



STATE OF MICHIGAN
ENTERPRISE 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. **071B7700151**

between
 THE STATE OF MICHIGAN
 and

CONTRACTOR	First Hospital Laboratories, Inc. d.b.a. FirstSource Solutions
	100 Highpoint Drive
	Chalfont, PA 18914
	Stacy Williams
	800-732-3784 ext. 5517 or 215-396-5567
	swilliams@fssolutions.com
	7463

STATE	Program Manager	Various (See below) or Section 4	
	Contract Administrator	Brandon Samuel 517-284-7025 samuelb@michigan.gov	DTMB

CONTRACT SUMMARY			
DESCRIPTION: Third Party Administrator Services - Employee, applicants and licensees for drug and alcohol testing – Statewide/MGCB			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
6/1/2017	5/31/2020	Five-one year	
PAYMENT TERMS		DELIVERY TIMEFRAME	
2Net10 and Net45		N/A	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS			
N/A			
MISCELLANEOUS INFORMATION			
The terms and conditions of this Contract are those of RFP 007117B0010083			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION			\$1,436,488.00

Program Managers

	AGENCY	NAME	PHONE	EMAIL
1	DTMB-OSE	Gerri Smith	517-335-1838	SmithG15@michigan.gov
2	MGCB	Al Ernst	313-456-4130	Ernsta@michigan.gov

FOR THE CONTRACTOR:

Company Name

Authorized Agent Signature

Authorized Agent (Print or Type)

Date

FOR THE STATE:

Signature

Name & Title

Agency

Date



STATE OF MICHIGAN

STANDARD CONTRACT TERMS

This STANDARD CONTRACT (“**Contract**”) is agreed to between the State of Michigan (the “**State**”) and First Hospital Laboratories Inc. d.b.a. FirstSource Solutions (“**Contractor**”), a Virginia Corporation. This Contract is effective on June 1, 2017, and unless terminated, expires on May 31, 2020.

This Contract may be renewed for up to five 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 NE Lansing, MI 48909 samuelb@michigan.gov 517-284-7025	Stacy Williams 100 Highpoint Drive Chalfont, PA 18914 swilliams@fssolutions.com 800-732-3784 ext. 5517 or 215-396-5567

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: Brandon Samuel 525 W. Allegan St., 1 st Floor NE Lansing, MI 48909 samuelb@michigan.gov 517-284-7025	Contractor: Stacy Williams 100 Highpoint Drive Chalfont, PA 18914 swilliams@fssolutions.com 800-732-3784 ext. 5517 or 215-396-5567
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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: For DTMB – Office of the State Employer (OSE) Gerri Smith 400 South Pine Street Lansing, MI 48909 SmithG15@michigan.gov 517-335-1838 For MGCB Horse Racing Al Ernst Cadillac Place 3062 W. Grand Blvd. Suite L-700 Detroit, MI 48202 ernsta@michigan.gov 313-456-4130	Contractor: Mary Ann Mesaros 100 Highpoint Drive Chalfont, PA 18914 mmesaros@fssolutions.com 800-732-3784 ext. 5515
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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>Minimal 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 0.
Automobile Liability Insurance	
<u>Minimal Limits:</u> \$1,000,000 Per Occurrence	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>Minimal Limits:</u> Coverage according to applicable laws governing work activities.	Waiver of subrogation, except where waiver is prohibited by law.
Employers Liability Insurance	
<u>Minimal Limits:</u> \$500,000 Each Accident \$500,000 Each Employee by Disease \$500,000 Aggregate Disease.	
Privacy and Security Liability (Cyber Liability) Insurance	
<u>Minimal Limits:</u> \$1,000,000 Each Occurrence \$1,000,000 Annual Aggregate	Contractor must have their policy cover information security and privacy liability, privacy notification costs, regulatory defense and penalties, and website media content liability.
Professional Liability (Errors and Omissions) Insurance	
<u>Minimal Limits:</u> \$1,000,000 Each Occurrence \$1,000,000 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 canceled 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 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 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. **Administrative Fee and Reporting.** Contractor must pay an administrative fee of 1% on all payments made to Contractor under the Contract including transactions with the State (including its departments, divisions, agencies, offices, and commissions), MiDEAL members, and other states (including governmental subdivisions and authorized entities). Administrative fee payments must be made by check payable to the State of Michigan and mailed to:

Department of Technology, Management and Budget
Cashiering
P.O. Box 30681
Lansing, MI 48909

Contractor must submit an itemized purchasing activity report, which includes at a minimum, the name of the purchasing entity and the total dollar volume in sales. Reports should be mailed to DTMB-Procurement.

The administrative fee and purchasing activity report are due within 30 calendar days from the last day of each calendar quarter.

8. **Extended Purchasing Program.** This contract is extended to MiDEAL members. MiDEAL members include local units of government, school districts, universities, community colleges, and nonprofit hospitals. A current list of MiDEAL members is available at www.michigan.gov/mideal. Upon written agreement between the State and Contractor, this contract may also be extended to: (a) State of Michigan employees and (b) other states (including governmental subdivisions and authorized entities).

If extended, Contractor must supply all Contract Activities at the established Contract prices and terms. The State reserves the right to impose an administrative fee and negotiate additional discounts based on any increased volume generated by such extensions.

Contractor must submit invoices to, and receive payment from, extended purchasing program members on a direct and individual basis.

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 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. **Delivery.** Contractor must deliver all Contract Activities F.O.B. destination, within the State premises with transportation and handling charges paid by Contractor, unless otherwise specified in Schedule A. All containers and packaging becomes the State's exclusive property upon acceptance.
18. **Risk of Loss and Title.** Until final acceptance, title and risk of loss or damage to Contract Activities remains with Contractor. Contractor is responsible for filing, processing, and collecting all damage claims. The State will record and report to Contractor any evidence of visible damage. If the State rejects the Contract Activities, Contractor must remove them from the premises within 10 calendar days after notification of rejection. The risk of loss of rejected or non-conforming Contract Activities remains with Contractor. Rejected Contract Activities not removed by Contractor within 10 calendar days will be deemed abandoned by Contractor, and the State will have the right to dispose of it as its own property. Contractor must reimburse the State for costs and expenses incurred in storing or effecting removal or disposition of rejected Contract Activities.
19. **Warranty Period.** The warranty period, if applicable, for Contract Activities is a fixed period commencing on the date specified in Schedule A. If the Contract Activities do not function as warranted during the warranty period the State may return such non-conforming Contract Activities to the Contractor for a full refund.
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/cpexpress> 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. Reserved.

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.** 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. **State Data.** All data and information provided to Contractor by or on behalf of the State, and all data and information derived therefrom, is the exclusive property of the State ("**State Data**"); this definition is to be construed as broadly as possible. Upon request, Contractor must provide to the State, or a third party designated by the State, all State Data within 10 calendar days of the request and in the format requested by the State. Contractor will assume all costs incurred in compiling and supplying State Data. No State Data may be used for any marketing purposes.
31. **Reserved.**
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. **Reserved.**

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; and (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. 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.*, and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, *et seq.*, 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, height, weight, marital status, or mental or physical disability. 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 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.

STATE OF MICHIGAN

Contract No. 071B7700151

SCHEDULE A STATEMENT OF WORK CONTRACT ACTIVITIES

This schedule identifies the anticipated requirements of the Contract. The term "Contractor" in this document refers to FirstSource Solutions.

