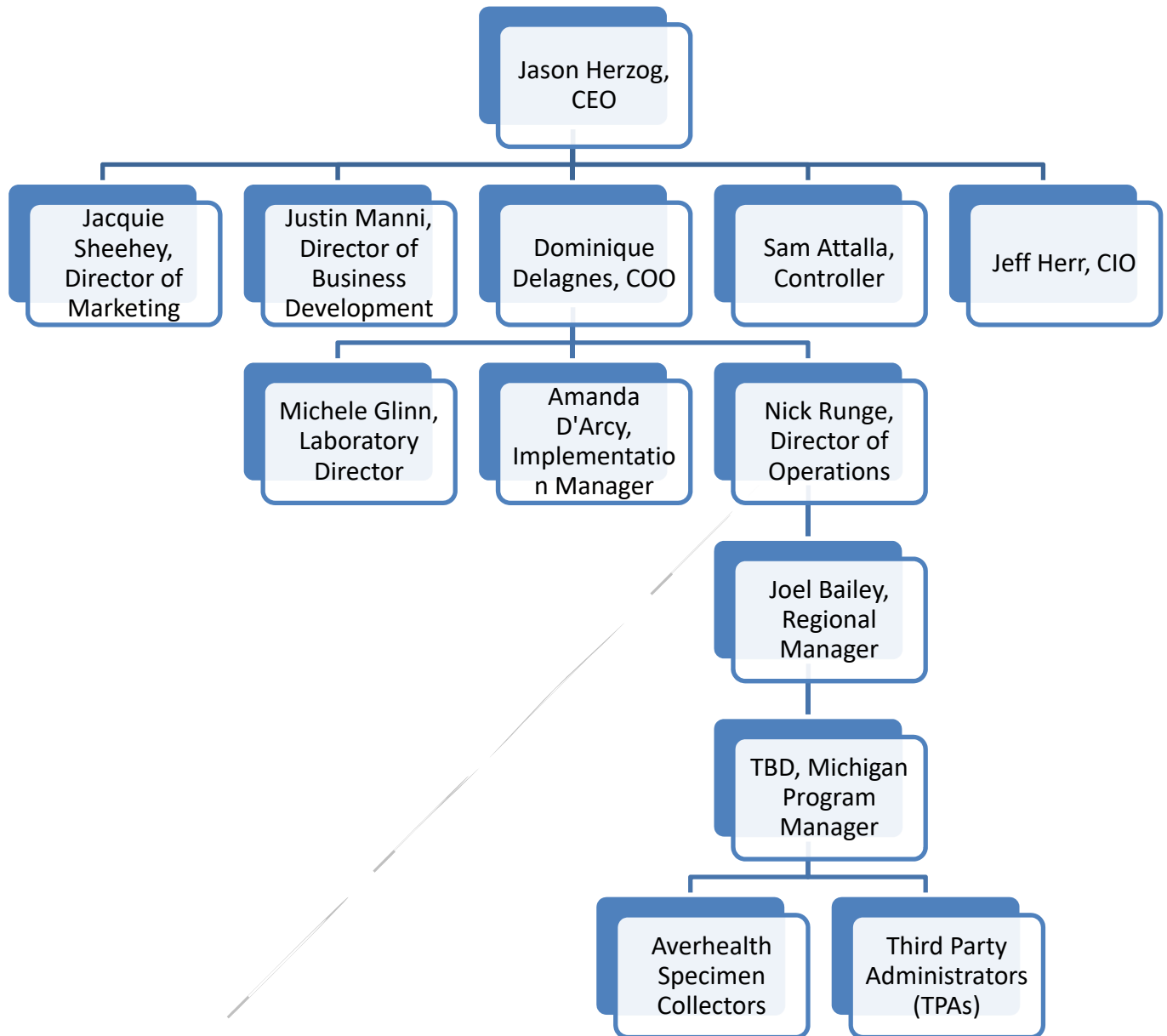
#### **4.3. Laboratory Qualifications**

The Contractor must ensure all laboratory(ies) participating in MDHHS drug screen testing must comply with all applicable requirements of the Federal Department of Health and Human Service, and under these federal requirements, are subsumed College of American Pathology-Forensic Drug Testing Certification (CAP-FDT), and/or Clinical Laboratory Improvement Act (CLIA) requirements.

#### **4.4 Credential/Experience**

- a. Laboratory Technologist must have a minimum education level which consists of a Bachelor of Science degree in chemistry, medical science, biology, biochemistry, microbiology, toxicology, or equivalent.
- b. All screening and confirmation laboratory personnel must have a minimum education level that consists of a bachelor's degree in a related field of study.

#### 4.5. Organizational Chart



#### 4.6. Customer Service Toll-Free Number

The Contractor must maintain a toll-free number for the State to contact the Contractor Customer Service Representative. The Contractor Representative must be available for calls during the hours of 8 am to 5 pm ET.

The Customer Service Toll-Free Number is 866-246-1321.



**4.7. Disclosure of Subcontractors**

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

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

The relationship of the subcontractor to the Contractor.

