



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 200000000019

CONTRACTOR	MICHIGAN PEER REVIEW ORGANIZATION
	22670 Haggerty Road
	Farmington Hills, MI 48335
	Leland Babitch
	248-465-7400
	lbabitch@mpro.org
	CV0029952

STATE	Program Manager	Aimee Khaled	MDHHS
		517-335-5118	
		khaleda@michigan.gov	
	Contract Administrator	Brandon Samuel	DTMB
		(517) 249-0439	
		samuelb@michigan.gov	

CONTRACT SUMMARY					
STATEWIDE MEDICAID LONG TERM SERVICES AND SUPPORTS ELIGIBILITY AND QUALITY REVIEWS FOR THE MDHHS					
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE		
January 1, 2020	December 31, 2022	2 - 1 Year	December 31, 2022		
PAYMENT TERMS		DELIVERY TIMEFRAME			
1%15, NET 45		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	REVISD EXP. DATE		
<input type="checkbox"/>		<input type="checkbox"/>	N/A		
CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE			
\$673,800.00	\$0.00	\$673,800.00			
DESCRIPTION					
Please note the State Program Manager has changed from Alisyn Crawford to Aimee Khaled (khaleda@michigan.gov or 517-335-5118)					
All other terms, conditions, specifications and pricing remain the same. Per contractor and agency agreement, and DTMB Central Procurement Services approval.					



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

NOTICE OF CONTRACT

NOTICE OF CONTRACT NO. **200000000019**
between
THE STATE OF MICHIGAN
and

CONTRACTOR	Michigan Peer Review Organization
	22670 Haggerty Road
	Farmington Hills, MI 48335
	LeLand Babitch
	248-465-7400
	lbabitch@mpro.org
	CV0029952

STATE	Program Manager	Alisyn Crawford	MDHHS
		517-335-5118	
		Crawford5@michigan.gov	
	Contract Administrator	Brandon Samuel	DTMB
		517-249-0439	
		samuelb@michigan.gov	

CONTRACT SUMMARY

DESCRIPTION: Statewide Medicaid Long Term Services and Supports Eligibility and Quality Reviews for the Michigan Department of Health and Human Services

INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
January 1, 2020	December 31, 2022	2 – 1 year	
PAYMENT TERMS		DELIVERY TIMEFRAME	
1%15; Net 45		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 190000002686. Orders for delivery will be issued directly by MDHHS (see Schedule A, Section 7.1 Authorizing Document).			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION			\$673,800.00

FOR THE CONTRACTOR:

Company Name

Authorized Agent Signature

Authorized Agent (Print or Type)

Date

FOR THE STATE:

Signature

Brandon Samuel. Category Specialist
Name & Title

DTMB – Central Procurement Services
Agency

Date



STATE OF MICHIGAN

STANDARD CONTRACT TERMS

This STANDARD CONTRACT ("**Contract**") is agreed to between the State of Michigan (the "**State**") and Michigan Peer Review Organization ("**Contractor**"), a Service Corporation, Non-Profit 501(c)(3). This Contract is effective on January 1, 2020 ("**Effective Date**"), and unless terminated, expires on December 31, 2022.

This Contract may be renewed for up to two 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.

The parties agree as follows:

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

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

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

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

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

If to State:	If to Contractor:
Brandon Samuel 525 W. Allegan St. 1 st Floor P.O. Box 30026 Lansing, MI 48909-7526 samuelb@michigan.gov 517-249-0439	Leland Babitch, M.D., MBA, President & CEO 22670 Haggerty Road, Suite 100 Farmington Hills, MI 48335 lbabitch@mpro.org (248) 465-7400

- 3. Contract Administrator.** The Contract Administrator for each party is the only person authorized to modify any terms of this Contract, and approve and execute any change under this Contract (each a "**Contract Administrator**");

State:	Contractor:
Brandon Samuel 525 W. Allegan St. 1 st Floor P.O. Box 30026 Lansing, MI 48909-7526 samuelb@michigan.gov 517-249-0439	Leland Babitch, M.D., MBA, President & CEO 22670 Haggerty Road, Suite 100 Farmington Hills, MI 48335 lbabitch@mpro.org (248) 465-7400

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

State:	Contractor:
L. Alisyn Crawford, LOCD Policy Specialist 400 South Pine Rd. Lansing, Michigan 48909 Crawford5@michigan.gov 517-335-5118	Meri Trajkovski, R.N., Director Medical Review Services 22670 Haggerty Road, Suite 100 Farmington Hills, MI 48335 mtrajkovski@mpro.org (248) 465-7367

5. **Performance Guarantee.** Contractor must at all times have financial resources sufficient, in the opinion of the State, to ensure performance of the Contract and must provide proof upon request. The State may require a performance bond (as specified in Schedule A) if, in the opinion of the State, it will ensure performance of the Contract.
6. **Insurance Requirements.** Contractor must maintain the insurances identified below and is responsible for all deductibles. All required insurance must: (a) protect the State from claims that may arise out of, are alleged to arise out of, or result from Contractor's or a subcontractor's performance; (b) be primary and non-contributing to any comparable liability insurance (including self-insurance) carried by the State; and (c) be provided by a company with an A.M. Best rating of "A-" or better, and a financial size of VII or better.

Required Limits	Additional Requirements
Commercial General Liability Insurance	
<u>Minimum Limits:</u> \$1,000,000 Each Occurrence Limit \$1,000,000 Personal & Advertising Injury Limit \$2,000,000 General Aggregate Limit \$2,000,000 Products/Completed Operations <u>Deductible Maximum:</u> \$50,000 Each Occurrence	Contractor must have their policy 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.

Umbrella or Excess Liability Insurance	
<u>Minimum Limits:</u> \$5,000,000 General Aggregate	Contractor must have their policy follow form.
Automobile Liability Insurance	
<u>Minimum Limits:</u> \$1,000,000 Per Accident	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.
Workers' Compensation Insurance	
<u>Minimum Limits:</u> Coverage according to applicable laws governing work activities.	Waiver of subrogation, except where waiver is prohibited by law.

Employers Liability Insurance	
<u>Minimum Limits:</u> \$500,000 Each Accident \$500,000 Each Employee by Disease \$500,000 Aggregate Disease.	
Privacy and Security Liability (Cyber Liability) Insurance	
<u>Minimum Limits:</u> \$1,000,000 Each Occurrence \$1,000,000 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, regulatory defense and penalties, and website media content liability.
Professional Liability (Errors and Omissions) Insurance	
<u>Minimum Limits:</u> \$3,000,000 Each Occurrence \$3,000,000 Annual Aggregate <u>Deductible Maximum:</u> \$50,000 Per Loss	

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

Contractor must: (a) provide insurance certificates to the Contract Administrator, containing the agreement or 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 State business days if any insurance is cancelled; and (d) waive all rights against the State for damages covered by insurance. Failure to maintain the required insurance does not limit this waiver.

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

7. **Reserved.**
8. **Reserved.**
9. **Independent Contractor.** Contractor is an independent contractor and assumes all rights, obligations and liabilities set forth in this Contract. Contractor, its employees, and agents will not be considered employees of the State. No partnership or joint venture relationship is created by virtue of this Contract. Contractor, and not the State, is responsible for the payment of wages, benefits and taxes of Contractor's employees and any subcontractors. Prior performance does not modify Contractor's status as an independent contractor.
10. **Subcontracting.** Contractor may not delegate any of its obligations under the Contract without the prior written approval of the State. Contractor must notify the State at least 90 calendar days before the proposed delegation and provide the State any information it requests to determine whether the delegation is in its best interest. If approved, Contractor must: (a) be the sole point of contact regarding all contractual matters, including payment and charges for all Contract Activities; (b) make all payments to the subcontractor; and (c) incorporate the terms and conditions contained in this Contract in any subcontract with a subcontractor.

Contractor remains responsible for the completion of the Contract Activities, compliance with the terms of this Contract, and the acts and omissions of the subcontractor. The State, in its sole discretion, may require the replacement of any subcontractor.

11. **Staffing.** The State's Contract Administrator may require Contractor to remove or reassign personnel by providing a notice to Contractor.
12. **Background Checks.** Upon request, Contractor must perform background checks on all employees and subcontractors and its employees prior to their assignment. The scope is at the discretion of the State and documentation must be provided as requested. Contractor is responsible for all costs associated with the requested background checks. The State, in its sole discretion, may also perform background checks.
13. **Assignment.** Contractor may not assign this Contract to any other party without the prior approval of the State. Upon notice to Contractor, the State, in its sole discretion, may assign in whole or in part, its rights or responsibilities under this Contract to any other party. If the State determines that a novation of the Contract to a third party is necessary, Contractor will agree to the novation and provide all necessary documentation and signatures.
14. **Change of Control.** Contractor will notify, at least 90 calendar days before the effective date, the State of a change in Contractor's organizational structure or ownership. For purposes of this Contract, a change in control means any of the following: (a) a sale of more than 50% of Contractor's stock; (b) a sale of substantially all of Contractor's assets; (c) a change in a majority of Contractor's board members; (d) consummation of a merger or consolidation of Contractor with any other entity; (e) a change in ownership through a transaction or series of transactions; (f) or the board (or the stockholders) approves a plan of complete liquidation. A change of control does not include any consolidation or merger effected exclusively to change the domicile of Contractor, or any transaction or series of transactions principally for bona fide equity financing purposes.

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

15. **Ordering.** Contractor is not authorized to begin performance until receipt of authorization as identified in Schedule A.
16. **Acceptance.** Contract Activities are subject to inspection and testing by the State within 30 calendar days of the State's receipt of them ("**State Review Period**"), unless otherwise provided in Schedule A. If the Contract Activities are not fully accepted by the State, the State will notify Contractor by the end of the State Review Period that either: (a) the Contract Activities are accepted, but noted deficiencies must be corrected; or (b) the Contract Activities are rejected. If the State finds material deficiencies, it may: (i) reject the Contract Activities without performing any further inspections; (ii) demand performance at no additional cost; or (iii) terminate this Contract in accordance with Section 23, Termination for Cause. Within 10 State business days from the date of Contractor's receipt of notification of acceptance with deficiencies or rejection of any Contract Activities, Contractor must cure, at no additional cost, the deficiency and deliver unequivocally acceptable Contract Activities to the State. If acceptance with deficiencies or rejection of the Contract Activities impacts the content or delivery of other non-completed Contract Activities, the parties' respective Program Managers must determine an agreed to number of days for re-submission that minimizes the overall impact to the Contract. However, nothing herein affects, alters, or relieves Contractor of its obligations to correct deficiencies in accordance with the time response standards set forth in this Contract. If Contractor is unable or refuses to correct the deficiency within the time response standards set forth in this Contract, the State may cancel the order in whole or in part. The State, or a third party identified by the State, may perform the Contract Activities and recover the difference between the cost to cure and the Contract price plus an additional 10% administrative fee.