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

PROJECT REQUEST

This is a Contract for the following two services:

1. Third Party Administrator (TPA) to provide a full range of administrative functions for a drug and alcohol testing program for State of Michigan employees and pre-hire applicants;
2. Third Party Administrator (TPA) provide a full range of administrative functions for a drug and alcohol testing program for **licensees of the Michigan Gaming Control Board's Horse Racing Section (MGCB Horse Racing Section)**;

TPA services

From above "full range" means all elements and requirements of the Federal U.S. Department of Transportation's (DOT) Omnibus Transportation Employee Testing Act of 1991 (OTETA) and its implementing rules and regulations, Department of Health and Human Services (DHHS) guidelines, all applicable federal and state laws, Civil Service Rules and Regulations, State of Michigan Policies requiring DOT and NON-DOT employee drug and alcohol testing, and any Collective Bargaining Agreements.

The Contractor's services must meet all federal requirements pertaining to drug and alcohol testing under the Department of Health and Human Services (DHHS), and the Department of Transportation's (DOT) FHWA, FAA, and USCG Regulations. The Drug and Alcohol Testing Program must also be conducted according to the State of Michigan's Policy and Procedures pertaining to employees required to obtain and retain a Commercial Driver License (CDL), Civil Service Rule 2-7 Drug and Alcohol Testing, Civil Service Regulations 2.07, 2.08, 2.09, and 2.10, NON-DOT Procedures, and applicable Collective Bargaining Agreements. The testing programs must include pre-employment and pre-appointment drug testing, reasonable suspicion drug and alcohol testing, monthly Random Selection Drug and Alcohol Testing and post-accident/post-incident drug and alcohol testing for employees subject to performing safety sensitive functions and employees occupying Test Designated Positions (TDP), and return to duty/follow-up drug and alcohol testing. Quality assurance (blind specimen) testing must also be provided on request.

This Contract is a per unit price contract. The price is per test, per training session, per service provided, etc., on an as needed, as-requested basis.

BACKGROUND

1. State of Michigan employees and pre-hire applicants

There are approximately 1,000 employees in 8 departments occupying "Safety Sensitive" positions in the DOT Program. The annual random selection test completion rate for alcohol tests is 10%. The annual random test completion rate for drugs is 25% or as amended.

There are approximately 48,200 employees in 19 departments subject to testing under the State's NON-DOT Drug and Alcohol Testing Program, pursuant to Civil Service Rule 2-7 and Collective Bargaining Agreement provisions. This program is based on DHHS guidelines for drug testing and DOT guidelines for alcohol testing. Of this number, there are approximately 16,000 employees occupying test-designated positions (TDP) that are subject to random selection and post-accident/post-incident drug and/or alcohol testing. The annual random selection test completion rates for both alcohol and drugs vary from 5% to 15% among the employee groups. Virtually all employees are subject to reasonable suspicion and follow-up testing. The State of Michigan also conducts pre-appointment drug testing of selected employees when they are appointed to a Test Designated Position (TDP). The State of Michigan conducts an average of 7,800 (2016) pre-employment drug tests annually. The State makes no guarantee to the number of tests to be requested.

2. MGCB Horse Racing Section

There were 1,970 individuals licensed by the MGCB Horse Racing Section in 2014, all of which are subject to random drug and alcohol testing as a condition of licensure.

The following individuals are required, upon application and for the duration of the occupational license, to consent to a breathalyzer test, urine test, or other noninvasive fluid test to detect the presence of alcohol or a controlled substance; applicants who are applying or possess a license for a racing official, jockey, driver, trainer, or groom license, or for any other license for an occupation that involves contact with or access to the racehorses or the barn areas or stables where racehorses are kept.

The MGCB Horse Racing Section currently has licensed racetracks in Hazel Park (Hazel Park Raceway), and Northville (Northville Downs).

MGCB makes no guarantee to the number of tests to be requested annually.

SCOPE

NOTE: Verbiage in red throughout the Contract is to help identify additional MGCB Horse Racing Section Information.

The following Services are included in this Contract for State of Michigan employees and pre-hire applicants; **MGCB Horse Racing Section**:

- A. Administration and Management of all State of Michigan drug and/or alcohol testing programs and related components, in concert with the State's Drug and Alcohol Testing Program Administrator/Coordinator and **MGCB Horse Racing Section**;
- B. Development and Maintenance of a Statewide Clinic/Provider Network;
- C. Breath Alcohol testing, Split-Specimen Urine Drug Collection, Testing and Shipping Services;
- D. Assignment of a Dedicated Account Representative;
- E. Record Keeping Services;
- F. Random Testing Services;
- G. Substance Abuse and Mental Health Services Administration (SAMHSA) Department of Health and Human Services Certified Laboratory Testing and Result Reporting Services;
- H. Medical Review Officer (MRO) and Substance Abuse Professional (SAP) referral Services;
- I. Training, Training Materials, and/or Information;
- J. Litigation support and Expert Witness testimony as requested;
- K. Research and Information regarding federal regulations: changes, additions, etc., applicable to drug and alcohol testing program; and
- L. Provide applicable reports.

REQUIREMENTS

1. General Requirements

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

A. Administration and Management

1. The Contractor must administer and manage all State of Michigan **and MGCB Horse Racing Section** drug and/or alcohol testing programs and related components, in concert with the State's Drug and Alcohol Testing Program Administrator/Coordinator **and MGCB Horse Racing Section**. The Contractor must provide drug and/or alcohol testing program administration, informational materials, testing forms (pre-printed DOT/NON-DOT chain of custody and breath alcohol forms), sample procedures, and any supplies upon request.

B. Development of a Statewide Clinic/Provider Network

1. The Contractor must guarantee a sufficient number of clinics/providers capable of providing both breath alcohol testing and split-specimen urine drug collection. Sufficient number is determined by the State **and MGCB Horse Racing Section** and is defined as at least one drug and alcohol testing site within 25 miles of each state facility, or a reasonable distance from state facilities **and or a racetrack licensed by the MGCB Horse Racing Section** as determined by the State **and MGCB Horse Racing Section**. In each Michigan County this will be dependent upon county size and state employee population.
2. The Contractor must endeavor to work towards its provider network guaranteeing 24 hours per day, 7 days per week access to drug and alcohol testing services within each county. ***This requirement will vary depending on state employee populations, types of state facilities, hours of operation, and services being provided in a given county.**
3. The Contractor is responsible for providing mobile or on-site collection for use in remote areas for the State of Michigan **and MGCB Horse Racing Section** unless otherwise specified.
4. The Contractor must develop, maintain and update a statewide, State of Michigan **and MGCB Horse Racing Section** clinic/provider network listing for reference in scheduling appointments and services. The list must include counties and be sorted alphabetically by city.
5. The clinic listing must be available to be downloaded electronically by the Office of the State Employer (OSE) and the department Drug and Alcohol Testing Coordinators (DATC) or Designated Employee Representatives (DER) **and MGCB Horse Racing Section** on a quarterly basis.
6. The Contractor must enter into an agreement for services with each clinic/provider listed. The Contractor must establish testing responsibilities, billing and payment procedures, handling, packaging, and shipping of specimens protocol, and any other provider responsibilities such as laboratory interaction, and properly forwarding reports for record keeping purposes. Payment to clinic/providers by the Contractor must be made within 30-35 days of receipt of invoice.
7. The State of Michigan **and MGCB Horse Racing Section** reserve the right to request the Contractor to add or remove a clinic(s) from the statewide clinic list. Any new or replacement facilities must meet with the State's **and MGCB Horse Racing Section** approval. The Contractor will endeavor, wherever possible, to maintain existing collection facilities utilized by the State **and MGCB Horse Racing Section**.

