



**STATE OF MICHIGAN**  
**CENTRAL PROCUREMENT SERVICES**  
 Department of Technology, Management, and Budget  
 320 S. WALNUT ST., LANSING, MICHIGAN 48933  
 P.O. BOX 30026 LANSING, MICHIGAN 48909

**CONTRACT CHANGE NOTICE**

Change Notice Number **5**  
 to  
 Contract Number **071B7700030**

<b>CONTRACTOR</b>	SCRIPTGUIDERX, INC
	15400 East Jefferson Avenue
	Grosse Point Park, MI 48230
	Ime Ekpenyong
	313-498-8981
	iekpenyong@scriptguiderx.com
	CV0034633

<b>STATE</b>	<b>Program Manager</b>	Thomas Dunn	MDHHS
		(517) 335-7203	
	DunnT2@michigan.gov		
	<b>Contract Administrator</b>	Mary Ostrowski	DTMB
(517) 249-0438			
ostrowskim@michigan.gov			

**CONTRACT SUMMARY**

**PHARMACY BENEFITS MANAGEMENT/CLAIMS ADJUDICATION SERVICES**

INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE
December 1, 2016	November 30, 2019	5 - 1 Year	November 30, 2023
PAYMENT TERMS		DELIVERY TIMEFRAME	
NET 45		N/A	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-Card <input type="checkbox"/> PRC <input type="checkbox"/> Other			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

**MINIMUM DELIVERY REQUIREMENTS**

N/A

**DESCRIPTION OF CHANGE NOTICE**

OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input checked="" type="checkbox"/>	1 Year	<input type="checkbox"/>		November 30, 2024
CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE		
\$299,636,629.21	\$0.00	\$299,636,629.21		

**DESCRIPTION**

Effective August 30, 2023, the State is exercising the final option year. The revised contract expiration date is November 30, 2024.

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



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**CONTRACT CHANGE NOTICE**

Change Notice Number **4**  
 to  
 Contract Number **071B7700030**

<b>CONTRACTOR</b>	SCRIPTGUIDERX, INC
	15400 East Jefferson Avenue
	Grosse Point Park, MI 48230
	Ime Ekpenyong
	313-498-8981
	iekpenyong@scriptguiderx.com
	CV0034633

<b>STATE</b>	<b>Program Manager</b>	Thomas Dunn	MDHHS
		(517) 335-7203	
	DunnT2@michigan.gov		
	<b>Contract Administrator</b>	Mary Ostrowski	DTMB
(517) 249-0438			
ostrowskim@michigan.gov			

<b>CONTRACT SUMMARY</b>				
<b>PHARMACY BENEFITS MANAGEMENT/CLAIMS ADJUDICATION SERVICES</b>				
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE	
December 1, 2016	November 30, 2019	5 - 1 Year	November 30, 2022	
PAYMENT TERMS		DELIVERY TIMEFRAME		
NET 45		N/A		
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING	
<input type="checkbox"/> P-Card	<input type="checkbox"/> PRC	<input type="checkbox"/> Other	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS				
N/A				
DESCRIPTION OF CHANGE NOTICE				
OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input checked="" type="checkbox"/>	1 - Year	<input type="checkbox"/>		November 30, 2023
CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE		
\$242,856,224.21	\$56,780,405.00	\$299,636,629.21		
DESCRIPTION				
Effective December 1, 2022, this Contract is exercising the fourth option year and is increased by \$56,780,405.00.				
All other terms, conditions, specifications, and pricing remain the same. Per vendor and agency agreement, DTMB Central Procurement approval, and State Administrative Board approval on October 11, 2022.				



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

**CONTRACT CHANGE NOTICE**

Change Notice Number **3**

to

Contract Number **071B7700030**

<b>CONTRACTOR</b>	SCRIPTGUIDERX, INC
	15400 East Jefferson Avenue
	Grosse Point Park, MI 48230
	Ime Ekpenyong
	313-498-8981
	iekpenyong@scriptguiderx.com
	CV0034633

<b>STATE</b>	<b>Program Manager</b>	Thomas Dunn	MDHHS
		(517) 335-7203	
	DunnT2@michigan.gov		
	<b>Contract Administrator</b>	Mary Ostrowski	DTMB
(517) 249-0438			
ostrowskim@michigan.gov			

**CONTRACT SUMMARY**

**PHARMACY BENEFITS MANAGEMENT/CLAIMS ADJUDICATION SERVICES**

INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE
December 1, 2016	November 30, 2019	5 - 1 Year	November 30, 2021
PAYMENT TERMS		DELIVERY TIMEFRAME	
NET 45		N/A	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-Card <input type="checkbox"/> PRC <input type="checkbox"/> Other			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

**MINIMUM DELIVERY REQUIREMENTS**

N/A

**DESCRIPTION OF CHANGE NOTICE**

OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input checked="" type="checkbox"/>	1 - Year	<input type="checkbox"/>		November 30, 2022
CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE		
\$186,028,924.21	\$56,827,300.00	\$242,856,224.21		

**DESCRIPTION**

Effective December 1, 2021, this Contract is exercising the third option year and is increased by \$56,827,300.00.

All other terms, conditions, specifications, and pricing remain the same. Per vendor and agency agreement, DTMB Central Procurement approval, and State Administrative Board approval on October 26, 2021.

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**CONTRACT CHANGE NOTICE**

Change Notice Number 2

to

Contract Number 071B7700030

<b>CONTRACTOR</b>	SCRIPTGUIDERX, INC
	15400 East Jefferson Avenue
	Grosse Point Park, MI 48230
	Ime Ekpenyong
	313-498-8981
	iekpenyong@sgrxhealth.com
	CV0034633

<b>STATE</b>	<b>Program Manager</b>	Thomas Dunn	MDHHS
		517-335-7203	
		DunnT2@michigan.gov	
	<b>Contract Administrator</b>	Mary Ostrowski	DTMB
		(517) 249-0438	
		ostrowskim@michigan.gov	

**CONTRACT SUMMARY**

PHARMACY BENEFITS MANAGEMENT/CLAIMS ADJUDICATION SERVICES

INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE
December 1, 2016	November 30, 2019	5 - 1 Year	November 30, 2021

PAYMENT TERMS	DELIVERY TIMEFRAME
NET 45	N/A

ALTERNATE PAYMENT OPTIONS	EXTENDED PURCHASING
<input type="checkbox"/> P-Card <input type="checkbox"/> PRC <input type="checkbox"/> Other	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

**MINIMUM DELIVERY REQUIREMENTS**

N/A

**DESCRIPTION OF CHANGE NOTICE**

OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input type="checkbox"/>		<input type="checkbox"/>		N/A

CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE
\$127,704,675.00	\$58,324,249.21	\$186,028,924.21

**DESCRIPTION**

Effective April 28, 2021, this Contract is increased by \$58,324,249.21, and the updates in the attached Change Notice 2, Attachment 1 are incorporated.

All other terms, conditions, specifications, and pricing remain the same. Per Contractor and Agency agreement, DTMB Central Procurement Services approval, and State Administrative Board approval on April 27, 2021.

## CHANGE NOTICE 2, ATTACHMENT 1

071B7700030

**A. The following changes are incorporated to update contract language and pricing as it pertains to the STD Program, Insurance Premium Assistance and 340B services:**

- 1. Exhibit A, Statement of Work, Project Request Section is updated and replaced with the following language:**

### **Project Request**

This is a Contract for the provision of Pharmacy Benefits Management (PBM) / Claims Adjudication / Insurance Assistance Services for the Michigan Acquired Immune Deficiency Syndrome (AIDS) Drug Assistance Program (MIDAP) and other administrative services related to the 340B Drug Pricing Program (340B), to include, but not limited to: point-of-sale claims processing, a comprehensive, statewide flexible prescription distribution network and a strong, effective partnership with the Division of HIV/STD Programs (DHSP) to fulfill mutual program objectives.