17. **Reserved.**

18. **Reserved.**

19. **Reserved.**

20. **Terms of Payment.** Invoices must conform to the requirements communicated from time-to-time by the State. All undisputed amounts are payable within 45 days of the State's receipt. Contractor may only charge

for Contract Activities performed as specified in Schedule A. Invoices must include an itemized statement of all charges. The State is exempt from State sales tax for direct purchases and may be exempt from federal excise tax, if Services purchased under this Agreement are for the State's exclusive use. Notwithstanding the foregoing, all prices are inclusive of taxes, and Contractor is responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state, or local governmental entity on any amounts payable by the State under this Contract.

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

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

21. **Liquidated Damages.** Liquidated damages, if applicable, will be assessed as described in Schedule A.
22. **Stop Work Order.** The State may suspend any or all activities under the Contract at any time. The State will provide Contractor a written stop work order detailing the suspension. Contractor must comply with the stop work order upon receipt. Within 90 calendar days, or any longer period agreed to by Contractor, the State will either: (a) issue a notice authorizing Contractor to resume work, or (b) terminate the Contract or purchase order. The State will not pay for Contract Activities, Contractor's lost profits, or any additional compensation during a stop work period.
23. **Termination for Cause.** The State may terminate this Contract for cause, in whole or in part, if Contractor, as determined by the State: (a) endangers the value, integrity, or security of any location, data, or personnel; (b) becomes insolvent, petitions for bankruptcy court proceedings, or has an involuntary bankruptcy proceeding filed against it by any creditor; (c) engages in any conduct that may expose the State to liability; (d) breaches any of its material duties or obligations; or (e) fails to cure a breach within the time stated in a notice of breach. Any reference to specific breaches being material breaches within this Contract will not be construed to mean that other breaches are not material.

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

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

24. **Termination for Convenience.** The State may immediately terminate this Contract in whole or in part without penalty and for any reason, including but not limited to, appropriation or budget shortfalls. The termination notice will specify whether Contractor must: (a) cease performance of the Contract Activities immediately, or (b) continue to perform the Contract Activities in accordance with Section 25, Transition Responsibilities. If the State terminates this Contract for convenience, the State will pay all reasonable costs, as determined by the State, for State approved Transition Responsibilities.
25. **Transition Responsibilities.** Upon termination or expiration of this Contract for any reason, Contractor must, for a period of time specified by the State (not to exceed 90 calendar days), provide all reasonable transition assistance requested by the State, to allow for the expired or terminated portion of the Contract Activities to continue without interruption or adverse effect, and to facilitate the orderly transfer of such Contract Activities to the State or its designees. Such transition assistance may include, but is not limited to:

(a) continuing to perform the Contract Activities at the established Contract rates; (b) taking all reasonable and necessary measures to transition performance of the work, including all applicable Contract Activities, training, equipment, software, leases, reports and other documentation, to the State or the State's designee; (c) taking all necessary and appropriate steps, or such other action as the State may direct, to preserve, maintain, protect, or return to the State all materials, data, property, and confidential information provided directly or indirectly to Contractor by any entity, agent, vendor, or employee of the State; (d) transferring title in and delivering to the State, at the State's discretion, all completed or partially completed deliverables prepared under this Contract as of the Contract termination date; and (e) preparing an accurate accounting from which the State and Contractor may reconcile all outstanding accounts (collectively, "**Transition Responsibilities**"). This Contract will automatically be extended through the end of the transition period.

- 26. General Indemnification.** Contractor must defend, indemnify and hold the State, its departments, divisions, agencies, offices, commissions, officers, and employees harmless, without limitation, from and against any and all actions, claims, losses, liabilities, damages, costs, attorney fees, and expenses (including those required to establish the right to indemnification), arising out of or relating to: (a) any breach by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable) of any of the promises, agreements, representations, warranties, or insurance requirements contained in this Contract; (b) any infringement, misappropriation, or other violation of any intellectual property right or other right of any third party; (c) any bodily injury, death, or damage to real or tangible personal property occurring wholly or in part due to action or inaction by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable); and (d) any acts or omissions of Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable).

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

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

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

- 27. Infringement Remedies.** If, in either party's opinion, any piece of equipment, software, commodity, or service supplied by Contractor or its subcontractors, or its operation, use or reproduction, is likely to become the subject of a copyright, patent, trademark, or trade secret infringement claim, Contractor must, at its expense: (a) procure for the State the right to continue using the equipment, software, commodity, or service, or if this option is not reasonably available to Contractor, (b) replace or modify the same so that it becomes non-infringing; or (c) accept its return by the State with appropriate credits to the State against Contractor's charges and reimburse the State for any losses or costs incurred as a consequence of the State ceasing its use and returning it.
- 28. Limitation of Liability and Disclaimer of Damages. IN NO EVENT WILL THE STATE'S AGGREGATE LIABILITY TO CONTRACTOR UNDER THIS CONTRACT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS CONTRACT, EXCEED THE MAXIMUM AMOUNT OF FEES PAYABLE UNDER THIS CONTRACT.** The State is not liable for consequential, incidental, indirect, or special damages, regardless of the nature of the action.
- 29. Disclosure of Litigation, or Other Proceeding.** Contractor must notify the State within 14 calendar days of receiving notice of any litigation, investigation, arbitration, or other proceeding (collectively, "**Proceeding**") involving Contractor, a subcontractor, or an officer or director of Contractor or subcontractor, that arises during the term of the Contract, including: (a) a criminal Proceeding; (b) a parole or probation Proceeding; (c) a Proceeding under the Sarbanes-Oxley Act; (d) a civil Proceeding involving: (1) a claim that might reasonably be expected to adversely affect Contractor's viability or financial stability; or (2) a governmental or public entity's claim or written allegation of fraud; or (e) a Proceeding involving any license that Contractor is required to possess in order to perform under this Contract.

30. Reserved.

31. State Data.

- a. Ownership. The State's data ("**State Data**," which will be treated by Contractor as Confidential Information) includes: (a) the State's data collected, used, processed, stored, or generated as the result of the Contract Activities; (b) personally identifiable information ("**PII**") collected, used, processed, stored, or generated as the result of the Contract Activities, including, without limitation, any information that identifies an individual, such as an individual's social security number or other government-issued identification number, date of birth, address, telephone number, biometric data, mother's maiden name, email address, credit card information, or an individual's name in combination with any other of the elements here listed; and, (c) personal health information ("**PHI**") collected, used, processed, stored, or generated as the result of the Contract Activities, which is defined under the Health Insurance Portability and Accountability Act (HIPAA) and its related rules and regulations. State Data is and will remain the sole and exclusive property of the State and all right, title, and interest in the same is reserved by the State. This Section survives the termination of this Contract.
- b. Contractor Use of State Data. Contractor is provided a limited license to State Data for the sole and exclusive purpose of providing the Contract Activities, including a license to collect, process, store, generate, and display State Data only to the extent necessary in the provision of the Contract Activities. Contractor must: (a) keep and maintain State Data in strict confidence, using such degree of care as is appropriate and consistent with its obligations as further described in this Contract and applicable law to avoid unauthorized access, use, disclosure, or loss; (b) use and disclose State Data solely and exclusively for the purpose of providing the Contract Activities, such use and disclosure being in accordance with this Contract, any applicable Statement of Work, and applicable law; and (c) not use, sell, rent, transfer, distribute, or otherwise disclose or make available State Data for Contractor's own purposes or for the benefit of anyone other than the State without the State's prior written consent. This Section survives the termination of this Contract.
- c. Extraction of State Data. Contractor must, within five (5) State business days of the State's request, provide the State, without charge and without any conditions or contingencies whatsoever (including but not limited to the payment of any fees due to Contractor), an extract of the State Data in the format specified by the State.
- d. Backup and Recovery of State Data. Unless otherwise specified in Schedule A, Contractor is responsible for maintaining a backup of State Data and for an orderly and timely recovery of such data. Unless otherwise described in Schedule A, Contractor must maintain a contemporaneous backup of State Data that can be recovered within two (2) hours at any point in time.
- e. Loss 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 survives termination or expiration of this Contract.

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

- a. Meaning of Confidential Information. For the purposes of this Contract, the term "**Confidential Information**" means all information and documentation of a party that: (a) has been marked "confidential" or with words of similar meaning, at the time of disclosure by such party; (b) if disclosed orally or not marked "confidential" or with words of similar meaning, was subsequently summarized in writing by the disclosing party and marked "confidential" or with words of similar meaning; and, (c) should reasonably be recognized as confidential information of the disclosing party. The term "Confidential Information" does not include any information or documentation that was: (a) subject to disclosure under the Michigan Freedom of Information Act (FOIA); (b) already in the possession of the receiving party without an obligation of confidentiality; (c) developed independently by the receiving party, as demonstrated by the receiving party, without violating the disclosing party's proprietary rights; (d) obtained from a source other than the disclosing party without an obligation of confidentiality; or, (e) publicly available when received, or thereafter became publicly available (other than through any unauthorized disclosure by, through, or on behalf of, the receiving party). For purposes of this Contract, in all cases and for all matters, State Data is deemed to be Confidential Information.
- b. Obligation of Confidentiality. The parties agree to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third parties other than employees, agents, or subcontractors of a party who have a need to know in connection with this Contract or to use such Confidential Information for any purposes whatsoever other than the performance of this Contract. The parties agree to advise and require their respective employees, agents, and subcontractors of their obligations to keep all Confidential Information confidential. Disclosure to a subcontractor is permissible where: (a) use of a subcontractor is authorized under this Contract; (b) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the subcontractor's responsibilities; and (c) Contractor obligates the subcontractor in a written contract to maintain the State's Confidential Information in confidence. At the State's request, any employee of Contractor or any subcontractor may be required to execute a separate agreement to be bound by the provisions of this Section.
- c. Cooperation to Prevent Disclosure of Confidential Information. Each party must use its best efforts to assist the other party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the foregoing, each party must advise the other party immediately in the event either party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Contract and each party will cooperate with the other party in seeking injunctive or other equitable relief against any such person.
- d. Remedies for Breach of Obligation of Confidentiality. Each party acknowledges that breach of its obligation of confidentiality may give rise to irreparable injury to the other party, which damage may be inadequately compensable in the form of monetary damages. Accordingly, a party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available, to include, in the case of the State, at the sole election of the State, the immediate termination, without liability to the State, of this Contract or any Statement of Work corresponding to the breach or threatened breach.