8. The Contractor must have the capabilities of establishing out of State/country testing providers that can handle any employment related drug and/or alcohol testing for the State of Michigan **and for MGCB Horse Racing** through the Contractor's associated laboratory **at no additional charge**. **The Contractor should provide MGCB Horse Racing Section with internet capability to identify out of State clinic sites. Contractor assistance may be necessary when a clinic location is not identified.** The Contractor must provide clinic locations for out of state/country testing within 48 hours of receipt of the request.
9. The Contractor must interact with all clinics/providers and resolve any problems in servicing the State of Michigan's **and MGCB Horse Racing** drug and alcohol testing programs.
10. The Contractor must promptly report such problems to the State of Michigan **and MGCB Horse Racing Section** and provide documentation of the resolution.
11. The Contractor must promptly resolve any problems reported by the State **and MGCB Horse Racing Section**, including billing problems, and provide documentation of the resolution.
12. The Contractor for unscheduled, emergency testing needs, must maintain a toll free "After Hours Hotline" 24 hours a day, 7 days per week for the purpose of locating and assistance with **emergency**, or after hours testing services.

C. Breath Alcohol Testing, Urine Drug Testing, Split Specimen Testing, Related Supplies and Shipping Services

1. The Contractor must be able to provide on-site, mobile Breath Alcohol Testing, and Split Specimen Urine Drug Collection services for 24 hour department operations as requested by the Program Manager, or department DATC or DER **and MGCB Horse Racing Section State Administrator or Coordinator**. On-site mobile testing is generally restricted to recruit schools when the State hires new law enforcement officers.
2. If on-site and mobile drug and alcohol collections are required, they must be conducted by collectors who are certified according to the requirements of the DOT and/or DHHS.
3. The Contractor must provide the appropriate custody and control forms, alcohol testing forms and other supplies for testing, as well as forms for invoicing the Contractor for the service provided. Forms must be delivered to the State of Michigan within ten days of receipt of the order. Tracking numbers must be used on all orders shipped. **Orders for custody and control forms and other laboratory provided supplies must be confirmed, with tracking numbers provided, and delivery scheduled for within five business days.**
4. The Contractor and/or their associated laboratory must provide all test kits and related supplies necessary for testing: forms, related supplies, **courier and shipping services**. **Forms must be delivered within five business days of receipt of the order. Orders must be confirmed upon receipt with tracking numbers.**
5. The Contractor must provide to each clinic/provider, and the State **and MGCB Horse Racing Section**, a procedures-responsibilities protocol that will ensure testing efficiencies aimed at minimizing difficulties or problems. This should include, but is not limited to:

- a. Standard Protocol Form with the correct procedures for State of Michigan and **MGCB Horse Racing Section collections**, which must also include the requirement of split specimen collections.
 - b. Standard Protocol Form with correct procedures for State of Michigan Breath Alcohol Testing which must also include the requirement of faxing the results to the department DATC or DER.
 - c. Submittal instructions for completed forms, including fax number and invoicing address.
6. The Contractor must provide shipping and handling of all specimen collections to the laboratory. The Contractor must be able to receive multiple results from the laboratory each day. Time frames to report confirmed test results must not exceed the following:
- a. Laboratory results for negative drug tests will be reported to the Contractor's MROs within 24 – 48 hours of receipt of the specimen by the laboratory, and after an administrative review, will be immediately available to the State's **and MGCB Horse Racing Section** authorized personnel. This processing time for transport of specimen to laboratory, specimen analysis at the laboratory and reporting of test results to the MRO, generally enables negative test results to be reported by the Contractor to the State **and MGCB Horse Racing Section** within 72 hours of the specimen being collected.
 - b. As a general rule, confirmed non-negative (positive, substituted, adulterated or diluted) results are reported to the MROs within 48 – 72 hours of receipt of the specimen by the laboratory. The non-negative results verification process is initiated by the MRO within one business day of the receipt of the result and required documentation from the laboratory. MRO processing of non-negative results requires 2-3 business days, depending on donor availability, MROs consultation with the laboratory, receipt of certified copies of the custody and control form, and review and validation of relevant prescription or medical information presented by the donor.
7. The Contractor must arrange for and provide "blind specimens" to the laboratory for use in quality control testing. Copies of "blind specimen" certification results must be provided to the State of Michigan **and MGCB Horse Racing Section** as requested. The State **and MGCB Horse Racing Section** reserves the right to require that the Contractor must submit the blind specimens to a source independent from the laboratory.
8. The Contractor must monitor all collection and testing services, ensure all collections and tests are conducted in accordance with the State of Michigan **and MGCB Horse Racing Section** drug and alcohol testing program, and ensure all copies of testing forms are distributed properly and timely.
9. Pre-employment drug testing must be documented by applicant name and one or more of the following: date of birth, State of Michigan applicant identification number, or last four digits of the applicant's social security number. **Drug Testing must be documented by either name, date of birth, social security number or a combination of these.**

D. Employment Record Establishment

1. The Contractor must establish and maintain hard copy as well as electronic means for all testing records that are generated as a result of State of Michigan **and MGCB Horse Racing Section** drug and/or alcohol testing activities. This information must capture the name of the individual tested as well as the individual's bargaining unit,

employing department, date and time of service, reason for testing and test result. All fields listed should be specifically identified as sort fields for reporting purposes.

2. The Contractor must provide secured access to results 24 hours a day, 7 days a week, 365 days per year, by either voice response, fax on demand, automated fax, direct download or via the internet.
3. The Contractor must ensure it is electronically linked to each testing laboratory to accurately and efficiently communicate drug test results. Test results must be available to authorized State and MGCB Horse Racing Section personnel via secure password enabled access to the Contractor's website. Each test result must have the MRO copy of the custody and control form and the test result certificate, which can be viewed and printed. Test results and the attached documents must remain available to the authorized State personnel and MGCB Horse Racing Section personnel at all times – either as new results or archived results.
4. The Contractor must also notify the authorized State personnel and MGCB Horse Racing Section personnel via email that non-negative results have been posted to the website, so the State and MGCB Horse Racing Section may access the test results as soon as possible. In addition, the MROs will notify the authorized State personnel and MGCB Horse Racing Section personnel by telephone immediately following verification of a non-negative test result.
5. The Contractor must ensure its interactive system is compatible with the State of Michigan computer system and includes Microsoft Office.
6. The Contractor must, at a minimum, provide overall statistical and summary reporting on DOT, NON-DOT, and selected client testing programs, to the State and to the MGCB Horse Racing Section on a quarterly basis. These reports must provide information by type of test, result, bargaining unit, state department and employee or licensee name as needed and be sortable by any combination of these fields. Refer to section 2.B for specific information regarding reports.
7. Test results must be available to the OSE staff, DATC for DER, MGCB Horse Racing Section's Program Administrator for electronic lookup and verification, by the last business day of the month following the test(s).
8. Record keeping must meet the requirements set forth in the DOT Regulations.