Whether the Contractor has a previous working experience with the subcontractor. If yes, provide the details of that previous relationship.

A complete description of the Services that will be performed or provided by the subcontractor.

All sub-contractors must be based and provide services in the Continental United States for all services. This includes testing, lab and customer service.

Any subcontractor providing data hosting services to the Contractor must disclose the location of their primary and secondary hosting locations. Such locations may not be located outside of the Continental United States.

**The Contractor has identified the following subcontractors:**

<b>Name</b>	<b>Description of Organization</b>	<b>Description of Services Provided</b>
Amazon Web Services	Cloud Services Provider	Web services hosting, data security
Sterling Area Health Center	TPA	Specimen collection services
Sacred Heart Rehabilitation Center	TPA	Specimen collection services
Baraga Sheriff Department	TPA	Specimen collection services
Houghton Sheriff Department	TPA	Specimen collection services
Michiana Drug Testing Center	TPA	Specimen collection services
Branch-Hillsdale-St. Joseph Community Health Agency	TPA	Specimen collection services
Pennock Occupational Health-Spectrum	TPA	Specimen collection services
Michiana Drug Testing Center	TPA	Specimen collection services
MidMichigan Urgent Care-Clare	TPA	Specimen collection services
ADAM Inc.	TPA	Specimen collection services
LADS	TPA	Specimen collection services
Northeast Tactical Supply	TPA	Specimen collection services
MidMichigan Urgent Care-Gladwin	TPA	Specimen collection services
D(n)A - Mt. Pleasant	TPA	Specimen collection services
Whole Life Therapy	TPA	Specimen collection services
Family Services and Children’s Aid	TPA	Specimen collection services
Huron Medical Center	TPA	Specimen collection services
KPEP	TPA	Specimen collection services
Family Outreach Center	TPA	Specimen collection services
JAMS – Roseville	TPA	Specimen collection services
PASS Lapeer	TPA	Specimen collection services

J & A Counseling and Evaluations	TPA	Specimen collection services
Fostering Solutions	TPA	Specimen collection services
Creative Counseling Choices	TPA	Specimen collection services
D(n)A – Livingston	TPA	Specimen collection services
Sheridan Hospital	TPA	Specimen collection services
St Suzanne Cody Rouge Community Res. Center	TPA	Specimen collection services
The Matrix Center	TPA	Specimen collection services
All Purpose Screening	TPA	Specimen collection services
JAMS – Madison Heights	TPA	Specimen collection services
JAMS – Farmington	TPA	Specimen collection services
JAMS – Pontiac	TPA	Specimen collection services
Huron House	TPA	Specimen collection services
TRI-CAP	TPA	Specimen collection services
Day Reporting Center	TPA	Specimen collection services
A Chance to Change	TPA	Specimen collection services
Caro Community Hospital	TPA	Specimen collection services
Bethany Christian Services	TPA	Specimen collection services
Ann Arbor Urgent Care	TPA	Specimen collection services
Brooks Lyons Brooks	TPA	Specimen collection services
JAMS – Taylor	TPA	Specimen collection services
JAMS – Westland	TPA	Specimen collection services
Forever Families	TPA	Specimen collection services

**4.8. Security**

The Contractor’s staff may be required to make deliveries to or enter State facilities.

The Contractor must meet all contractual security requirements, including those related to the security of State Data, and must meet the requirements of Schedule C, Data Security Requirements, found in the attached Contract Terms.

**5. Project Management**

**5.1. Project Plan (including transitional plan working with incumbent vendor (if applicable))**

The Contractor must carry out this project under the direction and control of MDHHS.

Although there will be continuous liaison with the Contractor team, the MDHHS Program Manager will meet as necessary, with the Contractor’s Account Representative or their designee for the purpose of reviewing progress and providing necessary guidance to the Contractor in solving problems which arise.

The Contractor must submit brief written summaries of progress with an outline of the work accomplished during the reporting period; work to be accomplished during the subsequent reporting period; problems, real or anticipated, which should be brought to the attention of the MDHHS Program Manager; and notification of any significant deviation from previously agreed-upon work plans.

Within 10 working days of Contract execution, the Contractor must submit a work plan to the MDHHS for final approval. This final implementation plan must be accepted by the State for Contract, and must, at a minimum, include the following:

- a. The Contractor's project organizational structure.
- b. The Contractor's staffing table with names and title key personnel assigned to the project as well as other necessary staff. 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.
- c. The project breakdown showing sub-projects, activities and tasks, and resources required and allocated to each for implementation and start-up. Implementation tasks must include marketing, statewide seminars, promotional material, and staffing for all presentations.

## **5.2. Meetings**

The Contractor must attend the following meetings:

- a. Post-Contract Award Meeting. This meeting will take place within 30 days of award notification. This meeting will be in person and at the location of the MDHHS Contract Administrator choosing.
- b. Contract Kickoff Meeting. This meeting will be no less than 30 days prior to the start date of the contract. This meeting will address but is not limited to any barriers to the contract/contractor having all resources, supplies, training and TPA's ready to begin on the contract start date.
- c. Quarterly or Bi-Annual Meetings (ongoing). All ongoing quarterly/bi-annual meetings will be in-person at the location of the MDHHS Contract Administrator's choosing.