- e. Surrender of Confidential Information upon Termination. Upon termination of this Contract or a Statement of Work, in whole or in part, each party must, within 5 calendar days from the date of termination, return to the other party any and all Confidential Information received from the other party, or created or received by a party on behalf of the other party, which are in such party's possession, custody, or control; provided, however, that Contractor must return State Data to the State following the timeframe and procedure described further in this Contract. Should Contractor or the State determine that the return of any Confidential Information is not feasible, such party must destroy the Confidential Information and must certify the same in writing within 5 calendar days from the date of termination to the other party. However, the State's legal ability to destroy Contractor data may be restricted by its retention and disposal schedule, in which case Contractor's Confidential Information will be destroyed after the retention period expires.

33. Data Privacy and Information Security.

- a. Undertaking by Contractor. Without limiting Contractor's obligation of confidentiality as further described, Contractor is responsible for establishing and maintaining a data privacy and information security program, including physical, technical, administrative, and organizational safeguards, that is designed to: (a) ensure the security and confidentiality of the State Data; (b) protect against any anticipated threats or hazards to the security or integrity of the State Data; (c) protect against unauthorized disclosure, access to, or use of the State Data; (d) ensure the proper disposal of State Data; and (e) ensure that all employees, agents, and subcontractors of Contractor, if any, comply with all of the foregoing. In no case will the safeguards of Contractor's data privacy and information security program be less stringent than the safeguards used by the State, and Contractor must at all times comply with all applicable State IT policies and standards, which are available to Contractor upon request.
- b. Audit by Contractor. No less than annually, Contractor must conduct a comprehensive independent third-party audit of its data privacy and information security program and provide such audit findings to the State.
- c. Right of Audit by the State. Without limiting any other audit rights of the State, the State has the right to review Contractor's data privacy and information security program prior to the commencement of Contract Activities and from time to time during the term of this Contract. During the providing of the Contract Activities, on an ongoing basis from time to time and without notice, the State, at its own expense, is entitled to perform, or to have performed, an on-site audit of Contractor's data privacy and information security program. In lieu of an on-site audit, upon request by the State, Contractor agrees to complete, within 45 calendar days of receipt, an audit questionnaire provided by the State regarding Contractor's data privacy and information security program.
- d. Audit Findings. Contractor must implement any required safeguards as identified by the State or by any audit of Contractor's data privacy and information security program.
- e. State's Right to Termination for Deficiencies. The State reserves the right, at its sole election, to immediately terminate this Contract or a Statement of Work without limitation and without liability if the State determines that Contractor fails or has failed to meet its obligations under this Section.

34. Reserved.

35. Reserved.

- 36. Records Maintenance, Inspection, Examination, and Audit.** The State or its designee may audit Contractor to verify compliance with this Contract. Contractor must retain and provide to the State or its designee and the auditor general upon request, all financial and accounting records related to the Contract through the term of the Contract and for 4 years after the latter of termination, expiration, or final payment under this Contract or any extension ("**Audit Period**"). If an audit, litigation, or other action involving the records is initiated before the end of the Audit Period, Contractor must retain the records until all issues are resolved.

Within 10 calendar days of providing notice, the State and its authorized representatives or designees have the right to enter and inspect Contractor's premises or any other places where Contract Activities are being performed, and examine, copy, and audit all records related to this Contract. Contractor must cooperate and provide reasonable assistance. If any financial errors are revealed, the amount in error must be reflected as

a credit or debit on subsequent invoices until the amount is paid or refunded. Any remaining balance at the end of the Contract must be paid or refunded within 45 calendar days.

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

37. **Warranties and Representations.** Contractor represents and warrants: (a) Contractor is the owner or licensee of any Contract Activities that it licenses, sells, or develops and Contractor has the rights necessary to convey title, ownership rights, or licensed use; (b) all Contract Activities are delivered free from any security interest, lien, or encumbrance and will continue in that respect; (c) the Contract Activities will not infringe the patent, trademark, copyright, trade secret, or other proprietary rights of any third party; (d) Contractor must assign or otherwise transfer to the State or its designee any manufacturer's warranty for the Contract Activities; (e) the Contract Activities are merchantable and fit for the specific purposes identified in the Contract; (f) the Contract signatory has the authority to enter into this Contract; (g) all information furnished by Contractor in connection with the Contract fairly and accurately represents Contractor's business, properties, finances, and operations as of the dates covered by the information, and Contractor will inform the State of any material adverse changes; (h) all information furnished and representations made in connection with the award of this Contract is true, accurate, and complete, and contains no false statements or omits any fact that would make the information misleading; and that (i) Contractor is neither currently engaged in nor will engage in the boycott of a person based in or doing business with a strategic partner as described in 22 USC 8601 to 8606. A breach of this Section is considered a material breach of this Contract, which entitles the State to terminate this Contract under Section 23, Termination for Cause.
38. **Conflicts and Ethics.** Contractor will uphold high ethical standards and is prohibited from: (a) holding or acquiring an interest that would conflict with this Contract; (b) doing anything that creates an appearance of impropriety with respect to the award or performance of the Contract; (c) attempting to influence or appearing to influence any State employee by the direct or indirect offer of anything of value; or (d) paying or agreeing to pay any person, other than employees and consultants working for Contractor, any consideration contingent upon the award of the Contract. Contractor must immediately notify the State of any violation or potential violation of these standards. This Section applies to Contractor, any parent, affiliate, or subsidiary organization of Contractor, and any subcontractor that performs Contract Activities in connection with this Contract.
39. **Compliance with Laws.** Contractor must comply with all federal, state and local laws, rules and regulations.
40. **Reserved.**
41. **Reserved.**
42. **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.
43. **Unfair Labor Practice.** Under MCL 423.324, the State may void any Contract with a Contractor or subcontractor who appears on the Unfair Labor Practice register compiled under MCL 423.322.
44. **Governing Law.** This Contract is governed, construed, and enforced in accordance with Michigan law, excluding choice-of-law principles, and all claims relating to or arising out of this Contract are governed by Michigan law, excluding choice-of-law principles. Any dispute arising from this Contract must be resolved in Michigan Court of Claims. Contractor consents to venue in Ingham County, and waives any objections, such as lack of personal jurisdiction or *forum non conveniens*. Contractor must appoint agents in Michigan to receive service of process.
45. **Non-Exclusivity.** Nothing contained in this Contract is intended nor will be construed as creating any requirements contract with Contractor. This Contract does not restrict the State or its agencies from acquiring similar, equal, or like Contract Activities from other sources.

46. **Force Majeure.** Neither party will be in breach of this Contract because of any failure arising from any disaster or acts of god that are beyond their control and without their fault or negligence. Each party will use commercially reasonable efforts to resume performance. Contractor will not be relieved of a breach or delay caused by its subcontractors. If immediate performance is necessary to ensure public health and safety, the State may immediately contract with a third party.
47. **Dispute Resolution.** The parties will endeavor to resolve any Contract dispute in accordance with this provision. The dispute will be referred to the parties' respective Contract Administrators or Program Managers. Such referral must include a description of the issues and all supporting documentation. The parties must submit the dispute to a senior executive if unable to resolve the dispute within 15 State business days. The parties will continue performing while a dispute is being resolved, unless the dispute precludes performance. A dispute involving payment does not preclude performance.
- Litigation to resolve the dispute will not be instituted until after the dispute has been elevated to the parties' senior executive and either concludes that resolution is unlikely or fails to respond within 15 business days. The parties are not prohibited from instituting formal proceedings: (a) to avoid the expiration of statute of limitations period; (b) to preserve a superior position with respect to creditors; or (c) where a party makes a determination that a temporary restraining order or other injunctive relief is the only adequate remedy. This Section does not limit the State's right to terminate the Contract.
48. **Media Releases.** News releases (including promotional literature and commercial advertisements) pertaining to the Contract or project to which it relates must not be made without prior written State approval, and then only in accordance with the explicit written instructions of the State.
49. **Website Incorporation.** The State is not bound by any content on Contractor's website unless expressly incorporated directly into this Contract.
50. **Entire Agreement and Order of Precedence.** This Contract, which includes Schedule A – Statement of Work, and expressly incorporated schedules and exhibits, is the entire agreement of the parties related to the Contract Activities. This Contract supersedes and replaces all previous understandings and agreements between the parties for the Contract Activities. If there is a conflict between documents, the order of precedence is: (a) first, this Contract, excluding its schedules, exhibits, and Schedule A – Statement of Work; (b) second, Schedule A – Statement of Work as of the Effective Date; and (c) third, schedules expressly incorporated into this Contract as of the Effective Date. NO TERMS ON CONTRACTOR'S INVOICES, ORDERING DOCUMENTS, WEBSITE, BROWSE-WRAP, SHRINK-WRAP, CLICK-WRAP, CLICK-THROUGH OR OTHER NON-NEGOTIATED TERMS AND CONDITIONS PROVIDED WITH ANY OF THE CONTRACT ACTIVITIES WILL CONSTITUTE A PART OR AMENDMENT OF THIS CONTRACT OR IS BINDING ON THE STATE FOR ANY PURPOSE. ALL SUCH OTHER TERMS AND CONDITIONS HAVE NO FORCE AND EFFECT AND ARE DEEMED REJECTED BY THE STATE, EVEN IF ACCESS TO OR USE OF THE CONTRACT ACTIVITIES REQUIRES AFFIRMATIVE ACCEPTANCE OF SUCH TERMS AND CONDITIONS.
51. **Severability.** If any part of this Contract is held invalid or unenforceable, by any court of competent jurisdiction, that part will be deemed deleted from this Contract and the severed part will be replaced by agreed upon language that achieves the same or similar objectives. The remaining Contract will continue in full force and effect.
52. **Waiver.** Failure to enforce any provision of this Contract will not constitute a waiver.
53. **Survival.** The provisions of this Contract that impose continuing obligations, including warranties and representations, termination, transition, insurance coverage, indemnification, and confidentiality, will survive the expiration or termination of this Contract.
54. **Contract Modification.** This Contract may not be amended except by signed agreement between the parties (a "**Contract Change Notice**"). Notwithstanding the foregoing, no subsequent Statement of Work or Contract Change Notice executed after the Effective Date will be construed to amend this Contract unless it specifically states its intent to do so and cites the section or sections amended.