E. Random Testing Services

1. The Contractor must ensure the random testing selection process is a scientifically developed and statistically reliable program. The process must be purely random and be capable of providing the selectees from multiple State employee, MGCB Horse Racing licensee or selected client databases. The random selection methodology must be provided to and accepted by the State and MGCB Horse Racing Section.
2. The Contractor must supply the State and MGCB Horse Racing Section with a random testing selection system that ensures compliance with DOT regulations, and State of Michigan requirements for the NON-DOT random drug and alcohol testing.
3. The Contractor must maintain the random pools for the State of Michigan and MGCB Horse Racing Section based on the State's requirements.

4. The Contractor must provide the Program Manager with documentation of the current equipment, testing supplies, process and method(s) that will be utilized in conducting the monthly random test selections. **This must allow for all types of testing being conducted by MGCB Horse Racing Section.**
5. The Contractor must ensure the random selection process is audited by an outside organization (other than the Contractor) to assure integrity of the program.
6. The Contractor must ensure the random test selection database is confined to those individuals subject to random testing with selection by employee identification (ID) numbers at specified percentage rates. Each random testing pool must be subject to a separate random selection process. Reporting capabilities must include matching and sorting employees by employee ID numbers to bargaining units and departments. Employee ID numbers consist of a maximum of nine digits. An integrated database must be used which is capable of linking name, and employee ID number for random selection testing pools to allow the possibility of locating a result by one of the two identifiers.
7. The Contractor must ensure the total number of employees and **licensees/applicants** selected for random testing will equal the number or percentage specified by the State and **MGCB Horse Racing Section**, on an annual basis. **Adjustments to the number of licensees selected for each selection period are made based on random test completions in previous quarters/months.** Random selections are made **quarterly/monthly** or at other intervals specified by the State and **MGCB Horse Racing Section** to ensure that random testing is spread out throughout the calendar year. Adjustments to the number of employees selected for each selection period are made by the State of Michigan **and MGCB Horse Racing Section** for all tests based on random test completions in previous months.
8. The Contractor must ensure all collections are split specimen collections. Additionally, the Contractor must develop and maintain the processes that are to be followed in the event someone requests testing of a split specimen. Furthermore, the Contractor must submit the processes to the Program Manager for review and approval.
9. **Pre-licensing applicants will utilize Social Security numbers as an identifier.**

F. Laboratory Services

1. The Contractor must utilize Department of Health and Human Services (DHHS) **and/or a Substance Abuse and Mental Health Services Administration (SAMHSA)** Certified Laboratories for urine specimen testing and reporting services. The Contractor will be held responsible for the services provided by any laboratories selected by the Contractor for use on this Contract.
2. The Contractor must ensure the laboratory provides specimen testing and result reporting to the Contractor of all urine drug specimens collected: pre-licensing, pre-employment, pre-appointment, random, reasonable suspicion, post-accident/post-incident, return to duty and follow-up testing.
3. The Contractor, in cooperation with the selected laboratory, must provide for shipping and receiving of specimens, courier services, proper storage, testing, reporting of results and payments for both primary and split specimens.
4. The Contractor must store samples according to the current version of 49 CFR, Part 40.

5. The Contractor must ensure the laboratory immediately report all drug test results (negative and non-negative) to the Contractor's MRO for confirmation, as required by the federal regulations.
6. The Contractor must ensure the laboratory negative screening results for drug tests are reported to the MRO within 24 – 48 hours of receipt of the specimen. As a general rule, confirmed non-negative results will be reported within 48 – 72 hours of receipt of the specimen.
7. The State **and MGCB Horse Racing Section** require that the Contractor enforce the DOT regulation that the MROs and the Laboratory be independent.
8. Specialized drug testing services for selected state applicants and employees may require testing for drugs or classes of drugs different from those required by DOT regulation and DHHS guidelines. Six panel tests are required by the Department of State Police for pre-employment testing of applicants for enlisted positions and pre-appointment testing prior to completion of recruit school.

G. Medical Review Officer (MRO) and Substance Abuse Professional (SAP) Services

1. The Contractor must employ full-time MROs unless they are part of a network of MROs which are demonstrated to provide full-time coverage to the State **and MGCB Horse Racing Section**.
2. The Contractor must ensure MROs are licensed physicians (M.D. or D.O.) knowledgeable about and with clinical experience in controlled substance abuse disorders, knowledgeable about issues relating to adulterated and substituted specimens and possible medical causes of specimens having an invalid result, and knowledgeable about DOT regulations and MRO guidelines. Physicians must receive qualification training meeting the DOT requirements and complete all required continuing education. Physicians must maintain current board certification in a specific medical specialty during the change notice period.
3. The Contractor must ensure the MROs are certified by the Medical Review Officers Certification Council, and may also be certified by the American Association of Medical Review Officers.
4. The Contractor must ensure the MROs function separately and independently from the third party administrator departments of the Contractor in order to preserve the integrity of the MRO process.
5. The Contractor must ensure the MROs are able to respond to inquiries from State **and MGCB Horse Racing Section** staff 24 hours a day, 7 days per week.
6. The MROs must receive reported drug test results from the laboratory for confirmation of negative or non-negative test results.
7. The Contractor must ensure the MROs review and interpret all laboratory test findings and confidentially report the findings only to authorized personnel at the State **and MGCB Horse Racing Section**. The MROs also must review laboratory results and custody and control forms for accuracy, authorize appropriate re-confirmation analysis of specimens (including split specimen testing), and interview employees whose test results are reported by the laboratory as positive, invalid, adulterated, or substituted.

8. The Contractor must ensure the MROs personally contact the individual employee or applicant and conduct the interview process for review of medical information prior to making a test confirmation. The MROs will contact the test donor via telephone using the number(s) provided by the donor at the time of the test. If the MRO is unsuccessful in contacting the donor after multiple attempts in a 24 hour period, the MRO must contact the appropriate DATC/DER or the State's **and MGCB Horse Racing Section's** Program Manager for assistance. Non-negative test results will be reported to the State **and MGCB Horse Racing Section** without a donor interview only in circumstances permitted under applicable federal regulations.
9. The Contractor must ensure all MRO interviews with test donors adhere to the confidentiality requirements of applicable federal regulations and/or State **and MGCB Horse Racing Section** policies and procedures. In addition, reporting of medical information critical to safety or medical qualification standards must be done in accordance with applicable state and federal regulations, and/or State **and MGCB Horse Racing Section** policies and procedures.
10. The Contractor for all non-negative verified results, must contact the appropriate State **and MGCB Horse Racing Section** contact to alert them that a verified non-negative test result is being reported.
11. The Contractor must ensure MROs document all drug test results as required by applicable rules and regulations. The results must be communicated to the employer via a secure and legally acceptable means.
12. The Contractor must ensure MROs must be available via telephone for questions and discussion with department DATCs and DERs as well as the OSE staff **and MGCB Horse Racing Section** on an as needed basis.
13. The Contractor must provide, or have available, referrals for statewide Substance Abuse Professional (SAP) services in Michigan as required by law.
14. The Contractor must provide a list of these Substance Abuse Professionals and identify the means for scheduling an employee for treatment.
15. The Contractor must ensure Substance Abuse Professionals are licensed physicians (M.D. or D.O.), licensed or certified psychologists, licensed or certified social workers, licensed or certified employee assistance professionals, or a certified drug and alcohol counselors. These professionals must have knowledge of, and clinical experience in, the diagnosis and treatment of drug and/or alcohol-related disorders. Additionally, these professionals must receive qualification training meeting the DOT requirements and complete all required continuing education.
16. The Contractor's processes must ensure monitoring, follow-up, and confidentiality of SAP services.
17. **The Contractor, as requested by MGCB Horse Racing Section, will provide the donor with assistance in scheduling Return-to Duty and Follow-Up testing.**

H. Additional Requirements for Contractor

1. The Contractor must provide legal representation assistance and audit preparation as requested. Legal representation must include expert legal testimony and litigation referral packet services. Audit preparation assistance must include assisting the State **and MGCB Horse Racing Section** with resolving any audit findings through

implementation of corrective actions and/or preparation of responses to the auditing agency.