The State may request other meetings as it deems appropriate.

## **5.3. Reporting**

The Contractor must submit, to the MDHHS Contract Administrator, the following written reports:

- a. Monthly Reports containing the following:
  - i. Number of tests by county including the number of MDHHS collected, Private Partner collected, and TPA collected tests and costs associated with each.
  - ii. The counties/private partners/TPA's who received training and the number of attendees at each training session.
  - iii. The number of times testimony was given listed by in-person, phone or Skype.
  - iv. Clients who have tested more than 9 times in a month
  - v. Clients who have tested 6 times or more (in a 30-day span) with all results being negative.
  - vi. Clients who have tested for three consecutive months with all results being negative.
  - vii. All users of the Hosted Services, including email address, in a format as requested by the State.

The Monthly Report shall be provided to the MDHHS Contract Administrator no later than 10 days after the end of the calendar month.

- b. Annual Report listing with overall statewide and individual county information including, but not limited to, the following:
  - i. Positive/Negative rates by month per drug tested
  - ii. Positive rates for each drug individually by county
  - iii. Training Session Data
  - iv. Customer Service Survey results

- v. Subpoena and Testimony data
- vi. Records Request data

The Annual Report must have maps along with graph information for each category listed above.

The Annual Report must be provided to the MDHHS Contract Administrator no later than 60 days after the close of the fiscal or calendar year (whichever is agreed upon as the tracking measure by both parties)

- c. Other reports as requested by MDHHS.

## **6. Ordering**

### **6.1. Authorizing Document**

The appropriate authorizing document for the Contract will be an annual Delivery Order.

## **7. Invoice and Payment**

### **7.1. Invoice Requirements**

All invoices submitted to the State must include: (a) date; (b) delivery order; (c) quantity; (d) description of the Services; (e) unit price; TPA costs; and (g) total price. Overtime, holiday pay, and travel expenses will not be paid.

### **7.2. Payment Methods**

The State will make payment for all Services via EFT.

## **8. Liquidated Damages**

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

**Exhibit 1 to Schedule A – Pricing**

All 83 Michigan Counties

All quantities listed are estimates only. The State does not commit to procuring these or any other amounts.

<b>COLLECTION AND TESTING SERVICES:</b>	<b>Estimated Annual Usage</b>			<b>Unit Price</b>	<b>Annual Total</b>
<b>Saliva Specimen Collection and Testing (per Sample) (10 panel)</b>	125,000	<i>Collection of Oral Fluid Swab by MDHHS, Private Partner, or Third-Party Administrator</i>	X	\$29.00	\$3,625,000
	62,500	<i>Collection Fee to Third Party Administrator (on average 50% of collections are conducted by TPA administrators)</i>	X	\$28.50	\$1,781,250
<b>Urine Specimen Collection and Testing (per Sample) (10 panel)</b>	1,000	<i>Collection of Urine Specimen by Third-Party</i>	X	\$29.00	\$29,000
		<i>Collection Fee to Third Party Administrator</i>	X	\$28.50	\$28,500
<b>Re-Analysis (Confirmation Testing) As-Needed (per sample)</b>	As needed			Included	Included
<b>ADDITIONAL OPTIONAL TESTING AS REQUESTED:</b>					
<b>Additional drugs tested as indicated on the Chain of Custody or referral if the referral is entered through the bidder portal.</b>	As needed			Included	Included
<b>OPTIONAL SERVICES AS REQUESTED:</b>					

<b>Education / Training (per Session)</b> • Including training of MDHHS Field Staff (both CPS & Foster Care), Private Agency Partners, Third Party Administrators for drug screens	1000			Included	Included
<b>Legal and Expert Witness Services</b>	200			Included	Included
<b>Training Guides</b>	1000			Included	Included
<b>IT Development Time</b>	As needed			Included	Included
				Annual Total Price	\$5,463,750
				5-Year Total Price	\$27,318,750

## **SCHEDULE B Service Level Agreement**

**1. Definitions.** For purposes of this Schedule, the following terms have the meanings set forth below. All initial capitalized terms in this Schedule that are not defined in this **Section 1** shall have the respective meanings given to them in the Contract.

“**Actual Uptime**” means the total minutes in the Service Period that the Hosted Services are Available.

“**Availability**” has the meaning set forth in **Section 4(a)**.

“**Availability Requirement**” has the meaning set forth in **Section 4(a)**.

“**Available**” has the meaning set forth in **Section 4(a)**.

“**Contractor Service Manager**” has the meaning set forth in **Section 2.5(a)**.

“**Corrective Action Plan**” has the meaning set forth in **Section 5.6**.

“**Critical Service Error**” has the meaning set forth in **Section 5.4(a)**.

“**Exceptions**” has the meaning set forth in **Section 4.2**.

“**Force Majeure Event**” has the meaning set forth in **Section 17.16.1**.

“**High Service Error**” has the meaning set forth in **Section 5.4(a)**.

“**Hosted Services**” has the meaning set forth in **Section 2.1(a)**.