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 CFR Part 60-1.3](#), and except as otherwise may be provided under [41 CFR 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**, bidders and the 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. 200000000019

**Statewide Medicaid Long Term Services and Supports Eligibility and Quality Reviews for the Michigan
Department of Health and Human Services**

SCHEDULE A STATEMENT OF WORK CONTRACT ACTIVITIES

This schedule identifies the anticipated requirements of the Contract. The term “Contractor” in this document refers to Michigan Peer Review Organization.

BACKGROUND

MDHHS is the single State agency responsible for health policy, the purchase of health care services, and accountability of those services to ensure only appropriate, medically necessary services are provided to the Medicaid population. Further, MDHHS has a vested interest to ensure that the services being provided and funded by Medicaid are delivered with quality assurances.

SCOPE

The purpose of this Contract is:

- a. To have a qualified Contractor conduct timely Verification Reviews of a sample of Level of Care Determination (LOCD) assessments performed by long-term care program providers (nursing facilities, MI Choice waiver agents, PACE organizations and MI Health Link Integrated Care Organizations).
- b. Conduct Secondary Reviews when requested by the provider or beneficiary when an individual is determined ineligible for long-term services and supports based on an LOCD.
- c. When an LOCD decision made by the Contractor is appealed, the Contractor must provide a written report of the basis for their decision and participate in the State Fair Hearing process.
- d. Conduct quality reviews of a random sample of Passive Redetermination LOCDs to assess the correspondence between the Passive Redetermination and the program assessment from which the Passive Redetermination is derived. Provide a written analysis of the quality review.
- e. Provide written notification of decisions to providers and beneficiaries per Medicaid policy.

Attachment A.1 lists MDHHS definitions that are seen within the body of this Contract and when performing the Contract’s requirements.

REQUIREMENTS

Contractor must provide Deliverables/Services and staff, and otherwise do all things necessary or incidental to the performance of work.

1. General Requirements

- a. Contract Activities must be completed as per the policy requirements set forth in the Nursing Facility Level of Care Determination (LOCD) Chapter of the Medicaid Provider Manual (State to provide). The LOCD Policy Chapter describes the MDHHS LOCD assessment, eligibility requirements, processes, criteria and appeal rights. The Nursing Facility Level of Care Field Definitions Guidelines prescribes how providers are to conduct the LOCD and interpret the criteria (State to provide).
- b. The Contractor must follow the above policy and guidelines to execute the following reviews:

The Contractor must conduct the following reviews:

1. LOCD Verification Review
2. LOCD Secondary Review
3. LOCD Quality Review

- c. MDHHS reserves the right to adjust the number of LTSS reviews with a 30-day notice to the Contractor. The State reserves the right to change/cancel the review process.

A. LOCD Verification Review (LOCD-VR)

- a. **Review Amount:** The CHAMPS system will randomly select 400 eligible LOCD records and 400 ineligible LOCD records annually to be reviewed by the Contractor. LOCD records will be selected daily in real-time.
- b. **Review Description:** Annually, MDHHS will use CHAMPS to randomly select a sample of LOCDs for review. The purpose of this review is to determine if the LOCD was conducted properly according to MDHHS LOCD policy standards and resulted in the correct determination of eligibility or ineligibility. When an LOCD is submitted in the CHAMPS system, the provider will receive a real-time pop up alert informing them that their LOCD has been selected for review. The provider will then have one business day to upload supporting documentation in CHAMPS to the LOCD record. The third-party designee will be responsible for the review of the documentation and provide a determination within two business days of receiving the documentation upload in CHAMPS. LOCDs selected for Verification Review are not considered complete until the Contractor informs the provider of the result of the review in CHAMPS.

- c. **Possible outcomes and Contractor responsibilities depending on determination:**

Approved (*eligible* record): When the Contractor, based on a review of the LOCD data entries and the uploaded documentation, determines that the record properly reflects LOCD eligibility, the Contractor must “approve” the LOCD record. When the Contractor approves an eligible record, the Contractor is stating that they agree that the individual is eligible, and the Door selection is accurate. The status of the LOCD record changes to “review complete”.

Rejected (*eligible* record): When the Contractor determines that the individual is eligible, but the Door selected is not an accurate reflection of the individual’s functionality, the Contractor must “reject” the LOCD record. Once the record is rejected, the Contractor must complete a new LOCD record to reflect the accurate LOCD qualifying Door.

Documents Not Available (*eligible/ineligible* record): When the provider fails to upload supporting documentation in CHAMPS within one business day, the Contractor must act upon the selected LOCD record and deem it as “Documents not available.” Once this status is placed on the LOCD record, any subsequent LOCD done for the beneficiary will be selected for review until supporting documentation is provided.

Approved (*ineligible* record): If the Contractor determines that the LOCD data accurately reflects that the beneficiary is ineligible for the nursing facility level of care (a Door 0), then the Contractor must mark the record as approved. The Contractor must then complete a new Door 0 record to reflect the reviewer’s determination.

Rejected (*ineligible* record): If the Contractor determines that the individual does meet LOCD eligibility through a qualifying Door (1-8), the Contractor must reject the Door 0 record and complete a new LOCD to reflect the appropriate qualifying Door.

- d. **Beneficiary Appeal Process:**

An individual who has been deemed ineligible for the nursing facility level of care may appeal after the Contractor has issued an adverse action notice to the individual within the guidelines stated in policy. When the individual requests a State Fair Hearing, the Contractor must provide the written reports and make direct testimony available to MDHHS as MDHHS deems necessary. An appeals form (Attachment B - DCH-0092 Hearing Request) and an addressed stamped envelope must accompany the adverse action notice. The adverse action notice and appeal form must be sent to the individual the day of the adverse action. Copies of all adverse action notices must be stored by the Contractor per the MDHHS’ retention schedule and available to MDHHS upon request. The Contractor must provide a written report and telephonically participate in the State Fair Hearing. Hearings typically last approximately one hour or less; occasionally a hearing may last two or more hours.

B. LOCD Secondary Review

- a. **Review Description:** The provider or the individual (or their legal representative) may request an LOCD Secondary Review. The review is completed by the Contractor to ensure full consideration of LOCD eligibility options. The review is available only when an LOCD is entered in CHAMPS and results in Door 0, indicating ineligibility. The Secondary Review examines the documentation for all Doors of eligibility.
- b. **Review Process:** A request for Secondary review must be made telephonically to the Contractor by the provider (following a Door 0 record but prior to adverse action notice) or by the individual (or their representative) (following a Door 0 record and after the provider gives adverse action notice) within three business days of notice. After getting the request for Secondary Review, the Contractor must contact the

provider and instruct them to upload supporting documentation in CHAMPS within one business day for review. Following review of the documentation, the Contractor must make a determination of eligibility (Doors 1-8) or ineligibility (Door 0). The Secondary Review has to be determined within three business days from the date of receipt of documentation. The Contractor must contact all parties with the results of the review (provider – telephonic) (individual/representative – written notice if ineligible and telephonic if eligible).

- c. **Beneficiary Appeal Process:** An individual who has been deemed ineligible for the nursing facility level of care may appeal after the Contractor issues an adverse action notice within the guidelines stated in policy. When an appeal is made, the Contractor must provide the written reports and make direct testimony available to MDHHS as MDHHS deems necessary. An appeals form (Attachment B - DCH-0092 Hearing Request) and an addressed stamped envelope must accompany the adverse action notice. The adverse action notice and appeal form must be sent to the individual the day of the adverse action. Copies of all adverse action notices must be stored by the Contractor per the MDHHS' retention schedule and available to MDHHS upon request. The Contractor must provide a written report and telephonically participate in the State Fair Hearing. Hearings typically last approximately one hour or less; occasionally a hearing may last two or more hours.

C. LOCD Quality Review

- a. **Review Description/Process:** The Contractor must conduct a review of randomly selected LOCDs for accuracy. The sample will be provided to the Contractor by MDHHS. The Contractor must inform the nursing facility of a quality review by way of a Notification of Quality Review letter (see Attachment E – Action Notices). The letter must include the Medicaid ID of the beneficiary who will receive a quality review, the 'to' and 'from' dates that the Contractor will be reviewing, a list of the medical records required from the provider by the reviewer, and the date by which the requested medical records must be received by the Contractor.
- b. **Provider Appeals Process:** The Contractor must send a quality review denial recommendation to MDHHS following completion of the Contractor's quality review. The Contractor must send notice of the determination of the quality review(s) to the provider. The provider must be able to request an appeal of any adverse determination made by the Contractor. MDHHS allows the provider the right of appeal through the Michigan Administrative Code, MAC R400.3401-400.3425 under the authority conferred on the executive director of the department of health and human services by section 6 and 9 of 1939 PA 280, MCL 400.6 and 400.9, and Executive Reorganization Orders 2005-1 and 2011-4, MCL 445.2021 and 445.2030).
- c. The Contractor's nurse reviewer must be available to testify as to the results of the quality review at any preliminary or internal conference, administrative hearing, or judicial proceeding. The Contractor representation at the appeals will be at the request of MOAHR for MDHHS.