2. The Contractor must prepare and provide litigation packages to departments upon written request.
3. The Contractor must provide "Expert Witness" testimony, which may include, but is not limited to litigation assistance, and depositions.
4. The Contractor must keep the State of Michigan **and MGCB Horse Racing Section** up to date on relevant issues relating to drug and alcohol testing.
5. The Contractor must provide expert consultation services in the area of policy and procedure development, specific problem issue resolution, and legal advice relating to the State's **and MGCB Horse Racing Section** drug and alcohol program.
6. The Contractor must provide research and information regarding federal regulations: changes, additions, etc., applicable to drug and alcohol testing programs.

2. Training and Reports

A. Training, Training Materials, and/or information

1. The Contractor must develop and maintain a current training program that meets the requirements of the applicable federal regulations including DHHS and DOT guidelines.
2. Upon request and at no additional cost to the State **and MGCB Horse Racing Section**, the Contractor must have qualified individuals on staff to conduct one to two hour training programs applicable to the above regulations for managers/supervisors, employee groups, or administrators. The Contractor may conduct training in person, or via webinar. Training must be customized to include the State's **and MGCB Horse Racing Section** policies and procedures.
3. The Contractor may be asked to assist department personnel in preparing for, and conducting training and informational programs.
4. Upon request and at no additional cost to the State **and MGCB Horse Racing Section**, the Contractor must provide other materials, such as brochures, pamphlets, manuals, handouts, and videos that can be used in training programs.

B. Reports

The following reports must be provided by the Contractor:

- A. **If the Random Selection Process is to be utilized**, the monthly employee random testing database pools used in the random selection process will be sent via electronic transmission to the Contractor by the 20th of each month. **Random selections lists must be provided via secure email delivery notice, be posted on a secure website for access by authorized State personnel, or be faxed to a secure State fax location.** The Contractor must conduct the random selection process on each individual database submitted, and must **provide the audited department selections back** post the random selection lists on a secure website for access by authorized State **and MGCB Horse Racing Section** personnel no later than the first day of the following month. Random selections must be completed for each pool separately and be reported by department. The number of pools and testing percentages in the random selection process are subject to change. Adjustments to the number of **licensees and** employees selected for each selection period are made based on random test completions in previous months. **Random selections are**

made monthly as specified by MGCB Horse Racing Section and are provided to the section by no later than the first business day of each month.

- B. Drug test results must be provided directly to the State's **and MGCB Horse Racing Section's** named DATC or DER within 72 hours of the specimen collection for negative results and within 5 business days for non-negative results (positive, substituted, adulterated or diluted). This may be accomplished through the use of a confidential secure fax or secure encrypted e-mail transmission over the Internet. The mode of transmission will be determined at the discretion of the State. In some cases another designated departmental person is named to handle the pre-employment testing program for that department. OSE, DER, DATC **and MGCB Horse Racing Contract Administrator**, will be the only employees with web access to the Contractor's test results.
 - 1. The Contractor must post the results to the web database within one business day of completion of the testing process.

- C. The Contractor must provide breath alcohol results directly to the DATC or DER by confidential secure fax upon completion of the breath alcohol test. All results reported must include the actual blood alcohol content (BAC).
 - 1. The Contractor must post the results to the web database within one business day of completion of the test.

- D. The Contractor must provide DOT and NON-DOT Drug and/or Alcohol Test Statistical Reports (Random Compliance), and DOT Management Information System (MIS) (Test Summary) Reports as follows:
 - 1. DOT:
 - a. Overall Statistical (Random Compliance) Report and MIS Report for both drugs and alcohol on a quarterly and yearly basis. Statistical (Random Compliance) Reports are required on a monthly basis for DOT to monitor and adjust testing percentages.
 - b. MIS Reports by department for both drugs and alcohol on a quarterly and yearly basis.

 - 2. Non-DOT:
 - a. MINON Report (NON-DOT MIS comprehensive report totaling all employee testing and pre-employment testing) for both drugs and alcohol on a quarterly and yearly basis.
 - b. MIS Reports (for both drugs and alcohol)
 - i) By department (yearly only)
 - ii) By bargaining unit (quarterly and yearly)
 - iii) By bargaining unit within department (yearly only)
 - c. Statistical (Random Compliance) Report for both drugs and alcohol on a quarterly and yearly basis for each bargaining unit. Statistical Reports may be required on a monthly basis for NON-DOT random testing pools and DOT testing pool to monitor and adjust testing percentages.

 - 3. Exception Reports (Tested but not Selected and Selected but not Tested):
 - a. Provide monthly reports to maintain testing accuracy for the random programs by NON-DOT random selection testing pool and DOT random selection testing pool.

 - 4. Other:
 - a. Statistical reports indicating the type, number and outcomes of tests performed for each quarter and cumulatively year to date, as well as statistical summary reports of all laboratory findings **to aid in the license screening process, risk management and for use as a management tool.**

- b. Statistical data categorized and formatted to satisfy the MIS reporting requirements.
 - c. Number of specimens collected by type of test (pre-employment, pre-appointment, random, reasonable suspicion, post-accident/post-incident, return-to-work and follow-up), individual tested and test result.
 - d. Number of positives verified by a Medical Review Officer by type of test and type of controlled substance.
 - e. Number of negative controlled substance tests verified by a Medical Review Officer by type of test.
 - f. Number of canceled, adulterated, diluted and substituted tests verified by the Medical Review Officer by type of test.
 - g. Random testing statistical reports
- E. Detailed random compliance reports providing reconciliation of random tests conducted on those individuals selected for testing record management must be consistent with DHHS and DOT guidelines. The Contractor must ensure that Subcontractor(s) remain compliant with the requirements set forth in these guidelines.
- F. The Contractor will provide for proper documentation and storage of test results for the appropriate period of time to comply with 49 CFR Part 40 and/or State requirements **and MGCB Horse Racing Section**, and supply such records to the State's authorized personnel **and MGCB Horse Racing Section personnel** using confidential secure protocols.
- G. The Contractor must provide periodic additional reports as requested by the Program Manager. These reports must be provided within 15 calendar days from the request unless otherwise noted.
- H. The Contractor must provide additional reports at no extra cost to assist investigation of problems involving delivery of services outlined within this Contract.
- I. **At the request of the MGCB Horse Racing Section's Program Administrator or Coordinator, the Contractor must produce and generate "Special Management Reports" within 15 calendar days.**

3. Staffing

3.1. Contractor Representative

- A. The Contractor has designated Ms. Mary Ann Mesaros as the dedicated Account Representative to handle the administration of the State of Michigan's **and MGCB Horse Racing Section** drug and alcohol testing program. The State **and MGCB Horse Racing Section** reserves the right to require the removal of any Account Representative as determined.
- B. Changes in the structuring or assignment of the Account Representative must be agreed upon with the State of Michigan **and MGCB Horse Racing Section** prior to adjustment.
- C. The Contractor must ensure the Account Representative is extremely knowledgeable regarding the State's **and MGCB Horse Racing Section** drug and alcohol program, and be available to the OSE staff, DATCs, DERs, and **MGCB Horse Racing Section** on a daily basis (Monday through Friday), during normal business hours (8:00 am to 5:00 pm ET), via telephone and email.
- D. The Contractor must ensure the Account Representative has the responsibility to handle the day-to-day operations of the State of Michigan's **and MGCB Horse Racing Section** drug and alcohol testing program. Any absence of the account representative must be

timely reported to OSE staff and **MGCB Horse Racing Section** and a capable individual must be assigned to take over the daily coordination of the State's **and MGCB Horse Racing Section** account.