“**Low Service Error**” has the meaning set forth in **Section 5.4(a)**.

“**Medium Service Error**” has the meaning set forth in **Section 5.4(a)**.

“**Resolve**” has the meaning set forth in **Section 5.4(b)**.

“**Scheduled Downtime**” has the meaning set forth in **Section 4.3**.

“**Scheduled Uptime**” means the total minutes in the Service Period.

“**Service Availability Credits**” has the meaning set forth in **Section 4.6(a)**.

“**Service Error**” means any failure of any Hosted Service to be Available or otherwise perform in accordance with this Schedule.

“**Service Level Credits**” has the meaning set forth in **Section 5.5**.

“**Service Level Failure**” means a failure to perform the Software Support Services fully in compliance with the Support Service Level Requirements.

“**Service Period**” has the meaning set forth in **Section 4(a)**.

“**Software**” has the meaning set forth in the Contract.

“**Software Support Services**” has the meaning set forth in **Section 5**.

“**State Service Manager**” has the meaning set forth in **Section 3.2**.

“**State Systems**” means the information technology infrastructure, including the computers, software, databases, electronic systems (including database management systems) and networks, of the State or any of its designees.

“**Support Request**” has the meaning set forth in **Section 5.4(a)**.

“**Support Service Level Requirements**” has the meaning set forth in **Section 5.4**.

“**Term**” has the meaning set forth in the Contract.

## **2. Services.**

2.1 Services. Throughout the Term, Contractor will, in accordance with all terms and conditions set forth in the Contract and this Schedule, provide to the State and its Authorized Users the following services:

- (a) the hosting, management and operation of the Software and other services for remote electronic access and use by the State and its Authorized Users (“**Hosted Services**”);
- (b) the Software Support Services set forth in **Section 5** of this Schedule;

## **3. Personnel**

3.1 Contractor Personnel for the Hosted Services. Contractor will appoint a Contractor employee to serve as a primary contact with respect to the Services who will have the authority to act on behalf of Contractor in matters pertaining to the receipt and processing of Support Requests and the Software Support Services (the “**Contractor Service Manager**”). The Contractor Service Manager will be considered Key Personnel under the Contract.

3.2 State Service Manager for the Hosted Services. The State will appoint and, in its reasonable discretion, replace, a State employee to serve as the primary contact with respect to the Services who will have the authority to act on behalf of the State in matters pertaining to the Software Support Services, including the submission and processing of Support Requests (the “**State Service Manager**”).

## **4. Service Availability and Service Availability Credits.**



(a) Availability Requirement. Contractor will make the Hosted Services Available, as measured over the course of each calendar month during the Term and any additional periods during which Contractor does or is required to perform any Hosted Services (each such calendar month, a “**Service Period**”), at least 99.99% of the time, excluding only the time the Hosted Services are not Available solely as a result of one or more Exceptions (the “**Availability Requirement**”). “**Available**” means the Hosted Services are available and operable for access and use by the State and its Authorized Users over the Internet in material conformity with the Contract. “**Availability**” has a correlative meaning. The Hosted Services are not considered Available in the event of a material performance degradation or inoperability of the Hosted Services, in whole or in part. The Availability Requirement will be calculated for the Service Period as follows:  $(\text{Actual Uptime} - \text{Total Minutes in Service Period Hosted Services are not Available Due to an Exception}) \div (\text{Scheduled Uptime} - \text{Total Minutes in Service Period Hosted Services are not Available Due to an Exception}) \times 100 = \text{Availability}$ .

4.2 Exceptions. No period of Hosted Service degradation or inoperability will be included in calculating Availability to the extent that such downtime or degradation is due to any of the following (“**Exceptions**”):

- (a) failures of the State’s or its Authorized Users’ internet connectivity;
- (b) Scheduled Downtime as set forth in **Section 4.3**.

4.3 Scheduled Downtime. Contractor must notify the State at least seventy-two (72) hours in advance of all scheduled outages of the Hosted Services in whole or in part (“**Scheduled Downtime**”). All such scheduled outages will: (a) last no longer than five (5) hours; (b) be scheduled between the hours of 10:00 pm and 5:00 am , Eastern Time; and (c) occur no more frequently than once per week and only on Wednesday beginning at 10 pm and ending at 5 am Thursday morning; provided that Contractor may request the State to approve extensions of Scheduled Downtime above five (5) hours, and such approval by the State may not be unreasonably withheld or delayed. Provided, however, Scheduled Downtime with a duration of less than sixty (60) minutes that occurs between the hours of 10:00 pm and 5:00 am Eastern Time shall be permitted and require no advance notice, but Authorized Users must be presented with a notice from Contractor related to the approximate downtime of the Service Software after an attempted log-in.

4.4 Software Response Time. Software response time, defined as the interval from the time the end user sends a transaction to the time a visual confirmation of transaction completion is received, must be less than two (2) seconds for 98% of all transactions. Unacceptable response times shall be considered to make the Software unavailable and will count against the Availability Requirement.