D. Additional Contractor Requirements

- a. The following are the mandatory elements for the Contract.
 - i. Responsibility for the authorization must be implemented no later than the first day of this Contract.
 - ii. The telephone and computer systems must be available from 8:00 am – 5:00 pm ET Monday through Friday except for State approved holidays.
 - iii. Telephonic and Computer Electronic systems must be in place on the Contract start date.
 - iv. The Contractor must assign staff to represent MDHHS in the Appeal Process.
 - v. The Contractor must have a system or process in place that allows the validation of all LTSS Reviews.
 - vi. The Contractor must utilize the Community Health Automated Processing System (CHAMPS) and FileNet.
 - vii. Potential Quality of Care issues will be referred to MDHHS Program Manager for review.
- b. A copy of the information received from the provider for all LTSS specified reviews must be validated by the Contractor. The information received from the provider for all LTSS specified reviews must be stored electronically or via hard copy per the MDHHS's retention schedule.
- c. A copy of the Review Coordinator's summary for all LTSS specified reviews must be stored electronically per the MDHHS's retention schedule.
- d. All LTSS specified reviews must be performed based on current Michigan Medicaid Nursing Facility Level of Care Determination criteria.
- e. The Contractor will be paid per review completed for all LTSS specified reviews named herein.
- f. As with any benefit denial, an individual may request a State Fair Hearing. The Administrative Tribunal provides an administrative hearing to appellants requesting a hearing who do not agree with the decision made by MDHHS or a MDHHS contracted agency that either determines eligibility for department program, or delivers a service provided under a department program to a beneficiary, patient, or resident. The MOAHR issues timely, clear, concise, and legally accurate hearing decisions and orders. (See Attachment F - MAHS Administrative Hearing Pamphlet).

- g. The Contractor must maintain absolute confidentiality of providers and beneficiaries assuring that no disclosure of information that may identify beneficiaries or providers is shared inappropriately.

E. Contract Coordination and Training Activities

The reviewer will participate in up to 10 monthly meetings of up to two hours each for the purpose of reviewing policy and operational issues necessary. Up to five of the meetings will be face-to-face meetings in Lansing, Michigan. The remaining meetings will be conducted telephonically at the discretion of MDHHS. The Contractor will provide input and feedback to the revision of standard MDHHS LOCD documents and the development of Medicaid policy bulletins and numbered letters. This work will be conducted through telephonic meetings and email. Training will be provided by MDHHS staff in Lansing and at up to four program sites in Michigan. Training will consist of up to six, two-hour sessions.

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 (if applicable).

Additionally, the Contractor must ensure the following mechanisms are in place:

1. Readiness for Implementation

- a. The Contractor must have an operational system in place no later than the first day of this Contract including, but not limited to, sufficient staff.
- b. The Contractor must demonstrate to the satisfaction of MDHHS, no later than one month from the startup of the Contract, that the Contractor is fully capable of performing all duties under this Contract, including demonstration of the following:
 - i. A sufficient number of RNs experienced in the areas of LTSS to perform the review duties as specified herein. The RNs performing these review functions cannot perform reviews for any other business entities outside this Contract. The MDHHS expects the Contractor to designate separate staff for these review categories.
 - ii. The Contractor has thoroughly trained its staff on the specifics of LTSS and that the Contractor's staff has knowledge to make eligibility determinations.
 - iii. The Contractor has the ability to accept, review, and utilize the CHAMPS system for documentation of LTSS that have been completed.
 - iv. The Contractor has quality assurance procedures in place that assures it follows all State and federal laws for confidentiality
- c. The Contractor's inability to demonstrate to the satisfaction of MDHHS and as provided herein, that the Contractor is fully capable of performing all duties under this Contract no later than the start-up of the Contract (i.e. January 1, 2020), including, but not limited to staff, will be grounds for the immediate termination of this Contract by the State in accordance with the terms specified herein.

1.2. Training

The Contractor must ensure applicable staff is trained in the use of MDHHS policy as related to contract covered services, call center operations, and medical review processes. MDHHS will provide initial CHAMPS system training.

Upon request from MDHHS Program Manager, the Contractor must provide all documentation and training materials that are used to train the Contractor's staff to perform the Contract activities.

2. Services Levels

2.1. Time Frames

All Contract Activities must be delivered within the times specified above in the requirements.

3. Acceptance

3.1. Acceptance, Inspection and Testing

To determine acceptance of the Contract Activities, MDHHS will at a minimum, through monthly/annual Contract reviews and periodic audits, determine if Contractor has met deliverable criteria and if work was performed according to the Contract Specifications.

4. Staffing

4.1. Contractor Representative

The Contractor has assigned Melody Petrul as RN Contractor Representative, specifically assigned to State of Michigan accounts, that will respond to State inquiries regarding the Contract Activities, answering questions related to ordering and delivery, etc. (the “Contractor Representative”). Also see Section 4.4 – Key Personnel.

Melody Petrul can be reached at 734-465-7366 or mpetrul@mpro.org

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

4.2. Customer Service Toll-Free Number

The Contractor must maintain a toll-free customer service number.

- a. The toll-free number must be maintained and staffed by RNs during normal working hours of Monday – Friday, 8:00 a.m. to 5:00 p.m. ET except for State holidays.
- b. The Contractor must answer all incoming phone calls promptly with average time to answer of less than 90 seconds.

The Contractor's toll-free number is 800-727-7223.

4.3. Work Hours

The Contractor must provide Contract Activities during the State's normal working hours Monday – Friday, 8:00 a.m. to 5:00 p.m. ET, excluding state holidays.

4.4. Key Personnel

The Contractor must appoint at a minimum the following individual(s) 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 four hours.

The Contractor must ensure that none of the Key Personnel have a conflict of interest with any organization involved in the reviews.

RN Contractor Representative (Melody Petrul) – This individual will be directly responsible for oversight of the day-to-day operations, contractual reporting requirements, supervision of RNs, and communication with MDHHS.

RN Reviewers (Yvonne Kendall; Geralann Shields)– These individuals are responsible for staffing the customer service toll-free line, processing and performing reviews, and advancing requests to Reviewers according to Contract requirements.

Contractor Security Officer (Michael Wagner) – 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.

Contractor's Key Personnel must perform all duties at Contractor's offices and facilities. Requests for remote operations must be approved, in writing, by the MDHHS Program Manager.

The Reviewers must meet the following requirements:

- Registered Nurse with a valid Michigan license
- experience in long-term services and supports programs, such as nursing facilities, PACE programs, or home and community-based waiver programs
- experience conducting long-term services and supports assessments, such as the Minimum Data Set or interRAI for Home Care assessment instruments.

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

outlining the reasons for the rejection. The State may require a 30-calendar day training period for replacement personnel.

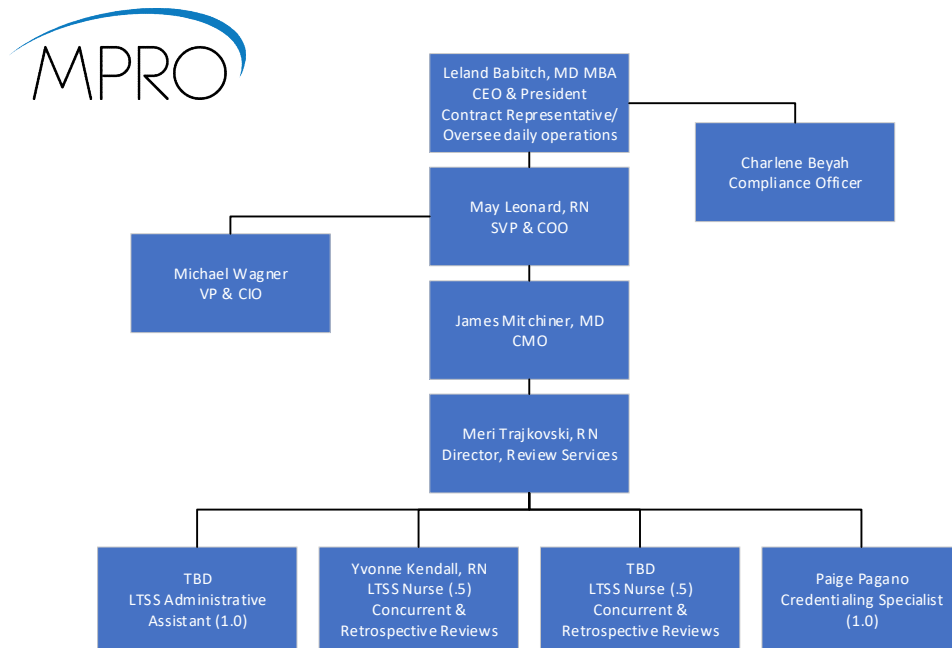
Contractor will not remove any Key Personnel from their assigned roles on this Contract without the prior written consent of the State. The Contractor's removal of Key Personnel without the prior written consent of the State is an unauthorized removal ("Unauthorized Removal"). An Unauthorized Removal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

4.5. Organizational Chart



4.6. Disclosure of Subcontractors

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

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

The relationship of the subcontractor to the Contractor.

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

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

4.7. Security

The Contractor's staff may be required to make deliveries to or enter State facilities and abide by the security requirements of that facility.

5. Project Management

5.1. Project Plan

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

5.2. Meetings

The Contractor must permit the MDHHS or its designee to visit and to make an evaluation of the project as determined by the Program Manager. At least once per Contract year, the MDHHS will complete a site visit of the Contractor to monitor work in progress. The monitoring will occur at the Contractor's site. All travel, lodging, and meal expenses incurred for site visit(s) for up to three State of Michigan employees must be paid by the Contractor. Reimbursement will be made at current State of Michigan rates.

The Contractor must meet/teleconference with the MDHHS Program Manager at least every other week during the first month of the Contract and at least every other month for the remainder of the Contract to review all reports, discuss issues, etc. unless mutually agreed upon to cancel.

MDHHS Program Manager will provide additional training, on an as-needed basis, on-site (either at Contractor's site or at a State site), by email, by facsimile, or by telephone conference calls regarding Medicaid policy, Medicaid policy interpretation and/or additional education necessary for the Contractor to perform proper review.

The State may request other meetings, as it deems appropriate.

5.3. Reporting

The Contractor, unless specified otherwise, must submit reports and information to the MDHHS Program Manager at the address listed in this Contract. The MDHSS Program Manager will evaluate the reports submitted as described in this section for their completeness and adequacy.