- 2. Exhibit A, Statement of Work, Background Section is updated and replaced with the following language:**

### **Background**

Michigan's Ryan White (HIV)/AIDS Program Part B grant and STD grant are administered by the Michigan Department of Health and Human Services (MDHHS) through the Division of HIV & Sexually Transmitted Disease (STD) Programs (DHSP). These grants support the delivery of HIV/AIDS and STD medications, care-related health services and other supportive services, to people who are HIV- or STD-infected (or in some circumstances, "affected") in the State of Michigan. The MIDAP, helps cover prescription costs for certain Food and Drug Administration (FDA) approved drugs for eligible persons living with HIV/AIDS in Michigan. Currently, to be eligible for the program, a member must be a resident of Michigan, HIV positive, have a gross income which does not exceed 450% of the Federal Poverty Level (FPL) and cannot be eligible for any other assistance program. This earmark of the Part B grant is administered by the DHSP. Other direct client services are delivered through contracts awarded throughout the State by both grants.

The implementation of the [Patient Protection and Affordable Care Act](#) (ACA) in early 2014 is dramatically changing the landscape of Ryan White programs. ACA expanded insurance coverage to people living with HIV in Michigan through the creation of a federally-facilitated insurance marketplace, the [Healthy Michigan](#) program, as well as a list of general provisions that eliminates restrictive practices and expands coverage.

The MIDAP and STD Program are covered entities in the 340B Drug Pricing Program. The 340B Drug Pricing Program requires drug manufacturers to provide outpatient drugs to eligible health care organizations for eligible patients at significantly reduced prices. The 340B program is designed to provide a pricing benefit to safety-net providers. It is the intent of the program that providers use the savings to reinvest in their programs and enhance medical services to uninsured or underinsured patients.

**3. Exhibit A, Statement of Work, Section 1.A. Contractor Requirements, 1 and 2 is updated and replaced with the following:**

**A. Contractor Requirements**

1. The DHSP and the Contractor will form a collaborative partnership to meet the medication/insurance assistance payment needs of HIV positive clients, and provide support for inventory/order management of STD 340B medications in an effective and efficient manner. The Contractor must manage: prescription claims processing; the National Drug Code (NDC) Formulary files (list of covered drugs); drug pricing; drug utilization data reporting; a comprehensive distribution network of pharmacies (with the option expand and/or change to a single source mail order distribution system); pharmacy drug reimbursement negotiation and coordination; and reporting that meets requirements of the federal grants.
  
2. The DHSP will manage client enrollment and maintenance of the eligibility file, as well as Version (03/1115) 17 the DHSP formulary of covered drugs. In order to avoid duplication of files and data entry, and to keep participant eligibility information current, the DHSP requires remote access to the PBM system. DHSP also requires remote access to all inventory/order management systems deployed by the Contractor for the administration of 340B services.

Contractor must provide unlimited access to their claims management system, ProPBM for the purpose of managing client enrollment and proper adjudication of formulary approved drugs. Contractor must also provide unlimited access to their inventory/order management system for the of managements proper formulary of approved STD drugs.

**4. Exhibit A, Statement of Work, 1.B Claims Processing is replaced with the language below:**

**B. Claims/Insurance Assistance/340B Processing**

The Contractor must provide an efficient, electronic point-of-sale (POS) claims/insurance assistance/340B adjudication systems, make payments to pharmacies, coordinate with other payers and provide data management and member support services pursuant to Exhibit E – Service Level Agreements (SLA's).

**5. Exhibit A, Statement of Work: The following updated references apply:**

- a) All references to “claims” are replaced with “claims/insurance assistance/340B”, but remains unchanged for any reference of “rebate claims”.
- b) All references to “system” are replaced with “systems”
- c) All references to “MIDAP” are replaced with “MIDAP/DHSP”

**6. Exhibit A, Statement of Work, Section 3.5.1 Key Personnel is replaced with the language below:**

**1. Contractor’s Key Personnel:**

Role	Name
Clinical Pharmacist	Marjorie Whitson, RPh
Account Executive	Latecia Jones

Customer Service Manager	Megan Fredrickson
Financial Analyst	Brian Brume
Account Coordinator	Tiffany Brown
Reporting	Jean Christian

**7. Exhibit A, Statement of Work, Section 5. Ordering is replaced with the language below:**

**5. Ordering**

**5.1 Authorizing Document**

A signed Master Agreement as well as an Agency issued Delivery Order (DO).

**8. Exhibit A, Statement of Work, Section 6. Invoice and Payment is replaced with the language below:**

**6. Invoice and Payment**

**6.1. Invoice Requirements**

1. All invoices submitted to the State must include:
  - (a) Date of invoice
  - (b) Period covered
  - (c) Invoice number
  - (d) Associated State DO number
  - (e) Total quantities and fixed rates associated to all itemized costs detailed in (f) through (q) below
  - (f) Physician Administered Vaccine (claim) cost (Invoiced and paid as incurred, no more frequently than monthly)
  - (g) Ingredient (claim) cost (Invoiced and paid bi-weekly)
  - (h) Dispensing fee cost (Invoiced and paid bi-weekly)
  - (i) Medicaid Recoupment Fee cost from a primary payer when, and if, applicable (Invoiced and paid as incurred, no more frequently than monthly)
  - (j) Physician Administered Vaccine Administration Fee Cost (Invoiced and paid as incurred, no more frequently than monthly)
  - (k) Administration fee (Invoiced and paid bi-weekly)
  - (l) 340B monthly service fee (Invoiced and paid monthly)
  - (m) Premium Assistance fee (Invoiced and paid monthly)
  - (n) Premium assistance mail fee (Invoiced and paid monthly)
  - (o) Premium cost (Invoiced and paid monthly)
  - (p) Health Insurance Premium and Cost Sharing Assistance (HIPCA) Fee per check (Invoiced and paid as incurred, no more frequently than monthly)
  - (q) Insurance Database Review – Invoiced and paid quarterly
  - (r) Coordination of Benefits (COB) Recoupment fee and recoupment value (Invoiced and paid as incurred, no more frequently than monthly)
  - (s) Total invoice amount

Invoices that include overtime, holiday pay, and travel expenses will not be paid.

2. Supporting documentation must be included to support the invoice, and must include separate Excel files for every price component for the line items identified in Section 6.1 Invoice Requirements and Exhibit C, Pricing. Excel files must include client-level detail and including claims. Contractor must provide a separate Excel

file for group claims, which details the total cost of ADAP claims in each county. Contractor must provide any other supporting documentation requested by the State Program Manager or designee and both grants managed under this Contract.

3. Invoices may be provided in any electronic format (Word, Excel, PDF, etc). Supporting documentation for the invoice must be provided using Microsoft Excel. All supporting documents, along with the invoice, will be saved in a zip file, and uploaded to the DHHS File Transfer. All supporting documents must be password protected.
4. The Contractor must provide payment to retail network pharmacies on a weekly or biweekly basis, in addition to providing detailed invoice information to the State Program Manager on all charges incurred for each invoice period.

## **6.2 Payment Methods**

1. The State will make payment for Contract Activities through Electronic Funds Transfer (EFT) as stated in 1984 PA 431, all contracts that the State enters into for the purchase of goods and service must provide that payment will be EFT.
2. All fees and costs associated to this Contract as identified in Exhibit C, Pricing, must be paid through SIGMA off of the associated DO. No alternate payment method (Such as PRC GAX or other) is allowed.