4.5 Service Availability Reports. Within thirty (30) days after the end of each Service Period, Contractor will provide to the State a report describing the Availability and other performance of the Hosted Services during that calendar month as compared to the Availability Requirement. The report must be in electronic or such other form as the State may approve in writing and shall include, at a minimum: (a) the actual performance of the Hosted Services relative to the Availability Requirement; and (b) if Hosted Service performance has failed in any respect to meet or exceed the Availability

Requirement during the reporting period, a description in sufficient detail to inform the State of the cause of such failure and the corrective actions the Contractor has taken and will take to ensure that the Availability Requirement are fully met.

4.6 Remedies for Service Availability Failures.

(a) If the actual Availability of the Hosted Services is less than the Availability Requirement for any Service Period, such failure will constitute a Service Error for which Contractor will issue to the State the following credits on the fees payable for Hosted Services provided during the Service Period (“**Service Availability Credits**”):

Availability	Credit of Fees
≥99.99%	None
<99.99% but ≥99.0%	15%
<99.0% but ≥95.0%	50%
<95.0%	100%

(b) Any Service Availability Credits due under this **Section 4.6** will be applied in accordance with payment terms of the Contract.

(c) If the actual Availability of the Hosted Services is less than the Availability Requirement in any two (2) of four (4) consecutive Service Periods, then, in addition to all other remedies available to the State, the State may terminate the Contract on written notice to Contractor with no liability, obligation or penalty to the State by reason of such termination.

**5. Support and Maintenance Services.** Contractor will provide Hosted Service maintenance and support services (collectively, “**Software Support Services**”) in accordance with the provisions of this **Section 5**. The Software Support Services are included in the Services, and Contractor may not assess any additional fees, costs or charges for such Software Support Services.

5.1 Support Service Responsibilities. Contractor will:

- (a) correct all Service Errors in accordance with the Support Service Level Requirements, including by providing defect repair, programming corrections and remedial programming;
- (b) provide unlimited telephone support 24 hours a day, seven days a week;
- (c) provide unlimited online support 24 hours a day, seven days a week;
- (d) provide online access to technical support bulletins and other user support information and forums, to the full extent Contractor makes such resources available to its other customers; and
- (e) respond to and Resolve Support Requests as specified in this **Section 5**.

5.2 Service Monitoring and Management. Contractor will continuously monitor and manage the Hosted Services to optimize Availability that meets or exceeds the Availability Requirement. Such monitoring and management includes:

(a) proactively monitoring on a twenty-four (24) hour by seven (7) day basis all Hosted Service functions, servers, firewall and other components of Hosted Service security;

(b) if such monitoring identifies, or Contractor otherwise becomes aware of, any circumstance that is reasonably likely to threaten the Availability of the Hosted Service, taking all necessary and reasonable remedial measures to promptly eliminate such threat and ensure full Availability; and

(c) if Contractor receives knowledge that the Hosted Service or any Hosted Service function or component is not Available (including by written notice from the State pursuant to the procedures set forth herein):

- (i) confirming (or disconfirming) the outage by a direct check of the associated facility or facilities;
- (ii) if Contractor's facility check in accordance with clause (i) above confirms a Hosted Service outage in whole or in part: (A) notifying the State in writing pursuant to the procedures set forth herein that an outage has occurred, providing such details as may be available, including a Contractor trouble ticket number, if appropriate, and time of outage; and (B) working all problems causing and caused by the outage until they are Resolved as Critical Service Errors in accordance with the Support Request Classification set forth in **Section 5.4**, or, if determined to be an internet provider problem, open a trouble ticket with the internet provider; and
- (iii) notifying the State that Contractor has fully corrected the outage and any related problems, along with any pertinent findings or action taken to close the trouble ticket.

5.3 Service Maintenance. Contractor will continuously maintain the Hosted Services to optimize Availability that meets or exceeds the Availability Requirement. Such maintenance services include providing to the State and its Authorized Users:

(a) all updates, bug fixes, enhancements, new releases, new versions and other improvements to the Hosted Services, including the Software, that Contractor provides at no additional charge to its other similarly situated customers; and

(b) all such services and repairs as are required to maintain the Hosted Services or are ancillary, necessary or otherwise related to the State's or its Authorized Users' access to or use of the Hosted Services, so that the Hosted Services operate properly in accordance with the Contract and this Schedule.

5.4 Support Service Level Requirements. Contractor will correct all Service Errors and respond to and Resolve all Support Requests in accordance with the required times and other terms and conditions set forth in this **Section 5.4 (“Support Service Level Requirements”)**, and the Contract.

(a) Support Requests. The State will classify its requests for Service Error corrections in accordance with the descriptions set forth in the chart below (each a “**Support Request**”). The State Service Manager will notify Contractor of Support Requests by email, telephone or such other means as the parties may hereafter agree to in writing.