1. The Contractor must submit Verification Review Reports: Reports must be provided electronically or by mail to the MDHHS Program Manager monthly, quarterly, and annually. Verification Review reports, must include:
 - a. Number of verification reviews performed.
 - b. The following information for each verification review:
 - i. Review determination date
 - ii. Beneficiary first and last name and Medicaid ID
 - iii. Provider's NPI/Contractor ID and setting type (nursing facility, waiver, PACE, MI Health Link)
 - iv. Review Nurse's name
 - v. Number approved
 - vi. Number rejected
 - vii. Number Documents Not Available
 - viii. Copies of Adverse Action Notices
 - ix. Number of Verification Reviews appealed
2. The Contractor must submit Secondary Review Reports: Reports must be provided electronically or by mail to the MDHHS Program Manager monthly, quarterly, and annually. Secondary Review reports, must include:
 - a. Number of secondary reviews performed
 - b. The following information for each secondary review:
 - i. Telephone contact date from the provider/beneficiary/representative
 - ii. Review determination date
 - iii. Beneficiary first and last name and Medicaid ID
 - iv. Provider's NPI/Contractor ID and setting type (nursing facility, waiver, PACE, MI Health Link)
 - v. Review Nurse's name
 - vi. Number approved
 - vii. Number rejected
 - viii. Number Documents Not Available
 - ix. Copies of Adverse Action Notices
 - x. Number of Secondary Reviews appealed
3. The Contractor must submit LOCD Quality Review Reports: Reports must be provided electronically or by mail to the MDHHS Program Manager monthly, quarterly, and annually. LOCD Quality Review reports must include:
 - a. The number of Quality Reviews performed for the review period.
 - b. The following information for each Quality Review:
 - i. Number of Quality Reviews completed
 - ii. Number of Quality Reviews approved
 - iii. Number of Quality Reviews denied
 - iv. Provider's name
 - v. Provider's NPI
 - vi. Beneficiary's Medicaid ID
 - vii. Review Period
 - viii. Number of Quality Reviews denials appealed.
 - ix. Number of Quality Reviews appeals upheld and overturned.
4. MDHHS reserves the right to require additional reports as necessary.

6. Pricing

6.1. Price Term

Pricing is firm for the entire length of the Contract.

7. Ordering

7.1. Authorizing Document

The appropriate authorizing document for the Contract will be the signed Master Agreement and Agency issued Delivery Orders (DO).

8. Invoice and Payment

8.1. Invoice Requirements

The agency will use the invoice language defined in Section 20, Terms of Payment, in the Standard Contract Terms.

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

The Contractor will be paid per review completed for all of the outlined categories.

8.2. Payment Methods

The State will make payment for Contract Activities through Electronic Fund Transfer (EFT).

9. Liquidated Damages

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

For audits, liquidated damages will be assessed and subject to extrapolation on all services and orders, within the audit sample which are non-compliant with standards specified in the resulting contract without accepted documentation for delay or reason.

10. Service Level Agreement (SLAs)

- A. The Contractor must report on and track the following SLAs in order to measure compliance with performance. The Department reserves the right to independently verify the Contractor's assessment of its performance, either by State employee or third-party review. Disagreements regarding SLAs will be subject to Dispute Resolution, per Section 47 of the Standard Contract Terms. The SLAs in this document are related to on-going Services, and will apply throughout the duration of the Contract, including any optional renewal periods (if exercised).
- B. Performance will be evaluated by the MDHHS's Program Manager and Contractor's Program Manager or designated individual. The MDHHS's Program Manager decision will be final.

Performance Description	Performance Criteria	Standard of Performance	Service Credits
TOLL-FREE LINE			
The Contractor must answer incoming calls, on average, within 90 seconds or less.	Average speed to answer 90 seconds or less	95% monthly average	\$1,000 per month
The Contractor must ensure an average call abandonment rate of 10% or less.	Average of 10% or less abandonment rate	95% monthly average	\$1,000 per month
LTSS RELATED			
The Contractor must complete Verification Reviews per LOCD policy.	Within 2 business days of receipt of documentation	98% monthly average	\$1,000 per month
The Contractor must complete Secondary Reviews per LOCD policy.	Within 3 business days of receipt of documentation	98% monthly average	\$1,000 per month

Performance Description	Performance Criteria	Standard of Performance	Service Credits
The Contractor must conduct Quality Reviews per LOCD policy.	Within 10 business days	98% monthly average	\$1,000 per month
The Contractor must submit Appeal Reports per LOCD policy.	Within 10 business days	98% monthly average	\$1,000 per month
REPORTING RELATED			
The Contractor must submit statistical reports electronically to the MDHHS Program Manager monthly, quarterly, and annually by the fifth day of the month following the month of completion (ex: January's reports must be received by February 5th, etc.).	Reports must be submitted timely accurately and completely.	95% monthly average	\$1,000 per month

C. To support the Contractor's service level, the Contractor and MDHHS agree to the following:

1. The requirement for service level credits shall not apply to any incidents taking place within the first 90 days of initial Contract start date.
2. Prior to imposing any SLA credits, MDHHS will allow the Contractor 30 days to cure the issue.
3. The achievement of the SLAs by the Contractor may require the coordinated, collaborative effort of the Contractor with their subcontractors, and other third parties contracted with by MDHHS. The Contractor must use the Program Manager (refer to Standard Contract Terms, Section 2) as a single point of contact to assist the Contractor in its prompt resolution of SLA defaults and service level issues.
4. Both the Contractor and MDHHS agree to cooperate fully to resolve any performance issues.
5. Both the Contractor and MDHHS agree to the concept of continuous improvement and that the SLAs will be evaluated during the life of the Contract to reflect this concept. To accomplish this, the SLAs will be jointly reviewed by the Contractor and MDHHS at least annually, and more frequently as reasonably requested by either party.

STATE OF MICHIGAN

Contract No. 200000000019

Statewide Medicaid Long Term Services and Supports Eligibility and Quality Reviews for the Michigan Department of Health and Human Services

SCHEDULE B – PRICING

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

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

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

The payment schedule will be based on the number of Verification Reviews, Secondary Reviews, and LOCD post-payment reviews completed the previous month of the contract. The invoice is due by the 5th day of the month following of completion (ex: January's reports must be received by February 5th, etc.). All review payments will include the medical/case record review. The Appeal Process for all reviews will be paid separately. Although the Contractor will receive payment upon completion of all reviews, the Contractor is still required to participate in the Appeal Process even though payment has been received.

Contract Activity	Volume/Month (estimated)	Total Annual Volume (estimated)	Unit Price	One-Year Pricing	Three-Year Pricing
Verification Review	66.66/month	800	\$ 97 per review	\$ 77,600	\$ 232,800
Verification Review Appeals	RN = 8.33 hours	100 hours	\$ 50 per half hour	\$ 10,000	\$ 30,000
Secondary Review	25/month	300	\$ 130 per review	\$ 39,000	\$ 117,000
Secondary Review Appeals	RN = 8.33 hours	100 hours	\$ 50 per half hour	\$ 10,000	\$ 30,000
LOCD Quality Reviews	50/month	600	\$ 130 per review	\$ 78,000	\$ 234,000
LOCD Quality Review Appeals	RN = 8.33 hours	100 hours	\$ 50 per half hour	\$ 10,000	\$ 30,000
GRAND TOTAL				\$ 224,600	\$ 673,800

STATE OF MICHIGAN

Contract No. 200000000019

Statewide Medicaid Long Term Services and Supports Eligibility and Quality Reviews for the Michigan Department of Health and Human Services

SCHEDULE C

HIPAA BUSINESS ASSOCIATE AGREEMENT

The parties to this Business Associate Agreement ("Agreement") are the Michigan Department of Technology, Management and Budget ("DTMB", "Business Associate 1") on behalf of Michigan Department of Health and Human Services ("DHHS", "Covered Entity") and Michigan Peer Review Organization "Business Associate 2".

RECITALS

- A. Under this Agreement, Business Associate 2 will collect or receive certain information on the Covered Entity's behalf, some of which may constitute Protected Health Information ("PHI"). In consideration of the receipt of PHI, the Business Associate agrees to protect the privacy and security of the information as set forth in this Agreement.
- B. Covered Entity and each Business Associate intend to protect the privacy and provide for the security of PHI collected or received by the Business Associate under the Agreement in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA") and the HIPAA Rules, as amended.
- C. The HIPAA Rules require the Covered Entity to enter into an agreement containing specific requirements with Business Associate 1, and likewise Business Associate 1 must enter an agreement with Business Associate 2 before the Business Associate 2's receipt of PHI.

AGREEMENT

1. Definitions.

- a. The following terms used in this Agreement have the same meaning as those terms in the HIPAA Rules: Breach; Data Aggregation; Designated Record Set; Disclosure; Health Care Obligations; Individual; Minimum Necessary; Notice of Privacy Practices; Protected Health Information; Required by Law; Secretary; Security Incident; Security Measures, Subcontractor; Unsecured Protected Health Information, and Use.
- b. "Business Associate" has the same meaning as the term "business associate" at 45 CFR 160.103 and regarding this Agreement means DTMB ("Business Associate 1") and Michigan Peer Review Organization ("Business Associate 2").
- c. "Covered Entity" has the same meaning as the term "covered entity" at 45 CFR 160.103 and regarding this Agreement means the **Michigan Department of Health and Human Services**.
- d. "HIPAA Rules" means the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

2. Obligations of Business Associate 2.

Business Associate 2 agrees to:

- a. use and disclose PHI only as permitted or required by this Agreement or as required by law.
- b. implement and use appropriate safeguards, and comply with Subpart C of 45 CFR 164 regarding electronic protected health information, to prevent use or disclosure of PHI other than as provided in this Agreement. Business Associate 2 must maintain, and provide a copy to the Covered Entity and Business Associate 1 within 10 days of a request from the Covered Entity or Business Associate 1, a comprehensive written information privacy and security program that includes security measures that reasonably and appropriately protect the confidentiality, integrity, and availability of PHI relative to the size and complexity of Business Associate 2's operations and the nature and the scope of its activities.
- c. report to the Covered Entity and Business Associate 1 within 24 hours of any use or disclosure of PHI not provided for by the Agreement of which it becomes aware, including breaches of Unsecured Protected Health Information as required by 45 CFR 164.410, and any Security Incident of which it becomes aware. If Business Associate 2 is responsible for any unauthorized use or disclosure of PHI, it must promptly act as required by applicable federal and State laws and regulations. Covered Entity and Business Associate 2 will cooperate in investigating whether a breach has occurred, to decide how to provide breach notifications to individuals, the federal Health and Human Services' Office for Civil Rights, and potentially the media.
- d. ensure, according to 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, that any subcontractors that create, receive, maintain, or transmit PHI on behalf of Business Associate 2 agree to the same restrictions, conditions, and requirements that apply to Business Associate 2 regarding such information. Each subcontractor must sign an agreement with Business Associate 2 containing substantially the same provisions as this Agreement and further identifying Business Associate 1 and Covered Entity as a third party beneficiary of the agreement with the subcontractor. Business Associate 2 must implement and maintain sanctions against subcontractors that violate such restrictions and conditions and must mitigate the effects of any such violation.
- e. make available PHI in a Designated Record Set to the Covered Entity within 10 days of a request from the Covered Entity to satisfy the Covered Entity's obligations under 45 CFR 164.524.
- f. within ten days of a request from the Covered Entity, amend PHI in a Designated Record Set under, 45 CFR § 164.526. If any individual requests an amendment of PHI directly from Business Associate 2 or its agents or subcontractors, Business Associate 2 must notify the Covered Entity in writing within five days of the request and amend the information within ten days of the request. Any denial of amendment of PHI maintained by Business Associate 2 or its agents or subcontractors is the responsibility of Business Associate 2.
- g. maintain, and within ten days of a request from the Covered Entity make available, the information required to provide an accounting of disclosures to enable the Covered Entity to fulfill its obligations under 45 CFR § 164.528. Business Associate 2 is not required to provide an accounting to the Covered Entity of disclosures: (i) to carry out treatment, payment or health care operations, as set forth in 45 CFR § 164.506; (ii) to individuals of PHI about them as set forth in 45 CFR § 164.502; (iii) under an authorization as provided in 45 CFR § 164.508; (iv) to persons involved in the individual's care or other notification purposes as set forth in 45 CFR § 164.510; (v) for national security or intelligence purposes as set forth in 45 CFR § 164.512(k)(2); (vi) to correctional institutions or law enforcement officials as set forth in 45 CFR § 164.512(k)(5); (vii) as part of a limited data set according to 45 CFR 164.514(e); or (viii) that occurred before the compliance date for the Covered Entity. Business Associate 2 agrees to implement a process that allows for an accounting to be collected and maintained by Business Associate 2 and its agents or subcontractors for at least six years before the request, but not before the compliance date of the Privacy Rule. At a minimum, such information must include: (i) the date of disclosure; (ii) the name of the entity or person who received PHI and, if known, the address of the entity or person; (iii) a brief description of PHI disclosed; and (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure or a copy of the written request for disclosure. If the request for an accounting is delivered directly to Business Associate 2 or its agents or subcontractors, Business Associate 2 must, within ten days of the receipt of the request, forward it to the Covered Entity in writing.
- h. to the extent Business Associate 2 is to carry out one or more of the Covered Entity's obligations under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the Covered Entity when performing those obligations.

- i. make its internal practices, books, and records relating to Business Associate 2's use and disclosure of PHI available to the Secretary for purposes of determining compliance with the HIPAA Rules. Business Associate 2 must concurrently provide to the Covered Entity a copy of any PHI that the Business Associate 2 provides to the Secretary.
- j. retain all PHI throughout the term of the Agreement and for a period of six years from the date of creation or the date when it last was in effect, whichever is later, or as required by law. This obligation survives the termination of the Agreement.
- k. implement policies and procedures for the final disposition of PHI and the hardware and equipment on which it is stored, including but not limited to, removal of PHI before re-use.
- l. within ten days of a written request by the Covered Entity, Business Associate 2 and its agents or subcontractors must allow the Covered Entity to conduct a reasonable inspection of the facilities, systems, books, records, agreements, policies and procedures relating to the use or disclosure of PHI under this Agreement. Business Associate 2 and the Covered Entity will mutually agree in advance upon the scope, timing and location of such an inspection. Covered Entity must protect the confidentiality of all confidential and proprietary information of Business Associate 2 to which the Covered Entity has access during the course of such inspection. Covered Entity and Business Associate 2 will execute a nondisclosure agreement, if requested by the other party. The fact that the Covered Entity inspects, or fails to inspect, or has the right to inspect, Business Associate 2's facilities, systems, books, records, agreements, policies and procedures does not relieve Business Associate 2 of its responsibility to comply with this Agreement. Covered Entity's (i) failure to detect or (ii) detection, but failure to notify Associate or require Associate's remediation of any unsatisfactory practices, does not constitute acceptance of such practice or a waiver of the Covered Entity's enforcement rights under this Agreement.

3. Permitted Uses and Disclosures by the Business Associate.

- a. Business Associate 2 may use or disclose PHI:
 - (1) for the proper management and administration of Business Associate 2 or to carry out the legal responsibilities of Business Associate 2; provided, however, either (A) the disclosures are required by law, or (B) Business Associate 2 obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person notifies Business Associate 2 of any instances of which it is aware in which the confidentiality of the information has been breached;
 - (2) as required by law;
 - (3) for Data Aggregation services relating to the health care operations of the Covered Entity;
 - (4) to de-identify, consistent with 45 CFR 164.514(a) – (c), PHI it receives from the Covered Entity. If Business Associates 2 de-identifies the PHI it receives from the Covered Entity, Business Associate 2 may use the de-identified information for any purpose not prohibited by the HIPAA Rules; and
 - (5) for any other purpose listed here: Purposes outside the scope of work of the Contract are not permissible.
- b. Business Associate 2 agrees to make uses and disclosures and requests for PHI consistent with the Covered Entity's minimum necessary policies and procedures.
- c. Business Associate 2 may not use or disclose PHI in a manner that would violate Subpart E of 45 CFR Part 164 if done by the Covered Entity except for the specific uses and disclosures described above in 3(a)(i) and (iii).

4. Covered Entity's Obligations

Covered entity agrees to:

- a. use its Security Measures to reasonably and appropriately maintain and ensure the confidentiality, integrity, and availability of PHI transmitted to Business Associate 2 under this Agreement until the PHI is received by Business Associate 2.
- b. provide Business Associate 2 with a copy of its Notice of Privacy Practices and must notify the Business Associate of any limitations in the Notice of Privacy Practices of the Covered Entity under 45 CFR 164.520 to the extent that such limitation may affect Business Associate 2's use or disclosure of PHI.

- c. notify Business Associate 2 of any changes in, or revocation of, the permission by an individual to use or disclose the individual's PHI to the extent that such changes may affect Business Associate 2's use or disclosure of PHI.
- d. notify Business Associate 2 of any restriction on the use or disclosure of PHI that the Covered Entity has agreed to or is required to abide by under 45 CFR 164.522 to the extent that such restriction may affect Business Associate 2's use or disclosure of PHI.

5. Term. This Agreement continues in effect until terminated or is replaced with a new agreement between the parties containing provisions meeting the requirements of the HIPAA Rules, whichever first occurs.

6. Termination.

a. Material Breach. In addition to any other provisions in the Agreement regarding breach, a breach by Business Associate 2 of any provision of this Agreement, as determined by the Covered Entity, constitutes a material breach of the Agreement and provides grounds for Business Associate 1 to terminate this Agreement for cause at the request of Covered Entity. Termination for cause is subject to 6.b.:

(1) Default. If Business Associate 2 refuses or fails to timely perform any of the provisions of this Agreement, the Covered Entity may notify Business Associate 2 in writing of the non-performance, and if not corrected within thirty days, Business Associate 1 may immediately terminate the Agreement at the request of Covered Entity. The Business Associate 2 must continue performance of the Agreement to the extent it is not terminated.

(2) Business Associate 2's Duties. Notwithstanding termination of the Agreement, and subject to any directions from the Covered Entity or Business Associate 1, Business Associate 2 must protect and preserve property in the possession of Business Associate 2 in which the Covered Entity has an interest.

(3) Erroneous Termination for Default. If Business Associate 1 terminates this Agreement at the request of Covered Entity under Section 6(a) and after such termination it is determined, for any reason, that Business Associate 2 was not in default, then such termination will be treated as a termination for convenience, and the rights and obligations of the parties will be the same as if the Agreement had been terminated for convenience.

b. Reasonable Steps to Cure Breach. If the Covered Entity or Business Associate 1 knows of a pattern of activity or practice of Business Associate 2 that constitutes a material breach or violation of Business Associate 2's obligations under the provisions of this Agreement or another arrangement and does not terminate this Agreement under Section 6(a), then the Business Associate 1, at the request of Covered Entity or on its own accord, must notify Business Associate 2 of the pattern of activity or practice. Business Associate 2 must then take reasonable steps to cure such breach or end such violation, as applicable. If the Business Associate 2's efforts to cure such breach or end such violation are unsuccessful, Business Associate 1, at the request of the Covered Entity or on its own accord, may either (i) terminate this Agreement, if feasible or (ii) report Business Associate 2's breach or violation to the Secretary.

c. Effect of Termination. After termination of this Agreement for any reason, the Business Associate, with respect to PHI it received from the Covered Entity, or created, maintained, or received by Business Associate 2 on behalf of the Covered Entity, must:

- (1) retain only that PHI which is necessary for Business Associate 2 to continue its proper management and administration or to carry out its legal responsibilities;
- (2) return to the Covered Entity (or, if agreed to by the Covered Entity in writing, destroy) the remaining PHI that Business Associate 2 still maintains in any form;
- (3) continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information to prevent use or disclosure of the PHI, other than as provided for in this Section, for as long as Business Associate 2 retains the PHI;
- (4) not use or disclose the PHI retained by Business Associate 2 other than for the purposes for which such PHI was retained and subject to the same conditions set out at Section 3(a)(1) which applied before termination; and
- (5) return to the Covered Entity (or, if agreed to by the Covered Entity in writing, destroy) the PHI retained by Business Associate 2 when it is no longer needed by Business Associate 2 for its proper management and administration or to carry out its legal responsibilities.