### **B. The State's Program Manager is updated to Thomas Dunn, in Standard Contract Terms, Section 4 Program Manager and the Contract cover page:**

Thomas Dunn  
Phone: (517) 335-7203  
Email: [DunnT2@michigan.gov](mailto:DunnT2@michigan.gov)

### **C. The contact information for the Contractor's Program Manager Ime Ekpenyong is updated in Standard Contract Terms, Section 4 Program Manager and the Contract cover page:**

Ime Ekpenyong  
15400 East Jefferson Avenue,  
Grosse Pointe Park, MI 48230  
Phone: (313) 498-8981  
Email: [iekpenyong@sgrxhealth.com](mailto:iekpenyong@sgrxhealth.com)

### **D. The attached Federal Provisions Addendum is incorporated.**



# STATE OF MICHIGAN

Contract No. 071B7700030

Pharmacy Benefits Management/Claims Adjudication Services for the Michigan AIDS Drug Assistance Program (MIDAP) for the Michigan Department of Health and Human Services.

## EXHIBIT C, PRICING

1. Pricing includes 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. Pricing Schedule:

	Retail Pharmacy Rates	Mail Order Rates
AWP Discount for Generic Drugs	70%	20%
AWP Discount for Brand Drugs	17.5%	73%
Dispensing Fee per Prescription Check	\$2.00*	\$0.00
<b>Specialty Drugs</b>		
AWP Discount for Specialty Drugs	17.5%	17.5%
Dispensing Fee per Prescription Check	\$0.00	\$0.00
<b>Administration Fees</b>		
Administration Fee per Prescription Check	\$1.50	\$1.50
340B Monthly Service Fee	\$10,000.00	
Premium Assistance Fee per Premium Check. (1600 check per month minimum)	\$6.25	
Premium Assistance Mail Fee	Actual cost per month	
Health Insurance Premium and Cost Sharing Assistance (HIPCA) Fee per Check	\$10.50	
Insurance Database Review Fee - Quarterly	\$5,000.00	
Medicaid Recoupment Percentage Fee	5% of Associated Prescription Costs	
Coordination of Benefits (COB) Recoupment Fee	5% of recouped costs	
Physician Administered Vaccine Fee	\$6.50 per claim	
Physician Administered Vaccine (Claim Cost)	Pass-through of Actual Cost	
Ingredient Cost	Pass-through of Actual Cost	
Premium Cost	Pass-through of Actual Cost	

\*Reflects a "Not-to-Exceed" rate

# FEDERAL PROVISIONS ADDENDUM

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

## 1. Equal Employment Opportunity

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

- a. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:  
  
Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- b. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- c. The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

## FEDERAL PROVISIONS ADDENDUM

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- d. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- e. The Contractor will comply with all provisions of [Executive Order 11246](#) of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- f. The Contractor will furnish all information and reports required by [Executive Order 11246](#) of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- g. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in [Executive Order 11246](#) of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in [Executive Order 11246](#) of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- h. The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of [Executive Order 11246](#) of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:  
  
Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.  
  
The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, that if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

## FEDERAL PROVISIONS ADDENDUM

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The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

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

If this Contract is a **prime construction contract** in excess of \$2,000, the Contractor (and its Subcontractors) must comply with the Davis-Bacon Act ([40 USC 3141-3148](#)) as supplemented by Department of Labor regulations ([29 CFR Part 5](#), "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"), and during performance of this Contract the Contractor agrees as follows:

- a. All transactions regarding this contract shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29C.F.R. pt. 5 as may be applicable. The contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.
- b. Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.
- c. Additionally, contractors are required to pay wages not less than once a week.

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

If this Contract is a contract for construction or repair work in excess of \$2,000 where the Davis-Bacon Act applies, the Contractor must comply with the Copeland "Anti-

## FEDERAL PROVISIONS ADDENDUM

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Kickback” Act ([40 USC 3145](#)), as supplemented by Department of Labor regulations ([29 CFR Part 3](#), “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”), which prohibits the Contractor and subrecipients from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled, and during performance of this Contract the Contractor agrees as follows:

- a. **Contractor.** The Contractor shall comply with 18 U.S.C. §874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.
- b. **Subcontracts.** The Contractor or Subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA or the applicable federal awarding agency may by appropriate instructions require, and also a clause requiring the Subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- c. **Breach.** A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a Contractor and Subcontractor as provided in 29 C.F.R. § 5.12.

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

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

- a. **Overtime requirements.** No Contractor or Subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- b. **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any Subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and Subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard work

## FEDERAL PROVISIONS ADDENDUM

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week of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

- c. **Withholding for unpaid wages and liquidated damages.** The State shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or Subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
- d. **Subcontracts.** The Contractor or Subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the Subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

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

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

### 6. Clean Air Act and the Federal Water Pollution Control Act

If this Contract is **in excess of \$150,000**, the Contractor must comply with all applicable standards, orders, and regulations issued under the Clean Air Act ([42 USC 7401-7671q](#)) and the Federal Water Pollution Control Act ([33 USC 1251-1387](#)), and during performance of this Contract the Contractor agrees as follows:

#### Clean Air Act

1. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
2. The Contractor agrees to report each violation to the State and understands and agrees that the State will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency or the applicable federal awarding agency, and the appropriate Environmental Protection Agency

## FEDERAL PROVISIONS ADDENDUM

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Regional Office.

3. The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA or the applicable federal awarding agency.

### Federal Water Pollution Control Act

1. The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
2. The Contractor agrees to report each violation to the State and understands and agrees that the State will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency or the applicable federal awarding agency, and the appropriate Environmental Protection Agency Regional Office.
3. The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA or the applicable federal awarding agency.

## 7. Debarment and Suspension

A “contract award” (see [2 CFR 180.220](#)) must not be made to parties listed on the government-wide exclusions in the [System for Award Management](#) (SAM), in accordance with the OMB guidelines at [2 CFR 180](#) that implement [Executive Orders 12549 \(51 FR 6370; February 21, 1986\)](#) and [12689 \(54 FR 34131; August 18, 1989\)](#), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than [Executive Order 12549](#).

- a. This Contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the Contractor is required to verify that none of the Contractor’s principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- b. The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- c. This certification is a material representation of fact relied upon by the State. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- d. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and

## FEDERAL PROVISIONS ADDENDUM

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throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

### 8. Byrd Anti-Lobbying Amendment

Contractors who apply or bid for an award of **\$100,000 or more** shall file the required certification in *Exhibit 1 – Byrd Anti-Lobbying Certification* below. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

### 9. Procurement of Recovered Materials

Under [2 CFR 200.322](#), Contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.

- a. In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired:
  - i. Competitively within a timeframe providing for compliance with the contract performance schedule;
  - ii. Meeting contract performance requirements; or
  - iii. At a reasonable price.
- b. Information about this requirement, along with the list of EPA- designated items, is available at EPA’s Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
- c. The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

### 10. Additional FEMA Contract Provisions.

The following provisions apply to purchases that will be paid for in whole or in part with funds obtained from the Federal Emergency Management Agency (FEMA):

- a. **Access to Records.** The following access to records requirements apply to this contract:
  - i. The Contractor agrees to provide the State, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of



## FEDERAL PROVISIONS ADDENDUM

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- making audits, examinations, excerpts, and transcriptions.
- ii. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
  - iii. The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

In compliance with the Disaster Recovery Act of 2018, the State and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

**b. Changes.**

See the provisions regarding modifications or change notice in the Contract Terms.

**c. DHS Seal Logo and Flags.**

The Contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

**d. Compliance with Federal Law, Regulations, and Executive Orders.**

This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The Contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

**e. No Obligation by Federal Government.**

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the State, Contractor, or any other party pertaining to any matter resulting from the Contract.”

**f. Program Fraud and False or Fraudulent Statements or Related Acts**

The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor’s actions pertaining to this contract.