<b>Support Request Classification</b>	<b>Description:</b> <b>Any Service Error Comprising or Causing any of the Following Events or Effects</b>
Critical Service Error	<ul style="list-style-type: none"> <li>• Issue affecting entire system or single critical production function;</li> <li>• System down or operating in materially degraded state;</li> <li>• Data integrity at risk;</li> <li>• Declared a Critical Support Request by the State; or</li> <li>• Widespread access interruptions.</li> </ul>
High Service Error	<ul style="list-style-type: none"> <li>• Primary component failure that materially impairs its performance; or</li> <li>• Data entry or access is materially impaired on a limited basis.</li> </ul>
Medium Service Error	<ul style="list-style-type: none"> <li>• Hosted Service is operating with minor issues that can be addressed with an acceptable (as determined by the State) temporary work around.</li> </ul>
Low Service Error	<ul style="list-style-type: none"> <li>• Request for assistance, information, or services that are routine in nature.</li> </ul>

(b) Response and Resolution Time Service Levels. Response and Resolution times will be measured from the time Contractor receives a Support Request until the respective times Contractor has (i) responded to, in the case of response time and (ii) Resolved such Support Request, in the case of Resolution time. **“Resolve”** (including **“Resolved”**, **“Resolution”** and correlative capitalized terms) means that, as to any Service Error, Contractor has provided the State the corresponding Service Error correction and the State has confirmed such correction and its acceptance thereof. Contractor will respond to and Resolve all Service Errors within the following times based on the severity of the Service Error:

<b>Support Request Classification</b>	<b>Service Level Metric  (Required Response Time)</b>	<b>Service Level Metric  (Required Resolution Time)</b>	<b>Service Level Credits  (For Failure to Respond to any Support Request Within the Corresponding Response Time)</b>	<b>Service Level Credits  (For Failure to Resolve any Support Request Within the Corresponding Required Resolution Time)</b>
Critical Service Error	One (1) hour	Three (3) hours	Five percent (5%) of the Fees for the month in which the initial Service Level Failure begins and five percent (5%) of such monthly Fees for each additional hour or portion thereof that the corresponding Service Error is not responded to within the required response time.	Five percent (5%) of the Fees for the month in which the initial Service Level Failure begins and five percent (5%) of such monthly Fees for the first additional hour or portion thereof that the corresponding Service Error remains un-Resolved, which amount will thereafter double for each additional one-hour increment.
High Service Error	One (1) hour	Four (4) hours	Three percent (3%) of the Fees for the	Three percent (3%) of the Fees for the

			month in which the initial Service Level Failure begins and three percent (3%) of such monthly Fees for each additional hour or portion thereof that the corresponding Service Error is not responded to within the required response time.	month in which the initial Service Level Failure begins and three percent (3%) of such monthly Fees for the first additional hour or portion thereof that the corresponding Service Error remains un-Resolved, which amount will thereafter double for each additional one-hour increment.
Medium Service Error	Three (3) hours	Two (2) Business Days	N/A	N/A
Low Service Error	Three (3) hours	Five (5) Business Days	N/A	N/A

(c) Escalation. With respect to any Critical Service Error Support Request, until such Support Request is Resolved, Contractor will escalate that Support Request within sixty (60) minutes of the receipt of such Support Request by the appropriate Contractor support personnel, including, as applicable, the Contractor Service Manager and Contractor’s management or engineering personnel, as appropriate.

5.5 Support Service Level Credits. Failure to achieve any of the Support Service Level Requirements for Critical and High Service Errors will constitute a Service Level Failure for which Contractor will issue to the State the corresponding service credits set forth in **Section 5.4(b)** (“**Service Level Credits**”) in accordance with payment terms set forth in the Contract.

5.6 Corrective Action Plan. If two or more Critical Service Errors occur in any thirty (30) day period during (a) the Term or (b) any additional periods during which Contractor does or is required to perform any Hosted Services, Contractor will promptly investigate the root causes of these Service Errors and provide to the State within five (5) Business Days of its receipt of notice of the second such Support Request an analysis of such root causes and a proposed written corrective action plan for the State’s review, comment and approval, which, subject to and upon the State’s written approval, shall be a part of, and by this reference is incorporated in, the Contract as the parties’ corrective action plan (the “**Corrective Action Plan**”). The Corrective Action Plan must include, at a minimum: (a) Contractor’s commitment to the State to devote the appropriate time, skilled personnel, systems support and

equipment and other resources necessary to Resolve and prevent any further occurrences of the Service Errors giving rise to such Support Requests; (b) a strategy for developing any programming, software updates, fixes, patches, etc. necessary to remedy, and prevent any further occurrences of, such Service Errors; and (c) time frames for implementing the Corrective Action Plan. There will be no additional charge for Contractor's preparation or implementation of the Corrective Action Plan in the time frames and manner set forth therein.

5.7 Additional Remedies for Service Level Failures. Contractor's repeated failure to meet the Support Service Level Requirements for any Critical Service Errors or High Service Errors, or any combination of such Errors, within the applicable Resolution time will constitute a material breach under the Contract. Without limiting the State's right to receive Service Level Credits, the State may terminate the Contract for cause in accordance with terms of the Contract.