- E. The Contractor must ensure the Account Representative is the Contractor's lead in resolving conflicts with clinics/providers, investigating billing and payment concerns, providing quarterly statistical and summary reports on both testing programs, establishment and maintenance of statewide clinic/provider lists, and providing the random selections each month to the State of Michigan **and MGCB Horse Racing Section**.

3.2. Key Personnel

- A. The Contractor must appoint individuals who will be directly responsible for the day to day operations of the Contract ("Key Personnel"). At a minimum Key Personnel must include Account Representative, Account Executive, Data Systems Manager and Medical Review Officers. Key Personnel must be specifically assigned to the State and **MGCB Horse Racing Section account**, be knowledgeable on the contractual requirements, and respond to inquiries within 48 hours.

The following individuals are proposed Key Personnel (includes actual Contractor titles):
Mary Ann Mesaros, Account Representative (Team Supervisor)
Melanie Chapman, Account Executive (GM Customer Service)
Regina Doural, Data Systems Manager (GM of Compliance / Randoms)
Mike Contorno, Data Systems Manager (EVP of Technology Information)
Natalie Hartenbaum, MD Medical Review Officer (Chief Medical Review Officer)

In addition to the above Key Personnel, the Contractor has identified the following Key Personnel who are available to assist with any issues and/or concerns:
Christopher Roames, President and Chief Executive Officer
Shawn P. O'Neil, EVP, Client Services & Account Management
Shawn Moes, Sr. VP of Business Development
Mary Ellen Petti, Client Solutions Advocate
Adam Quirk, GM, Background Screening Services
Suzanne Alunni-Kinkle, Director of Business Development, Recovery Management Solutions
Peggy Levins, Director of Proposals and Inside Sales
Kelly Osterlitz, Director of Field Sales

- B. The State **and MGCB Horse Racing Section** have the right to recommend and approve in writing the initial assignment, as well as any proposed reassignment or replacement, of any Key Personnel. Before assigning an individual to any Key Personnel position, Contractor will notify the State **and MGCB Horse Racing Section** of the proposed assignment, introduce the individual to the State's Project Manager, **and MGCB Horse Racing Section's Project Manager** and provide the State **and MGCB Horse Racing Section** with a resume and any other information about the individual reasonably requested by the State **and MGCB Horse Racing Section**. The State **and MGCB Horse Racing Section** reserve the right to interview the individual before granting written approval. In the event the State **and MGCB Horse Racing Section** find a proposed individual unacceptable, the State **and MGCB Horse Racing Section** will provide a written explanation including reasonable detail outlining the reasons for the rejection. The State **and MGCB Horse Racing Section** may require a 30-calendar day training period for replacement personnel.
- C. Contractor will not remove any Key Personnel from their assigned roles on this Contract without the prior written consent of the State **and MGCB Horse Racing Section**. The Contractor's removal of Key Personnel without the prior written consent of the State **and MGCB Horse Racing Section** 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 and MGCB Horse Racing Section 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 MGCB Horse Racing Section, and that it would be impracticable and extremely difficult to fix the actual damage sustained by the State and MGCB Horse Racing Section as a result of any Unauthorized Removal. Therefore, Contractor and the State and MGCB Horse Racing Section agree that in the case of any Unauthorized Removal in respect of which the State and MGCB Horse Racing Section does not elect to exercise its rights under Termination for Cause, Contractor will issue to the State and MGCB Horse Racing Section the corresponding credits set forth below (each, an "Unauthorized Removal Credit"):

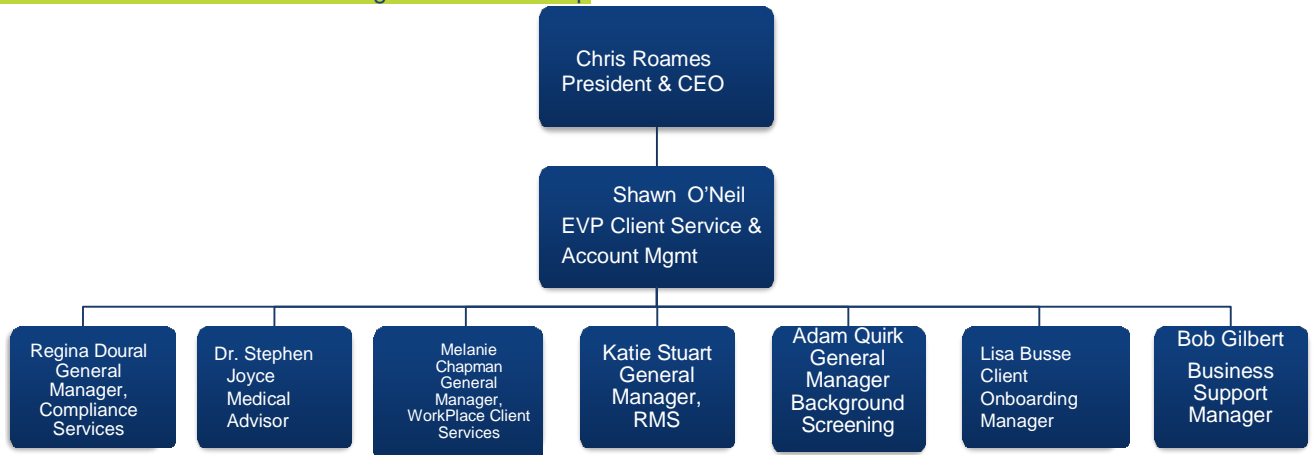
(i) For the Unauthorized Removal of any Key Personnel designated in the applicable Statement of Work, the credit amount will be \$10,000.00 per individual if Contractor identifies a replacement approved by the State and MGCB Horse Racing Section and assigns the replacement to shadow the Key Personnel 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 \$10,000.00 credit specified above, Contractor will credit the State and MGCB Horse Racing Section \$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 \$10,000.00 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 \$10,000.00 per individual.

- D. 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 and MGCB Horse Racing Section that may arise from the Unauthorized Removal, which would be impossible or very difficult to accurately estimate; and (ii) may, at the State's and MGCB Horse Racing Section option, be credited or set off against any fees or other charges payable to Contractor under this Contract.

3.3 Organizational Chart

Client Service & Account Management Leadership



3.4 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.