# EXHIBIT 1

## BYRD ANTI-LOBBYING CERTIFICATION

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Contractor must complete this certification if the purchase will be paid for in whole or in part with funds obtained from the federal government and the purchase is greater than \$100,000.

### **APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING**

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**EXHIBIT 1 - BYRD ANTI-LOBBYING CERTIFICATION**

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The Contractor, Script Guide RX, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

\_\_\_\_\_  
Signature of Contractor's Authorized Official

\_\_\_\_\_  
Name and Title of Contractor's Authorized Official

\_\_\_\_\_  
Date



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

**CONTRACT CHANGE NOTICE**

Change Notice Number **1**  
 to  
 Contract Number **071B7700030**

<b>CONTRACTOR</b>	Script Guide Rx
	15400 East Jefferson Avenue
	Grosse Point Park, MI 48230
	Ime Ekpenyong
	313-498-8981
	iekpenyong@scriptguiderx.com

<b>STATE</b>	Program Manager	Dawn Lukomski	MDHHS
		517-241-5924	
		lukomskid@michigan.gov	
<b>STATE</b>	Contract Administrator	Mary Ostrowski	DTMB
		(517) 284-7021	
		ostrowskim@michigan.gov	

**CONTRACT SUMMARY**

**PHARMACY BENEFITS MANAGEMENT/CLAIMS ADJUDICATION SERVICES FOR MIDAP**

INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE
December 1, 2016	November 30, 2019	5 - 1 Year	November 30, 2019
PAYMENT TERMS		DELIVERY TIMEFRAME	
NET 45		N/A	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-Card <input type="checkbox"/> PRC <input type="checkbox"/> Other			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

**MINIMUM DELIVERY REQUIREMENTS**  
 N/A

**DESCRIPTION OF CHANGE NOTICE**

OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input checked="" type="checkbox"/>	2 - One Year	<input type="checkbox"/>		November 30, 2021
CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE		
\$54,984,675.00	\$72,720,000.00	\$127,704,675.00		

**DESCRIPTION**

Effective December 1, 2019, two of five option years on the Contract are exercised, and \$72,720,000.00 in funds are added to the Contract. In addition, the following changes are made:

- 1) Dawn Lukomski is replacing Mino Norwood in Standard Contract Terms Section, Section 4 Program Manager and the Contract cover page:  
 Dawn Lukomski  
 Phone: (517) 241-5924  
 Email: LukomskiD@michigan.gov
- 2) Estimated Contract Value at Time of Execution on Notice of Contract is corrected to read \$54,984,675 per approved Administrative Board tabulation on August 30, 2016 to include estimated claims cost and administrative fees to represent total cost of ownership.

All other terms, conditions, specifications, and pricing remain the same. Per Vendor and Agency agreement, DTMB Procurement approval, and State Administrative Board approval on November 19, 2019.



**STATE OF MICHIGAN  
ENTERPRISE PROCUREMENT**

Department of Technology, Management, and Budget

525 W. Allegan, Lansing MI 48913  
P.O. Box 30026, Lansing, MI 48909

**NOTICE OF CONTRACT**

CONTRACT NO. **071B7700030**

between

THE STATE OF MICHIGAN

and

<b>CONTRACTOR</b>	Script Guide Rx
	15400 East Jefferson Avenue
	Grosse Pointe Park, MI 48230
	Ime Ekpenyong
	313-498-8981
	iekpenyong@scriptguiderx.com
6808	

<b>STATE</b>	Program Manager	Minoo Norwood	DHHS
		517-373-1717	
	Norwoodm2@michigan.gov		
	Contract Administrator	Mary Ostrowski	DTMB
517-373-6327			
OstrowskiM@michigan.gov			

**CONTRACT SUMMARY**

**DESCRIPTION:** Pharmacy Benefits Management/Claims Adjudication Services for the Michigan AIDS Drug Assistance Program (MIDAP) for the Michigan Department of Health and Human Services.

INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
December 1, 2016	November 30, 2019	Five-One year options	
PAYMENT TERMS		DELIVERY TIMEFRAME	
NET 45		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			
N/A			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION			<b>\$984,675.00</b>

CONTRACT NO. 071B7700012

**FOR THE CONTRACTOR:**

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

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

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

\_\_\_\_\_  
**Date**

**FOR THE STATE:**

\_\_\_\_\_  
**Signature**

**Tom Falik, Division Director - Services**

**DTMB – Enterprise Procurement**  
**Agency**

\_\_\_\_\_  
**Date**



# STATE OF MICHIGAN

## STANDARD CONTRACT TERMS

This STANDARD CONTRACT (“**Contract**”) is agreed to between the State of Michigan (the “**State**”) and ScriptGuide Rx, Inc., a Michigan corporation. This Contract is effective on December 1, 2016 (“**Effective Date**”), and unless terminated, expires on November 30, 2019. This Contract may be renewed for up to five additional one year period(s). Renewal must be by written agreement of the parties and will automatically extend the Term of this Contract.

The parties agree as follows:

1. **Duties of Contractor.** Contractor must perform the services and provide the deliverables described in **Exhibit 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 Exhibit 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:
Mary Ostrowski 525 West Allegan St Lansing, MI 48933 OstrowskiM@michigan.gov 517-284-7021	Ime Ekpenyong 15400 East Jefferson Avenue, Grosse Pointe Park, MI 48230 <a href="mailto:iekpenyong@scriptguiderx.com">iekpenyong@scriptguiderx.com</a> 313.498.8981

3. **Contract Administrator.** The Contract Administrator for each party is the only person authorized to modify any terms and conditions of this Contract (each a “**Contract Administrator**”):

State: Mary Ostrowski 525 West Allegan St Lansing, MI 48933 OstrowskiM@michigan.gov 517-284-7021	Contractor: Ime Ekpenyong 15400 East Jefferson Avenue, Grosse Pointe Park, MI 48230 <a href="mailto:iekpenyong@scriptquiderx.com">iekpenyong@scriptquiderx.com</a> 313.498.8981
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4. **Program Manager.** The Program Manager for each party will monitor and coordinate the activities of the Contract (each a “**Program Manager**”):

State: Mino Norwood 109 Michigan Ave Lansing, MI 48933 <a href="mailto:norwoodm2@michigan.gov">norwoodm2@michigan.gov</a> 517.373.1717	Contractor: Ime Ekpenyong 15400 East Jefferson Avenue, Grosse Pointe Park, MI 48230 <a href="mailto:iekpenyong@scriptquiderx.com">iekpenyong@scriptquiderx.com</a> 313.498.8981
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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 Exhibit 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.

Insurance Type	Additional Requirements
<b>Commercial General Liability Insurance</b>	
<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.
<b>Umbrella or Excess Liability Insurance</b>	
<u>Minimal Limits:</u> \$5,000,000 General Aggregate	Contractor must have their policy endorsed to add “the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents” as additional insureds.
<b>Automobile Liability Insurance</b>	
<u>Minimal Limits:</u> \$1,000,000 Per Occurrence	
<b>Workers' Compensation Insurance</b>	
<u>Minimal Limits:</u> Coverage according to applicable laws governing work activities.	Waiver of subrogation, except where waiver is prohibited by law.
<b>Employers Liability Insurance</b>	



<u>Minimal Limits:</u> \$500,000 Each Accident \$500,000 Each Employee by Disease \$500,000 Aggregate Disease.	
<b>Privacy and Security Liability (Cyber Liability) Insurance</b>	
<u>Minimal Limits:</u> \$5,000,000 Each Occurrence \$5,000,000 Annual Aggregate	Contractor must have their policy: (1) endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds; and (2) cover information security and privacy liability, privacy notification costs, regulatory defense and penalties, and website media content liability.
<b>Crime Insurance</b>	
<u>Minimal Limits:</u> \$3,000,000 Employee Theft Per Loss	Contractor must have their policy: (1) cover forgery and alteration, theft of money and securities, robbery and safe burglary, computer fraud, funds transfer fraud, money order and counterfeit currency, and (2) endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as Loss Payees.
<b>Professional Liability (Errors and Omissions) Insurance</b>	
<u>Minimal Limits:</u> \$3,000,000 Each Occurrence \$3,000,000 Annual Aggregate  <u>Deductible Maximum:</u> \$50,000 Per Loss	