## **6. Force Majeure.**

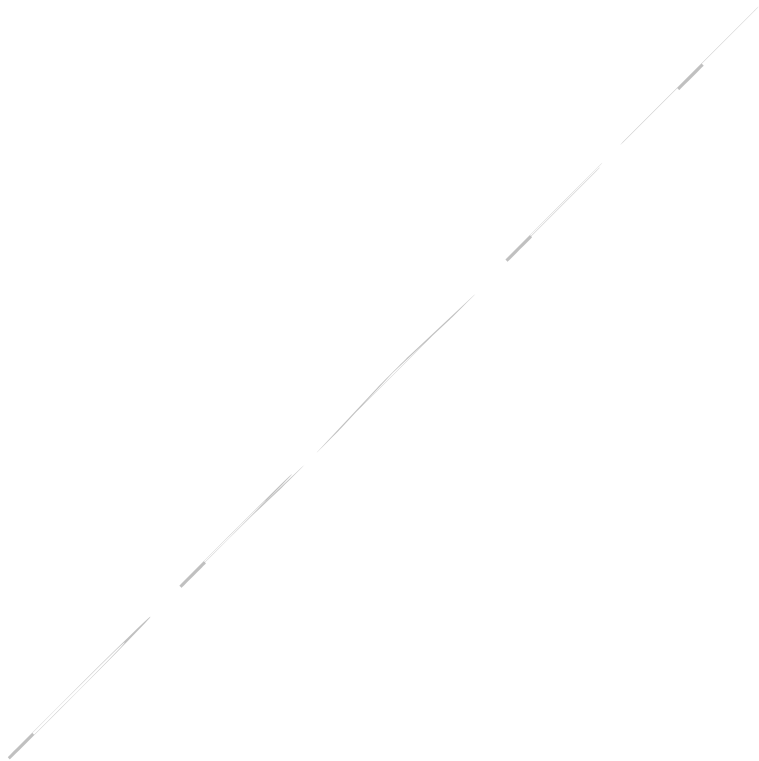
6.1 Force Majeure Events. Subject to **Section 6.3**, neither party will be liable or responsible to the other party, or be deemed to have defaulted under or breached the Contract, for any failure or delay in fulfilling or performing any term hereof, when and to the extent such failure or delay is caused by: acts of God, flood, fire or explosion, war, terrorism, invasion, riot or other civil unrest, embargoes or blockades in effect on or after the date of the Contract, national or regional emergency, or any passage of law or governmental order, rule, regulation or direction, or any action taken by a governmental or public authority, including imposing an embargo, export or import restriction, quota or other restriction or prohibition (each of the foregoing, a "**Force Majeure Event**"), in each case provided that: (a) such event is outside the reasonable control of the affected party; (b) the affected party gives prompt written notice to the other party, stating the period of time the occurrence is expected to continue; (c) the affected party uses diligent efforts to end the failure or delay and minimize the effects of such Force Majeure Event.

6.2 State Performance; Termination. In the event of a Force Majeure Event affecting Contractor's performance under the Contract, the State may suspend its performance hereunder until such time as Contractor resumes performance. The State may terminate the Contract by written notice to Contractor if a Force Majeure Event affecting Contractor's performance hereunder continues substantially uninterrupted for a period of five (5) Business Days or more. Unless the State terminates the Contract pursuant to the preceding sentence, any date specifically designated for Contractor's performance under the Contract will automatically be extended for a period up to the duration of the Force Majeure Event.

6.3 Exclusions; Non-suspended Obligations. Notwithstanding the foregoing or any other provisions of the Contract or this Schedule:

- (a) in no event will any of the following be considered a Force Majeure Event:
  - (i) shutdowns, disruptions or malfunctions of Contractor Systems or any of Contractor's telecommunication or internet services other than as a result of general and widespread internet or telecommunications failures that are not limited to the Contractor Systems; or

- (ii) the delay or failure of any Contractor Personnel to perform any obligation of Contractor hereunder unless such delay or failure to perform is itself by reason of a Force Majeure Event.





**SCHEDULE C**  
**Data Security Requirements**

**7. Definitions.** For purposes of this Schedule, the following terms have the meanings set forth below. All initial capitalized terms in this Schedule that are not defined in this **Section 7** shall have the respective meanings given to them in the Contract.

“**Contractor Security Officer**” has the meaning set forth in **Section 8** of this Schedule.

“**Contractor Systems**” has the meaning set forth in **Section 11** of this Schedule.

“**FedRAMP**” means the Federal Risk and Authorization Management Program, which is a federally approved risk management program that provides a standardized approach for assessing and monitoring the security of cloud products and services.

“**Hosted Services**” means the hosting, management and operation of the computing hardware, ancillary equipment, Software, firmware, data, other services (including support services), and related resources for remote electronic access and use by the State and its Authorized Users.

“**NIST**” means the National Institute of Standards and Technology.

“**PSP**” means the State’s IT Policies, Standards and Procedures located at:

[http://michigan.gov/dtmb/0,4568,7-150-56355\\_56579\\_56755---,00.html](http://michigan.gov/dtmb/0,4568,7-150-56355_56579_56755---,00.html).