The Contractor has identified the following subcontractors for Laboratory Services:

LabOne, Inc. d/b/a Quest Diagnostics
10101 Renner, Blvd., Lenexa, KS 66219
913-888-3927 or 800-873-8845

Quest Diagnostics, Incorporated
3175 Presidential Drive
Atlanta, GA 30340
770-452-1590 or 800-729-6432

Quest Diagnostics Incorporated
400 Egypt Road
Norristown, PA 19403
610-631-4600 or 877-642-2216

Quest Diagnostics Incorporated
7600 Tyrone Avenue
Van Nuys, CA 91405
818-989-2521 or 866-370-6699

3.5 Work Hours

The Contractor must provide Contract Activities during the State's normal working hours Monday – Friday 7:00 a.m. to 6:00 p.m. EST, and possible night and weekend hours depending on the requirements of the project.

4. Project Management

- A. The Contractor shall carry out this project under the direction and control of the Program Manager, Office of the State Employer, and MGCB Horse Racing Section Contract Administrator.
- B. Although there shall be continuous liaison with the Contractor team, OSE and MGCB Horse Racing Section will meet as necessary, with the Contractor's Account Executive for the purpose of reviewing progress and providing necessary guidance to the Contractor in solving problems which arise.
- C. The Contractor must submit to OSE and MGCB Horse Racing Section a brief written summary of progress which outline the work accomplished during the reporting period; work to be accomplished during the subsequent reporting; problems, real or anticipated, which should be brought to the attention of the client agency's project director; and notification of any significant deviation from previously agreed-upon work plans.
- D. The Contractor within 30 working days of the Contract start date (unless otherwise noted), must submit a project plan to the OSE Program Manager, and the MGCB Horse Racing Section Contract Administrator for final approval. This final implementation plan must be

accepted by the State **and MGC B Horse Racing Section** for Contract, and must include (unless otherwise noted), but not limited to the following:

1. The Contractor's project organizational structure.
2. The Contractor's staffing table with names and title of key personnel assigned to the project as well as other necessary staff. This shall be in agreement with staffing as provided in the accepted proposal. Necessary substitutions due to change of employment status and other unforeseen circumstances may only be made with prior approval of the State **and MGC B Horse Racing Section**.
3. Project breakdown showing sub-projects, tasks, and resources required.
4. A time-phase implementation plan in the form of a graphic display, showing each event, task, and decision point in the Contractor's work plan which will allow the State to be ready for a smooth transition in our testing program.
5. Collection site list, subject to State approval.
6. Plans for a series of implementation meetings with State **and MGC B Horse Racing Section** personnel and Contractor key personnel to ensure a smooth and seamless transition.

- E. Within 30 working days of the Contract start date, the State **and MGC B Horse Racing Section** will provide the Contractor with:
1. Current approved collection sites
 2. Current approved on-site collectors
 3. Addresses of the State facilities **and MGC B Horse Racing facilities**
 4. SAP list, reviewed and finalized

5. Service Level Agreements (SLAs) / Performance Guarantees

- A. The Contractor must report on and track the following SLAs and Performance Guarantees in order to measure compliance with performance. Contractor-based performance audits may be verified through external audit activity. The Contractor must allow third party audits to measure performance standards.
- B. Performance guarantees will be evaluated by the State's **and MGC B Horse Racing Section** Program Manager and Contractor's Account Manager. The State's Program Manager **and MGC B Horse Racing Section's Program Manager** decision will be final.

Performance Category	Performance Criteria	Standard of performance	Penalties
Payment to clinics	Within 40 days of receipt	95%	\$50 per incident, with \$3,000 in maximum annual SLA credits.
Reporting Results to DATC or DER and MGC B Horse Racing Section	Within 72 hours from specimen collection for negative and 5 business days for non-negative drug results Upon completion of test for alcohol	95%	\$50 per incident, with \$3,000 in maximum annual SLA credits. **Applies to negative screening results only.

Performance Category	Performance Criteria	Standard of performance	Penalties
Locate and make arrangements for an out of state/country clinic as needed	Within 48 hours of receipt of request	95%	\$50 per incident, with \$3,000 in maximum annual SLA credits.
Return calls to OSE staff or any DATC or DER and MGC B Horse Racing Section	Within 24 hours	95%	\$50 per incident, with \$3,000 in maximum annual SLA credits.
Random Selections	Returned by the first day of each month that randoms will be performed	95%	\$50 per incident, with \$3,000 in maximum annual SLA credits.
Quarterly Reports	Within 4 weeks of completion of the quarter	95%	\$50 per incident, with \$3,000 in maximum annual SLA credits.
Yearly Reports	Within 5 weeks of completion of the year	90%	\$50 per incident, with \$3,000 in maximum annual SLA credits.
Custody and Control Form Delivery	Within 10 days of receipt of order	95%	\$50 per incident, with \$3,000 in maximum annual SLA credits.
Reporting Accuracy		95%	\$50 per incident, with \$3,000 in maximum annual SLA credits.
Problem Resolution	Within 2 weeks (initial investigative data available within 1 week and weekly progress reports until resolution)	95%	\$50 per incident, with \$3,000 in maximum annual SLA credits.

*** Specimens that screen negative can be available within the 72 hour time frame. Those that screen non-negative and have to go for additional testing and MRO review will require more time.*

C. To support the Contractor's service level, the Contractor and the State **and MGC B Horse Racing Section** agree to the following:

1. The total pool available for all SLA credits for this contract shall be a maximum of \$3,000 per year.
2. The requirement for service level credits shall not apply to any incidents taking place within the first 90 days of testing.
3. Prior to imposing any SLA credits, the State **and MGC B Horse Racing Section** will allow the Contractor 30 days to cure the issue.
4. The achievement of the SLAs by the Contractor may require the coordinated, collaborative effort of the Contractor with their sub-contractors, and other third parties contracted with by the State **and MGC B Horse Racing Section**. The Contractor will 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.
5. Both the Contractor and the State **and MGC B Horse Racing Section** agree to cooperate fully to resolve any performance issues.
6. Both the Contractor and the State **and MGC B Horse Racing Section** 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 the State **and MGC B Horse Racing**

Section at least annually, and more frequently as reasonably requested by either party.

6. Pricing

The State will pay the Contractor a per test amount for the performance of all Services within this Contract. See Schedule B for pricing.

Contractor's out-of-pocket expenses are not separately reimbursable by the State unless, on a case-by-case basis for unusual expenses, the State has agreed in advance and in writing to reimburse Contractor for the expense at the State's current travel reimbursement rates. See http://www.michigan.gov/dtmb/0,5552,7-150-9141_13132---,00.html for current rates.

6.1 Price Term

Pricing is firm for the entire length of the Contract.

6.2 Tax Excluded from price

(a) Sales Tax: For purchases made directly by the State, the State is exempt from State and Local Sales Tax. Prices must not include the taxes. Exemption Certificates for State Sales Tax will be furnished upon request.

(b) Federal Excise Tax: The State may be exempt from Federal Excise Tax, or the taxes may be reimbursable, if articles purchased under any resulting Contract are used for the State's exclusive use. Certificates showing exclusive use for the purposes of substantiating a tax-free, or tax-reimbursable sale will be sent upon request. If a sale is tax exempt or tax reimbursable under the Internal Revenue Code, prices must not include the Federal Excise Tax.

7. Ordering

7.1. Authorizing Document

The appropriate authorizing document for the Contract will be a purchase order.