If any of the required policies provide **claim-made** coverage, the Contractor must: (a) provide coverage with a retroactive date before the effective date of the contract or the beginning of Contract Activities; (b) maintain coverage and provide evidence of coverage for at least three 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 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 five 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. Extended Purchasing Program Administrative Fee and Reporting.** Contractor must pay an administrative fee of 1% on all Extended Purchasing Program payments made to Contractor under the Contract including transactions with 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  
Financial Services – Cashier Unit  
Lewis Cass Building  
320 South Walnut St.  
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](http://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 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. Contractor hereby acknowledges that the State is and will be the sole and exclusive owner of all right, title, and interest in the Contract Activities and all associated intellectual property rights, if any. Such Contract Activities are works made for hire as defined in Section 101 of the Copyright Act of 1976. To the extent any Contract Activities and related intellectual property do not qualify as works made for hire under the Copyright Act, Contractor will, and hereby does, immediately on its creation, assign, transfer and otherwise convey to the State, irrevocably and in perpetuity, throughout the universe, all right, title and interest in and to the Contract Activities, including all intellectual property rights therein.
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, provide all necessary documentation and signatures, and continue to perform, with the third party, its obligations under the Contract.
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 Exhibit 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 Exhibit 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. **RESERVED**

18. **RESERVED.**

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

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

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

24. **Termination for Convenience.** The State may immediately terminate this Contract in whole or in part without penalty and for any reason, including but not limited to, appropriation or budget shortfalls. The termination notice will specify whether Contractor must: (a) cease performance of the Contract Activities immediately, or (b) continue to perform the Contract Activities in accordance with Section 25, Transition Responsibilities. If the State terminates this Contract for convenience, the State will pay all reasonable costs, as determined by the State, for State approved Transition Responsibilities.

**25. Transition Responsibilities.** Upon termination or expiration of this Contract for any reason, Contractor must, for a period of time specified by the State (not to exceed 90 calendar days), provide all reasonable transition assistance requested by the State, to allow for the expired or terminated portion of the Contract Activities to continue without interruption or adverse effect, and to facilitate the orderly transfer of such Contract Activities to the State or its designees. Such transition assistance may include, but is not limited to: (a) continuing to perform the Contract Activities at the established Contract rates; (b) taking all reasonable and necessary measures to transition performance of the work, including all applicable Contract Activities, training, equipment, software, leases, reports and other documentation, to the State or the State's designee; (c) taking all necessary and appropriate steps, or such other action as the State may direct, to preserve, maintain, protect, or return to the State all materials, data, property, and confidential information provided directly or indirectly to Contractor by any entity, agent, vendor, or employee of the State; (d) transferring title in and delivering to the State, at the State's discretion, all completed or partially completed deliverables prepared under this Contract as of the Contract termination date; and (e) preparing an accurate accounting from which the State and Contractor may reconcile all outstanding accounts (collectively, "**Transition Responsibilities**"). This Contract will automatically be extended through the end of the transition period.

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

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

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

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

**27. Infringement Remedies.** If, in either party's opinion, any piece of equipment, software, commodity, or service supplied by Contractor or its subcontractors, or its operation, use or reproduction, is likely to become the subject of a copyright, patent, trademark, or trade secret infringement claim, Contractor must, at its expense: (a) procure for the State the right to continue using the equipment, software, commodity, or service, or if this option is not reasonably available to Contractor, (b) replace or modify the same so that it becomes non-infringing; or (c) accept its return by the State with appropriate credits to the State against Contractor's charges and reimburse the State for any losses or costs incurred as a consequence of the State ceasing its use and returning it.

**28. Limitation of Liability.** The State is not liable for consequential, incidental, indirect, or special damages, regardless of the nature of the action.

**29. Disclosure of Litigation, or Other Proceeding.** Contractor must notify the State within 14 calendar days of receiving notice of any litigation, investigation, arbitration, or other proceeding (collectively, "**Proceeding**") involving Contractor, a subcontractor, or an officer or director of Contractor or subcontractor, that arises during the term of the Contract, including: (a) a criminal Proceeding; (b) a parole or probation Proceeding; (c) a Proceeding under the Sarbanes-Oxley Act; (d) a civil Proceeding involving: (1) a claim that might reasonably be expected to adversely affect Contractor's viability or financial stability; or (2) a governmental or public entity's claim or written allegation of fraud; or (e) a Proceeding involving any license that Contractor is required to possess in order to perform under this Contract.

**30. Reserved.**

**31. State Data.**

- a. **Ownership.** The State's data ("**State Data**," which will be treated by Contractor as Confidential Information) includes: (a) the State's data collected, used, processed, stored, or generated as the result of the Contract Activities; (b) personally identifiable information ("**PII**") collected, used, processed, stored, or generated as the result of the Contract Activities, including, without limitation, any information that identifies an individual, such as an individual's social security number or other government-issued identification number, date of birth, address, telephone number, biometric data, mother's maiden name, email address, credit card information, or an individual's name in combination with any other of the elements here listed; and, (c) personal health information ("**PHI**") collected, used, processed, stored, or generated as the result of the Contract Activities, which is defined under the Health Insurance Portability and Accountability Act (HIPAA) and its related rules and regulations. State Data is and will remain the sole and exclusive property of the State and all right, title, and interest in the same is reserved by the State. This Section survives the termination of this Contract.
- b. **Contractor Use of State Data.** Contractor is provided a limited license to State Data for the sole and exclusive purpose of providing the Contract Activities, including a license to collect, process, store, generate, and display State Data only to the extent necessary in the provision of the Contract Activities. Contractor must: (a) keep and maintain State Data in strict confidence, using such degree of care as is appropriate and consistent with its obligations as further described in this Contract and applicable law to avoid unauthorized access, use, disclosure, or loss; (b) use and disclose State Data solely and exclusively for the purpose of providing the Contract Activities, such use and disclosure being in accordance with this Contract, any applicable Statement of Work, and applicable law; and (c) not use, sell, rent, transfer, distribute, or otherwise disclose or make available State Data for Contractor's own purposes or for the benefit of anyone other than the State without the State's prior written consent. This Section survives the termination of this Contract.
- c. **Extraction of State Data.** Contractor must, within five business days of the State's request, provide the State, without charge and without any conditions or contingencies whatsoever (including but not limited to the payment of any fees due to Contractor), an extract of the State Data in the format specified by the State.
- d. **Backup and Recovery of State Data.** Unless otherwise specified in Exhibit A, Contractor is responsible for maintaining a backup of State Data and for an orderly and timely recovery of such data. Unless otherwise described in Exhibit A, Contractor must maintain a contemporaneous backup of State Data that can be recovered within two hours at any point in time.
- e. **Loss of Data.** In the event of any act, error or omission, negligence, misconduct, or breach that compromises or is suspected to compromise the security, confidentiality, or integrity of State Data or the physical, technical, administrative, or organizational safeguards put in place by Contractor that relate to the protection of the security, confidentiality, or integrity of State Data, Contractor must, as applicable: (a) notify the State as soon as practicable but no later than 24 hours of becoming aware of such occurrence; (b) cooperate with the State in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable law or as otherwise required by the State; (c) in the