7. No Waiver of Immunity. The parties do not intend to waive any of the immunities, rights, benefits, protection, or other provisions of the Michigan Governmental Immunity Act, MCL 691.1401, *et seq.*, the Federal Tort Claims Act, 28 U.S.C. 2671 *et seq.*, or the common law.
8. Data Ownership. Business Associate 2 has no ownership rights in the PHI. The covered entity retains all ownership rights of the PHI.
9. Disclaimer. Neither Business Associate 1, nor the Covered Entity, warrants or represents that compliance by Business Associate 2 with this Agreement, HIPAA, or the HIPAA Rules will be adequate or satisfactory for Business Associate 2's own purposes. Business Associate 2 is solely responsible for all decisions made by Business Associate 2 regarding the safeguarding of PHI.
10. Certification. If the Covered Entity determines an examination is necessary to comply with the Covered Entity's legal obligations under HIPAA relating to certification of its security practices, the Covered Entity or its authorized agents or contractors, may, at the Covered Entity's expense, examine Business Associate 2's facilities, systems, procedures and records as may be necessary for such agents or contractors to certify to the Covered Entity the extent to which Business Associate 2's security safeguards comply with HIPAA, the HIPAA Rules or this Agreement.
11. Amendment. The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of this Agreement may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA and the HIPAA Rules. Upon the request of either party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to this Agreement embodying written assurances consistent with the standards and requirements of HIPAA and the HIPAA Rules. Either party may terminate the Agreement upon thirty days written notice if (i) one party does not promptly enter into negotiations to amend this Agreement when requested by the other party or (ii) Business Associate 2 does not enter into an amendment to this Agreement providing assurances regarding the safeguarding of PHI that the Covered Entity, in its sole discretion, deems sufficient to satisfy the standards and requirements of HIPAA or the HIPAA Rules.
12. Assistance in Litigation or Administrative Proceedings. Business Associate 2 must make itself, and any subcontractors, employees or agents assisting Business Associate 2 in the performance of its obligations under this Agreement, available to the Covered Entity or Business Associate 1, at no cost to the Covered Entity or Business Associate 1, to testify as witnesses, or otherwise, if litigation or administrative proceedings are commenced against the Covered Entity or Business Associate 1, its directors, officers or employees, departments, agencies, or divisions based upon a claimed violation of HIPAA or the HIPAA Rules or other laws relating to Business Associate 2's or its subcontractors use or disclosure of PHI under this Agreement, except where Business Associate 2 or its subcontractor, employee or agent is a named adverse party.
13. No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer upon any person other than the Covered Entity, Business Associate 1, Business Associate 2 and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.
14. Interpretation and Order of Precedence. Any ambiguity in this Agreement must be interpreted to permit compliance with the HIPAA Rules. Where the provisions of this Agreement differ from those mandated by the HIPAA Rules, but are nonetheless permitted by the HIPAA Rules, the provisions of this Agreement control.
15. Effective Date. This Agreement is effective upon receipt of the last approval necessary and the affixing of the last signature required.
16. Survival of Certain Agreement Terms. Notwithstanding any contrary provision in this Agreement, the Business Associate 2's obligations under Section 6(d) and record retention laws ("Effect of Termination") and Section 12 ("No Third Party Beneficiaries") survive termination of this Agreement and are enforceable by the Covered Entity or Business Associate 1.

17. Representatives and Notice.

a. Representatives. The individuals listed below are designated as the parties' respective representatives for purposes of this Agreement. Either party may from time to time designate in writing new or substitute representatives.

b. Notices. All required notices must be in writing and must be hand delivered or given by certified or registered mail to the representatives at the addresses set forth below.

Covered Entity Representative:

James Bowen
Privacy and Security Manager
MDHHS Compliance Office
333 South Grand Ave, 4th Floor
Lansing, MI 48933
(517) 284-1018
MDHHSPrivacySecurity@michigan.gov

Business Associate 1 Representative:

Name: Brandon Samuel
Title: Category Specialist
Department: Michigan Department of Technology, Management & Budget
Address: 525 W Allegan St, Lansing MI 48933
Phone: 517-249-0439
Email: samuelb@michigan.gov

Business Associate 2 Representative:

Name: Leland A. Babitch, M.D., MBA
Title: President & CEO
Department: PACER
Address: 22670 Haggerty Road, Suite 100
Farmington Hills, MI 48335
Phone: 248-465-7366
Email: mpetrul@mpro.org

Any notice given to a party under this Agreement shall be deemed effective, if addressed to such party, upon: (i) delivery, if hand delivered; or (ii) the third Business Day after being sent by certified or registered mail.

**DTMB as Business Associate 1, on behalf of
Michigan Department of Health and Human
Services**

**Business Associate 2
Michigan Peer Review Organization**

By: _____

By: _____

Date: _____

Date: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

SCHEDULE D

Data Security Requirements

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.

“Contractor Security Officer” has the meaning set forth in **Section 2** of this Schedule.

“Contractor Systems” has the meaning set forth in **Section 5** 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.

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.

Protection of the State's Confidential Information. Throughout the Term and at all times in connection with its actual or required performance of the Contract Activities, Contractor will:

maintain FedRAMP certification or FISMA compliance verified using a third party audit service for the storage of State Data throughout the Term, and in the event the contractor is unable to maintain FedRAMP certification or FISMA compliance, the State may move the Software to an alternative provider, at contractor's sole cost and expense;

ensure that the State Data 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), or its equivalent;

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 SOM PSP's;

Note: Not all applicable PSP's are available publicly. Controlled PSP's applicable to the RFP are available after signing and returning to the State the required Nondisclosure Agreement (NDA) agreement.

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;

take all reasonable measures to:

secure and defend all locations, equipment, systems and other materials and facilities employed in connection with the Contract Activities 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

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 Contract Activities; (ii) the State's Confidential Information from being commingled with or contaminated by the data of other customers or their users of the Contract Activities; and (iii) unauthorized access to any of the State's Confidential Information;

State Data must be encrypted in transit and at rest using AES 128bit or higher encryption;

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

The Hosted Services must have multi-factor authentication for privileged/administrative or other access as identified, and

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

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 4**. 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.

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, agents, and all subcontractors in connection with the Contract Activities ("**Contractor Systems**") and shall prevent unauthorized access to State systems through the Contractor Systems.

Security Audits. During the Term, Contractor will:

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;

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

1.3 if requested by the State, provide a copy of Contractor's FedRAMP System Security Plan or SSAE 18 SOC 2 TYPE 2 audit report. The System Security Plan will be recognized as Contractor's Confidential Information.

Nonexclusive Remedy for Security Breach. Any failure of the Contractor 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.

Attachment A.1

LTSS Definitions

Michigan Department of Health and Human Services (MDHHS)

Beneficiary: All Medicaid eligible individuals in the Fee for Service Program, (FFS), (Title XIX), Children's Special Health Care Services Program (CSHCS dual eligible and CSHCS only) (Title V/XIX), Medicare/Medicaid, (Title XVIII/XIX).

CHAMPS: MDHHS's Community Health Automated Medicaid Processing System

Health Insurance Portability and Accountability Act (HIPAA): a federal law that makes a number of changes that have the goal of allowing persons to qualify immediately for comparable health insurance coverage when they change their employment relationships. Title II, Subtitle F, of HIPAA gives U.S. Department of Health and Human Services (DHHS) the authority to mandate the use of standards for electronic exchange of health care data; to specify what medical and administrative codes sets should be used within those standards; to require the use of national identification systems for health care patients, provider, payers (or plans), and employers (or sponsors); and to specify the types of measures required to protect the security and privacy of personally identifiable health care information. Also known as the Kennedy-Kassebaum Bill, the Kassebaum-Kennedy Bill, K2, or Public Law 104-191.

Long Term Services and Supports (LTSS): for this Contract only, LTC includes those programs that are required to adhere to the Michigan Medicaid Nursing Facility Level of Care Determination definition; specifically Nursing Facilities, MI Choice Waiver Program for Elderly and Disabled, the Program for All Inclusive Care for the Elderly (PACE), and MI Health Link (Community and Nursing Facilities).

interRAI (iHC): assessment that informs and guides comprehensive care and service planning in community-based settings.

MDS: Minimum Data Set-assessment information required for all nursing facility in Michigan.

MI Choice Waiver Program: The MI Choice program furnishes an array of home and community-based services to assist aged and disabled Medicaid beneficiaries to live in the community who would otherwise be institutionalized in a nursing facility. MI Choice is a 1915(b)(c) waiver program.

Michigan Medicaid Nursing Facility Level of Care Determination: Medicaid criteria established by the MDHHS, utilized by the Medicaid providers, to determine a beneficiary's functional eligibility for nursing facility admission or MI Choice Waiver, PACE program, and MI Health Link enrollment.

National Provider Identifier (NPI) Number: NPI is part of the HIPPA mandate requiring a standard unique identifier for health care providers.

Nurse Reviewer: A registered professional nurse with a current Michigan license and with appropriate education and clinical background, trained in the performance of utilization review and quality assurance to determine adherence to Medicaid policies.

Nursing Facility: A nursing home, county medical care facility, or hospital long-term care unit, with Medicaid certification.

Nursing Facility Level of Care Exception Process Criteria: Criteria established by the MDHHS, utilized by the Contractor, in determining Medicaid eligibility based on frailty for beneficiaries who do not meet the online Michigan Medicaid Nursing Facility Level of Care Determination criteria.

Nursing Facility Level of Care: Each state that participates in the Medicaid program is required to provide nursing facility care as a mandatory state plan service. Each state must determine function/medical eligibility criteria to determine the appropriateness for that setting. Federal regulations state that Medicaid covered nursing facility care must include the following:

- (A) Skilled nursing care and related services for residents who require medical or nursing care,
- (B) rehabilitation services for the rehabilitation of injured, disabled, or sick persons, or
- (C) on a regular basis, health-related care and services to individuals who because of their mental or physical condition require care and services (above the level of room and board) which can be made available to them only through institutional facilities.

PACE: The Program of All Inclusive Care for the Elderly, a capitated community program for persons with LTC needs. Funds are blended from both Medicare and Medicaid sources.

PASRR: The Pre-Admission Screening and Resident Review is required to be completed for all potential nursing facility residents. This review ensures that persons with mental health conditions are placed in the most appropriate setting.

Peer Review Organization (PRO): an organization that is Utilization Review Accreditation Commission (URAC) approved and experienced in utilization review and quality assurance which meets the guidelines set forth in 42 USC 1320(c) (1) and 42 CFR 475. Note: QIO-like entities satisfy the requirements of the Contract and are qualified to bid on the proposal.

Proposal: the response to this RFP submitted to the State by a bidder.

Provider: Medicaid enrolled Provider for Inpatient Hospital, Selected Durable Medical Equipment/Medical Supplies, Ventilator Dependent Care Units (within a Hospital or Nursing Facility) and Long Term Care Facilities.