8. Acceptance

8.1. Acceptance

The State will use the following criteria to determine acceptance of the Contract Activities: Contractor provides all services as specified in Contract.

9. Invoice and Payment

9.1. Invoice Requirements

All invoices submitted to the State must include: (a) date; (b) purchase order; (c) quantity; (d) description of the Contract Activities; (e) unit price; (f) shipping cost (if any); and (g) total price. Overtime, holiday pay, and travel expenses will not be paid. Invoices are to be submitted on a monthly basis.

9.2. Payment Methods

The State will make payment for Contract Activities via Electronic Funds Transfer

10. 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.

STATE OF MICHIGAN

Contract No. 071B7700151

Third Party Administrator (TPA) to provide full range of administrative functions for a drug and alcohol testing program

SCHEDULE B PRICING MATRIX

1. 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).
2. The Contractor offers 2% discount off invoices paid within 10 days after receipt of invoice.

1. Third Party Administrator (TPA) to provide a full range of administrative functions for a drug and alcohol testing program for State of Michigan employees and pre-hire applicants

Collection and Testing Services:	Est. Annual Quantity		Unit Price	Total
➤ Specimen Collection and Testing (per Sample) Includes all related services except those separately stated below: *when collected at a Patient Service Center (PSC) **when collected at an Approved Third Party Site	<u>400</u>	X	<u>\$26.95 per test*</u>	<u>\$10,780.00</u>
	<u>9,600</u>		<u>\$38.54 per test**</u>	<u>\$369,984.00</u>
➤ Breath Alcohol Testing (per Test) Includes all related services except those separately stated below:	<u>2,000</u>	X	<u>\$ 33.14 per test</u>	<u>\$66,280.00</u>
➤ Re-analysis of Split Specimens (per Drug) Includes all related services except those separately stated below: (Paid for by individual)	<u>TBD</u>	X	<u>\$ 125.00 per drug</u>	N/A
➤ Blood 5 panel (per test) Includes all related services except those separately stated below:	10	X	<u>\$ 300.00 per test</u>	<u>\$3,000.00</u>
Optional Other Services:	Est. Annual Quantity		Unit Price	Total
➤ Mobile or on-site collections for use in remote areas of the State.	<u>50</u>	X	<u>\$ 75.00</u>	<u>\$3,750.00</u>
➤ Education/Training (per session) *** Does not include travel expenses	<u>5</u>	X	<u>\$ 200.00 per hour</u>	<u>\$1,000.00</u> See *** below
➤ Legal and Expert Witness Services as requested (per hour)	<u>75</u>	X	<u>\$ 150.00 per hour</u>	<u>\$11,250.00</u>
➤ Litigation Package	<u>75</u>	X	<u>\$ 90.00 each</u>	<u>\$6,750.00</u>
➤ Special Projects/Reports If outside the standard reports	<u>5</u>	X	<u>\$ 200.00 per hr.</u>	<u>\$1,000.00</u>
➤ IT Development Time per occurrence	<u>5</u>	X	<u>\$ 200.00 per hr.</u>	<u>\$1,000.00</u>

Annual Total Price	<u>\$474,794.00</u>
3-Year Total Price	<u>\$1,424,382.00</u>
<i>Note: All quantities listed are estimates only. The State does not commit to procuring these or any other amounts. Additionally the State reserves the right to switch panel drugs; and to add drugs.</i>	

NOTE: \$75 charge for mobile or on-site collections for use in remote areas of the State is not associated with Section 1.C.1 of Schedule A. Section 1.C.1 of Schedule A is indicative of such recruit schools such as the Michigan State Police Recruit School at the State Police Academy in Dimondale, MI. Such cost per test for 5 or 6 panels urine drug screen under Section 1.C.1 of Schedule A will be the same cost per test indicated Under "Specimen Collection and Testing (per sample)".

***Contractor will provide one (1) annual on-site training sessions (2 or 4 hour session) location TBD by State at NO CHARGE

***Contractor will also provide at NO CHARGE FirstResponse™ the DOT approved Supervisory Reasonable Suspicion Training Video (flash drive format) that can be uploaded to the State's Intranet/Training Site for all to have access to and download.

The FirstResponse™ training program will satisfy the DOT regulatory training requirements for supervisory personnel and other company officials. The program can be self-paced or used to train classes of multiple supervisors.

The training program consists of a series of video segments followed by workbook activities and exercises, Facilitator Guidebook, Training Manual/Workbook and a Certificate of Completion to document training, all in printable PDF format.

2. Third Party Administrator (TPA) to provide a full range of administrative functions for a drug and alcohol testing program for licenses of the Michigan Gaming Control Board's Horse Racing Section (MGC Horse Racing)

Collection and Testing Services:	Est. Annual Quantity		Unit Price	Total
➤ Specimen Collection and Testing (per Sample) Includes all related services except those separately stated below: *when collected at a Patient Service Center (PSC) **when collected at an Approved Third Party Site	<u>2</u>		\$ <u>26.95 per test*</u>	\$ <u>53.90</u>
	<u>48</u>	X	\$ <u>38.54 per test**</u>	\$ <u>1,849.92</u>
➤ Breath Alcohol Testing (per Test) Includes all related services except those separately stated below:	<u>10</u>	X	\$ <u>33.14 per test</u>	\$ <u>331.40</u>
➤ Re-analysis of Split Specimens (per Drug) Includes all related services except those separately stated below: (Paid for by individual)	<u>TBD</u>	X	\$ <u>125.00 per drug</u>	N/A
Optional Other Services:	Est. Annual Quantity		Unit Price	Total
➤ Mobile or on-site collections for use in remote areas of the State.	<u>TBD</u>		\$ <u>75.00</u>	TBD
➤ Education/Training (per session)	<u>1</u>	X	\$ <u>200.00 per hour</u>	\$ <u>200.00 per hour</u> See *** below
➤ Legal and Expert Witness Services – as requested (per hour)	<u>5</u>	X	\$ <u>150.00 per hour</u>	\$ <u>750.00</u>
➤ Litigation Package	<u>5</u>	X	\$ <u>90.00 each</u>	\$ <u>450.00</u>
➤ Special Projects/Reports If outside the standard reports	<u>1</u>	X	\$ <u>200.00 per hr.</u>	\$ <u>200.00</u>
➤ IT Development Time per occurrence	<u>1</u>	X	\$ <u>200.00 per hr.</u>	\$ <u>200.00</u>
Annual Total Price				\$ <u>4,035.00</u>
3-Year Total Price				\$ <u>12,106.00</u>

Note: All quantities listed are estimates only. The State does not commit to procuring these or any other amounts. Additionally the State reserves the right to switch panel drugs; and to add drugs.

***Contractor will provide one (1) annual on-site training sessions (2 or 4 hour session) location TBD by State at NO CHARGE

***Contractor will also provide at NO CHARGE FirstResponse™ the DOT approved Supervisory Reasonable Suspicion Training Video (flash drive format) that can be uploaded to the State's Intranet/Training Site for all to have access to and download.

The FirstResponse™ training program will satisfy the DOT regulatory training requirements for supervisory personnel and other company officials. The program can be self-paced or used to train classes of multiple supervisors.

The training program consists of a series of video segments followed by workbook activities and exercises, Facilitator Guidebook, Training Manual/Workbook and a Certificate of Completion to document training, all in printable PDF format.