case of PII or PHI, at the State's sole election, (i) notify the affected individuals who comprise the PII or PHI as soon as practicable but no later than is required to comply with applicable law, or, in the absence of any legally required notification period, within five calendar days of the occurrence; or (ii) reimburse the State for any costs in notifying the affected individuals; (d) in the case of PII, provide third-party credit and identity monitoring services to each of the affected individuals who comprise the PII for the period required to comply with applicable law, or, in the absence of any legally required monitoring services, for no less than 24 months following the date of notification to such individuals; (e) perform or take any other actions required to comply with applicable law as a result of the occurrence; (f) without limiting Contractor's obligations of indemnification as further described in this Contract, indemnify, defend, and hold harmless the State for any and all claims, including reasonable attorneys' fees, costs, and expenses incidental thereto, which may be suffered by, accrued against, charged to, or recoverable from the State in connection with the occurrence; (g) be responsible for recreating lost State Data in the manner and on the schedule set by the State without charge to the State; and, (h) provide to the State a detailed plan within 10 calendar days of the occurrence describing the measures Contractor will undertake to prevent a future occurrence. Notification to affected individuals, as described above, must comply with applicable law, be written in plain language, and contain, at a minimum: name and contact information of Contractor's representative; a description of the nature of the loss; a list of the types of data involved; the known or approximate date of the loss; how such loss may affect the affected individual; what steps Contractor has taken to protect the affected individual; what steps the affected individual can take to protect himself or herself; contact information for major credit card reporting agencies; and, information regarding the credit and identity monitoring services to be provided by Contractor. This Section survives the termination of this Contract.

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

- a. Meaning of Confidential Information. For the purposes of this Contract, the term "**Confidential Information**" means all information and documentation of a party that: (a) has been marked "confidential" or with words of similar meaning, at the time of disclosure by such party; (b) if disclosed orally or not marked "confidential" or with words of similar meaning, was subsequently summarized in writing by the disclosing party and marked "confidential" or with words of similar meaning; and, (c) should reasonably be recognized as confidential information of the disclosing party. The term "Confidential Information" does not include any information or documentation that was: (a) subject to disclosure under the Michigan Freedom of Information Act (FOIA); (b) already in the possession of the receiving party without an obligation of confidentiality; (c) developed independently by the receiving party, as demonstrated by the receiving party, without violating the disclosing party's proprietary rights; (d) obtained from a source other than the disclosing party without an obligation of confidentiality; or, (e) publicly available when received, or thereafter became publicly available (other than through any unauthorized disclosure by, through, or on behalf of, the receiving party). For purposes of this Contract, in all cases and for all matters, State Data is deemed to be Confidential Information.
- b. Obligation of Confidentiality. The parties agree to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third parties other than employees, agents, or subcontractors of a party who have a need to know in connection with this Contract or to use such Confidential Information for any purposes whatsoever other than the performance of this Contract. The parties agree to advise and require their respective employees, agents, and subcontractors of their obligations to keep all Confidential Information confidential. Disclosure to a subcontractor is permissible where: (a) use of a subcontractor is authorized under this Contract; (b) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the subcontractor's responsibilities; and (c) Contractor obligates the subcontractor in a written contract to maintain the State's Confidential Information in confidence. At the State's request, any employee of Contractor or any subcontractor may be required to execute a separate agreement to be bound by the provisions of this Section.

- c. Cooperation to Prevent Disclosure of Confidential Information. Each party must use its best efforts to assist the other party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the foregoing, each party must advise the other party immediately in the event either party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Contract and each party will cooperate with the other party in seeking injunctive or other equitable relief against any such person.
- d. Remedies for Breach of Obligation of Confidentiality. Each party acknowledges that breach of its obligation of confidentiality may give rise to irreparable injury to the other party, which damage may be inadequately compensable in the form of monetary damages. Accordingly, a party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available, to include, in the case of the State, at the sole election of the State, the immediate termination, without liability to the State, of this Contract or any Statement of Work corresponding to the breach or threatened breach.
- e. Surrender of Confidential Information upon Termination. Upon termination of this Contract or a Statement of Work, in whole or in part, each party must, within five 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 non-State Data Confidential Information is not feasible, such party must destroy the non-State Data Confidential Information and must certify the same in writing within five calendar days from the date of termination to the other party.

### **33. Data Privacy and Information Security.**

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



- e. State's Right to Termination for Deficiencies. The State reserves the right, at its sole election, to immediately terminate this Contract or a Statement of Work without limitation and without liability if the State determines that Contractor fails or has failed to meet its obligations under this Section.
- f. Other Security Compliance Requirements: Contractor must contact the State within 24 hours once they have determined there has been an information breach or impermissible use of data. The Contractor must adhere to NIST 800-53 and all applicable laws, rules, regulations, and standards when designing and developing the application and when creating, receiving, maintaining, or transmitting data under this Agreement. Contractor must participate with Department of Health and Human Services and Department of Technology, Management & Budget staff to conduct a risk assessment and to develop a Security Plan for the application, which will include but is not limited to: (i) identifying risks to any data the Contractor may create, receive, maintain or transmit under this Agreement: (ii) and remediating security vulnerabilities that may be identified during the term of this Agreement.

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 four 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. **Order of Precedence.** In the event of a conflict between the terms and conditions of the Contract, the exhibits, a purchase order, or an amendment, the order of precedence is: (a) the purchase order; (b) the amendment; (c) Exhibit A; (d) any other exhibits; and (e) the Contract.
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. **Entire Contract and Modification.** This Contract is the entire agreement and replaces all previous agreements between the parties for the Contract Activities. This Contract may not be amended except by signed agreement between the parties (a "**Contract Change Notice**").

# STATE OF MICHIGAN

Contract No. 071B7700030

Pharmacy Benefits Management/Claims Adjudication Services for the Michigan AIDS Drug Assistance Program (MIDAP) for the Michigan Department of Health and Human Services

## EXHIBIT A STATEMENT OF WORK CONTRACT ACTIVITIES

### Project Request

This is a Contract for the provision of Pharmacy Benefits Management (PBM) / Claims Adjudication Services for the Michigan Acquired Immune Deficiency Syndrome (AIDS) Drug Assistance Program (MIDAP), to include, but not limited to: point-of-sale claims processing, a comprehensive, statewide flexible prescription distribution network and a strong, effective partnership with the MIDAP to fulfill mutual program objectives.

### BACKGROUND

Michigan's Ryan White (HIV)/AIDS Program Part B grant is a formula grant administered by the Michigan Department of Health and Human Services (MDHHS) through the Division of HIV & Sexually Transmitted Disease (STD) Programs (DHSP), HIV Care and Prevention Section. The Part B grant supports the delivery of HIV/AIDS medications, care-related health services and other supportive services, to people who are HIV-infected (or in some circumstances, "affected") in the State of Michigan. The MIDAP, helps cover prescription costs for certain Food and Drug Administration (FDA) approved drugs for eligible persons living with HIV/AIDS in Michigan. Currently, to be eligible for the program, a member must be a resident of Michigan, HIV positive, have a gross income which does not exceed 450% of the Federal Poverty Level (FPL) and cannot be eligible for any other assistance program. This earmark of the Part B grant is administered by the DHSP. Other direct client services are delivered through contracts awarded throughout the State.

The implementation of the [Patient Protection and Affordable Care Act](#) (ACA) in early 2014 is dramatically changing the landscape of Ryan White programs. ACA expanded insurance coverage to people living with HIV in Michigan through the creation of a federally-facilitated insurance marketplace, the [Healthy Michigan](#) program, as well as a list of general provisions that eliminates restrictive practices and expands coverage. MIDAP currently provides medications to 2,600 HIV positive residents in the State of Michigan. It is projected that over 80,000 prescription claims were processed, resulting in spending in excess of \$20 million for HIV medications in 2015.