**8.** Contractor will appoint a Contractor employee to respond to the State’s inquiries regarding the security of the Contractor Systems who has sufficient knowledge of the security of the Contractor Systems and the authority to act on behalf of Contractor in matters pertaining thereto (“**Contractor Security Officer**”). The Contractor Security Officer will be considered Key Personnel under the Contract.

**9. Protection of the State’s Confidential Information.** Throughout the Term and at all times in connection with its actual or required performance of the Services, Contractor will:

9.1 maintain FedRAMP certification for the Hosted Services throughout the Term, and in the event the contractor is unable to maintain FedRAMP certification, the State may move the Software to an alternative provider, at contractor’s sole cost and expense;

9.2 ensure that the Software is securely hosted, supported, administered, and accessed in a data center that resides in the continental United States, and minimally meets Uptime Institute Tier 3 standards ([www.uptimeinstitute.com](http://www.uptimeinstitute.com)), or its equivalent;

9.3 maintain and enforce an information security program including safety and physical and technical security policies and procedures with respect to its Processing of the State’s Confidential Information that comply with the requirements of the State’s data security policies as set forth in the Contract, and must, at a minimum, remain compliant with the NIST Special Publication 800.53 (most recent version) MOD Controls using minimum control values as established in the applicable PSP;

9.4 provide technical and organizational safeguards against accidental, unlawful or unauthorized access to or use, destruction, loss, alteration, disclosure, transfer, commingling or processing of such information that ensure a level of security appropriate to the risks presented by the processing of the State's Confidential Information and the nature of such Confidential Information, consistent with best industry practice and standards;

9.5 take all reasonable measures to:

(a) secure and defend all locations, equipment, systems and other materials and facilities employed in connection with the Services against "hackers" and others who may seek, without authorization, to disrupt, damage, modify, access or otherwise use Contractor Systems or the information found therein; and

(b) prevent (i) the State and its Authorized Users from having access to the data of other customers or such other customer's users of the Services; (ii) the State's Confidential Information from being commingled with or contaminated by the data of other customers or their users of the Services; and (iii) unauthorized access to any of the State's Confidential Information;

9.6 State Data must be encrypted in transit and at rest using AES 256bit or higher encryption;

9.7 The Hosted Services must support Identity Federation/Single Sign-on (SSO) capabilities using Security Assertion Markup Language (SAML) or comparable mechanisms; and

9.8 The Hosted Services must have multi-factor authentication for privileged/administrative access.

9.9 assist the State, at no additional cost, with development and completion of a system security plan using the State's automated governance, risk and compliance (GRC) platform.

**10. Unauthorized Access.** Contractor may not access, and shall not permit any access to, State systems, in whole or in part, whether through Contractor's Systems or otherwise, without the State's express prior written authorization. Such authorization may be revoked by the State in writing at any time in its sole discretion. Any access to State systems must be solely in accordance with the Contract and this Schedule, and in no case exceed the scope of the State's authorization pursuant to this **Section 10**. All State-authorized connectivity or attempted connectivity to State systems shall be only through the State's security gateways and firewalls and in compliance with the State's security policies set forth in the Contract as the same may be supplemented or amended by the State and provided to Contractor from time to time.

**11. Contractor Systems.** Contractor will be solely responsible for the information technology infrastructure, including all computers, software, databases, electronic systems (including database management systems) and networks used by or for Contractor in connection with the Services ("**Contractor Systems**") and shall prevent unauthorized access to State systems through the Contractor Systems.

**12. Security Audits.** During the Term, Contractor will:

12.1 maintain complete and accurate records relating to its data protection practices, IT security controls, and the security logs of any of the State's Confidential Information, including any backup, disaster recovery or other policies, practices or procedures relating to the State's Confidential Information and any other information relevant to its compliance with this Schedule;

12.2 upon the State's request, make all such records, appropriate personnel and relevant materials available during normal business hours for inspection and audit by the State or an independent data security expert that is reasonably acceptable to Contractor, provided that the State: (i) gives Contractor at least five (5) Business Days prior notice of any such audit; (ii) undertakes such audit no more than once per calendar year, except for good cause shown; and (iii) conducts or causes to be conducted such audit in a manner designed to minimize disruption of Contractor's normal business operations and that complies with the terms and conditions of all data confidentiality, ownership, privacy, security and restricted use provisions of the Contract. The State may, but is not obligated to, perform such security audits, which shall, at the State's option and request, include penetration and security tests, of any and all Contractor Systems and their housing facilities and operating environments; and

12.3 if requested by the State, provide a copy of Contractor's FedRAMP System Security Plan. The System Security Plan will be recognized as Contractor's Confidential Information.

**13. Nonexclusive Remedy for Security Breach.** Any failure of the Services to meet the requirements of this Schedule with respect to the security of any State Data or other Confidential Information of the State, including any related backup, disaster recovery or other policies, practices or procedures, is a material breach of the Contract for which the State, at its option, may terminate the Contract immediately upon written notice to Contractor without any notice or cure period, and Contractor must promptly reimburse to the State any Fees prepaid by the State prorated to the date of such termination.

**SCHEDULE D – CONTRACTOR’S DISASTER RECOVERY PLAN**

**Schedule Redacted for Security Reasons**