The MIDAP is a covered entity in the 340B Drug Pricing Program. The 340B Drug Pricing Program requires drug manufacturers to provide outpatient drugs to eligible health care organizations for eligible patients at significantly reduced prices. The 340B program is designed to provide a pricing benefit to safety-net providers. It is the intent of the program that providers use the savings to reinvest in their programs and enhance medical services to uninsured patients.

### 1. Requirements

#### A. Contractor Requirements

1. The MIDAP and the Contractor will form a collaborative partnership to meet the medication needs of HIV positive clients in an effective and efficient manner. The Contractor will manage: prescription claims processing; the National Drug Code (NDC) Formulary file (list of covered drugs); drug pricing; drug utilization data reporting; a comprehensive distribution network of pharmacies (with the option expand and/or change to a single source mail order distribution system); pharmacy drug reimbursement negotiation and coordination; and reporting that meets requirements of the federal grant.
2. The Michigan MIDAP will manage client enrollment and maintenance of the eligibility file, as well as

the MIDAP formulary of covered drugs. In order to avoid duplication of files and data entry, and to keep participant eligibility information current, the MIDAP requires remote access to the PBM system.

Contractor will provide unlimited access to SGRX's claims management system, ProPBM for the purpose of managing client enrollment and proper adjudication of formulary approved drugs.

## **B. Claims Processing**

The Contractor must provide an efficient, electronic point-of-sale (POS) claims adjudication system, make payments to pharmacies, coordinate with other payers and provide data management and member support services pursuant to Exhibit E – Service Level Agreements (SLA's).

1. The Contractor must provide MIDAP staff with remote access to POS eligibility to enter and maintain patient information to allow for immediate claim adjudication by pharmacies. The Contract will provide unlimited MIDAP staff access without MIDAP incurring additional costs.

Contractor will provide the MIDAP staff with unlimited, remote access to ProPBM, SGRX's claims management system. It is supported by Relay Health, a McKesson company.

2. The Contractor's claim system remote access must provide MIDAP staff with:
  - a. Pharmacy locator
  - b. Real-time claim tracking/history – to include retail, mail order and direct member reimbursement claims history
  - c. Drug formulary and pricing information
  - d. Patient benefit level information
  - e. Disease Management information
  - f. Prior Authorization.
3. The Contractor's POS system must allow for data collection of patient information to enable MIDAP to meet federal and State reporting requirements as a condition of grant funding.

Contractor will work with the MIDAP staff to ensure all pertinent data elements are captured for the purpose of addressing Federal & State reporting requirements.

4. The Contractor must provide electronic claims processing using the most current HIPAA compliant NCPDP (National Council for Prescription Drug Programs) standards.
5. The Contractor's POS claims processing must allow for coordination of primary, secondary and often tertiary payers of prescription claims.
6. Prescription claims must always pay with MIDAP as final payer based on other payers' payment of claim using "payer of last resort".

Contractor will partner with MIDAP to ensure that all clients are properly categorized under the primary and secondary coverage groups. This ensures that MIDAP is a payer of last resort in situations where the clients have other coverage.

7. The Contractor's POS claims system must have the ability to transmit primary and/or secondary insurance information back to the pharmacy in real time.
8. The Contractor must work proactively with MIDAP to identify other payers whether commercial insurance, Medicare, Medicaid, County Health Plans (A&B), etc.
9. The Contractor must have a recoupment process that, in instances where other prescription coverage has been identified, claims can be reversed and re-billed to other payers.

a. The Contractor must facilitate and report to the MIDAP the recoupment process on a monthly basis.

#### Contractor Recoupment Services Summary

Contractor's recoupment process involves collaborating with the ADAP staff and pharmacy providers to ensure that claims paid for by the ADAP, as opposed to a primary payer, are reversed and processed through the appropriate payer in a timely manner.

Primary payers typically include Medicaid, Medicare Part D, and Private Insurance payers. Contractor's pharmacy network agreement requires all participating ADAP pharmacy providers work with Contractor to ensure ADAP is a payer of last resort. Below is a summary of the recoupment process

#### Client (ADAP) Responsibility:

- Medicaid
  - o Upon receipt of active client report from Contractor, ADAP staff sends the report to the State of Michigan for verification of Medicaid coverage. Upon receipt of feedback from State of Michigan Medicaid, ADAP staff indicates clients' whose claims need to be resubmitted to State Medicaid program, cause MIDAP should not have been the primary as client was eligible for Medicaid
  - o Report also specifies other payer information in the recoupment report when available. Report indicates approval to proceed with recoupment.
- Medicare
  - o Eligibility data is sent to CMS for the purpose of identifying individuals that are eligible for Medicare. Upon receipt of response file from CMS, information is forwarded to ADAP staff for review
  - o Upon review, ADAP staff will provide a listing of individuals eligible for recoupment and approval to proceed with the recoupment process.
- Private Insurance
  - o Files are sent to HMS for the purpose of identifying individuals that have private insurance. Upon receipt of response file from HMS, information is forwarded to ADAP staff for review.
  - o Upon review, ADAP staff will provide a listing of individuals eligible for recoupment and approval to proceed with recoupment process.

#### Contractor Responsibility:

- Contractor must use this information obtained above to extract claims information for the applicable timeframe.
- Contractor must isolate affected pharmacies filled the claims in the report.
- Standard letter template must be used to provide affected pharmacies with claims data. Letters are emailed, faxed or & mailed in compliance with HIPAA rules & regulations.
- On each letter/email, approximately two weeks is given to the pharmacies to reverse and resubmit to the other payer. Pharmacy is given a contact name and number for any questions or issues they may have.

- After two weeks, the same list is run to determine which claims are still showing a paid status, and a final notice is sent to the pharmacy requesting the claims be reprocessed. The letter also states that Contractor must reverse the claims if no action is taken by the pharmacy.
- After several unsuccessful attempts to have the claims reprocessed, claims still showing "paid" status are manually reversed by Contractor with the ADAPs approval.
- A spreadsheet must be created to show the plan a recoupment summary. The sheet is divided into two parts: Reversed and "Could not reverse", for example claims that have exceeded resubmission window.
- An email including the spreadsheet, current recoupment total & year to date total, goes to the plan monthly.

To prevent duplication of rebates or "double dipping", Contractor must provide ADAP staff with rebate data that excludes claims that have been reversed.

10. The Contractor must have a process (such as Direct Member Reimbursement) to provide eligible members reimbursement for prescription cost paid out-of-pocket due to the MIDAP and/or pharmacy billing issues.
11. The Contractor must serve as an electronic data transfer agent to meet all requirements related to Medicare True Out of Pocket (TrOOP) payments, serve as TrOOP Coordinator, and prepare reports.

### **C. Drug Pricing**

1. The Contractor must continuously maximize the cost effectiveness of the MIDAP through drug pricing negotiation.
2. The Contractor must provide monthly reporting of up-to-date drug pricing for top 100 National Drug Codes (NDC) to include Average Wholesale Price (AWP) and contracted AWP discounted rate.
3. Prescription claims submitted to the MIDAP for reimbursement by the Contractor with expired, invalid NDCs will not be reimbursed.
  - a. The Contractor must have written procedures in place to assure the NDC billed for medications dispensed to MIDAP clients are current and valid.
4. The Contractor must use single-source generic and generic medications with only one manufacturer. Contractor must use the lesser of logic to ensure that MIDAP get the best possible pricing option on each claim. The logic must compare Contractor's negotiated contract pharmacy rate, usual & customary price, pharmacy submitted price, and maximum allowable cost (MAC)
5. The Contractor must maintain compliance with the 340B Drug Pricing Program.
6. Michigan currently operates under a 340B Rebate Model. The Contractor must provide the MIDAP with a detailed drug utilization report allowing the MIDAP to submit 340B rebate claims to pharmaceutical manufacturers.

### **D. Distribution**

The Contractor must maintain and expand a retail pharmacy distribution network within the State Of Michigan; and to provide the MIDAP with an established and operational single source mail order distribution system capable of serving the medication needs of all MIDAP members. The Contractor must

maintain a consistent level of service to members while doing so in the most cost effective manner.

1. The Contractor must maintain a network of pharmacy locations that will provide walk-in service to 100% of members.
2. The Contractor must communicate with the pharmacy network regarding MIDAP updates or changes via broadcast fax, email or mail and provide copies of all pharmacy correspondence to the MIDAP.
3. The Contractor must identify all information that is available for clients and/or case managers in appropriate literacy levels in English, Spanish, Chinese or any other language.
4. The Contractor must perform POS monitoring of dispensing and distribution of medications for retail and mail order prescriptions consistent with state of the art treatment guidelines, providing educational updates via claims system edits to ensure appropriate dosing and prevent potential health risk. This should include monitoring of: Drug-to-Drug Interactions, Duplicate Therapy Monitoring, Refill Compliance Screening, Drug-Disease Contraindication, Dose Range, and Duration Checking.
  - a. The Contractor must provide reports to MIDAP on a monthly basis.
5. The Contractor must have an established mail order pharmacy to provide; at a minimum; cost neutral or lower mail order service to all MIDAP members.
6. The Contractor must provide less than a five day turnaround for mail order prescriptions from time the prescription is submitted to the Contractor to receipt of the prescription by patient.
7. The Contractor must provide mail order including options for 30, 60, and 90 day fills at plan discretion to include a price breakdown for each level of day fills..
8. The Contractor can, with guidance from MIDAP, address special shipping needs of homeless and transient members by shipping mail order prescriptions to a member preferred address.
9. The Contractor must confirm delivery of medications to member preferred address and work with plan on loss reduction activities and associated costs with repeat delivery events.
10. The Contractor's emergency response disaster plan must ensure that, once implemented, operations of the retail claims network and/or mail order pharmacy, and database(s) will be 95% restored, at minimum, and operational within 48 hours of the conclusion of the emergency.
  - a. This plan must be tested, at minimum, twice a year.
  - b. The Contractor must have a documented emergency response disaster plan.
11. On an annual basis, the Contractor must provide the MIDAP with documentation of the emergency response disaster plan and frequency of testing, as well as any contingency plans.
12. The Contractor must transition members to either mail order and/or the retail walk-in pharmacy network within 48 hours if there is an interruption of service in either distribution system that requires implementation of the emergency response/preparedness plan.
13. The Contractor must have an established Specialty Pharmacy.
14. MIDAP can define specialty drugs and the Contractor must not classify drugs as specialty drugs unless the MIDAP approves of the inclusion.



15. The Contractor must provide members a prescription drug card with unique identification number to be used when member accesses medication from either the retail or mail order pharmacies.
  - a. Contractor must issue replacement cards at no cost, on an as-needed basis.
16. The Contractor must have written procedures in place to assure that medications are dispensed only to eligible clients.
  - a. Prescription claims submitted to the MIDAP for reimbursement by the Contractor for non-eligible clients will not be reimbursed.
17. The Contractor must provide members, pharmacies and physicians with the ability to access plan information (unsecured (and secure as applicable) and/or member information to assist in technical assistance with formulary and prior authorization, mail order processing of medications and direct member reimbursement information.

**E. Formulary**

The Contractor must establish and manage a formulary of covered drugs in collaboration with the MIDAP.

1. The MIDAP develops the list of covered drugs. The Contractor must work directly with the MIDAP to develop a standard formulary format.
2. The Contractor must work with the MIDAP to maintain the MIDAP formulary to address cost containment measures (promoting the use of lower cost generic medications).
3. The Contractor must assist in promoting medication adherence to help reduce costly complications in people living with HIV/AIDS due to accelerated disease progression from non-adherence.
4. With guidance from the MIDAP, the Contractor must create, maintain, and manage prescription exceptions that the MIDAP requests, including refill exceptions, prior authorization, step therapy, or “dispense as written” (DAW) exceptions and mandatory generics.

**F. Client Confidentiality**

1. The Contractor must comply with all relevant HIPAA standards, according to the terms and schedules in Federal regulations.
2. The Contractor’s data system that manages claims and any other information must be HIPAA compliant by the dates specified in federal regulations.
3. Contractor must comply with all applicable requirements of HIPAA, as amended including a signed Exhibit D – HIPAA Business Associate Addendum.
4. Michigan law provides for the following penalties regarding the improper disclosure of confidential information concerning HIV infection in its various stages including AIDS:

“A person who violates this section is guilty of a misdemeanor, punishable by imprisonment for not more than one (1) year or a fine of not more than \$5,000.00, or both, and is liable in a civil action for actual damages or \$1,000.00, whichever is greater, and costs and reasonable attorney fees. This subsection also applies to the employer of a person who violates this section, unless the employer had in effect at the time of the violation reasonable precautions designed to prevent the violation.” MCLA 333.5131 (8).

**G. Additional Terms and Conditions**

1. The Contractor must adhere to NIST 800-53 and all applicable laws, rules, regulations, and standards when designing and developing the application and when creating, receiving, maintaining, or transmitting data under this Contract. Contractor must participate with DHHS and

Department of Technology, Management & Budget staff to conduct a risk assessment and to develop a Security Plan for the application, which will include, but is not limited to: (i) identifying risks to any data the Contractor may create, receive, maintain or transmit under this Contract; (ii) and remediating security vulnerabilities that may be identified during the term of this Contract.

2. The Contractor must provide all its own staffing, hardware, software, network training (including communications to the State offices in Lansing) and documentation for all work described in the Contract.

### 3. **Contract Activities That Will Include IT Related Services**

The links below provide information on the State's Enterprise Information Technology (IT) policies, standards and procedures which includes security policy and procedures, eMichigan web development, and the State Unified Information Technology Environment (SUITE).

Contractors must conform to State IT policies and standards. All services and products provided as a result of this Contract must comply with all applicable State IT policies and standards.

All software and hardware items provided by the Contractor must run on and be compatible with the DTMB Standard IT Environment. Additionally, the State must be able to maintain software and other items produced as the result of the Contract.

It is recognized that technology changes rapidly. The Contractor may request, in writing, a change in the standard environment, providing justification for the requested change and all costs associated with any change. The State's Project Manager must approve any changes, in writing, and DTMB, before work may proceed based on the changed environment.

#### **Enterprise IT Policies, Standards and Procedures (PSP):**

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

#### **The State's security environment includes:**

- DTMB Single Login.
- DTMB provided SQL security database.
- Secured Socket Layers.
- SecureID (State Security Standard for external network access and high risk Web systems)

DTMB requires that its single - login security environment be used for all new client-server software development. Where software is being converted from an existing package, or a client-server application is being purchased, the security mechanism must be approved in writing by the State's Program Manager and DTMB Office of Enterprise Security.

#### **Look and Feel Standard**

All software items provided by the Contractor must be ADA compliant and adhere to the Look and Feel Standards [www.michigan.gov/somlookandfeelstandards](http://www.michigan.gov/somlookandfeelstandards).

#### **ADA Compliance**

Contractor shall comply with and adhere to the Accessibility Standards of Section 508 of the Rehabilitation Act of 1973, including any more specific requirements set forth in an applicable Statement of Work. See DTMB Policy at

[http://www.michigan.gov/documents/dmb/1650.00\\_209567\\_7.pdf?20151026134621](http://www.michigan.gov/documents/dmb/1650.00_209567_7.pdf?20151026134621).

#### **SUITE:**

Includes standards for project management, systems engineering, and associated forms and templates – must be followed: <http://www.michigan.gov/suite>

### **1.1. Transition**

1. The Contractor must work with the State and/or previous contractor during implementation if applicable. The Contractor must allow as many personnel as practicable to attend meetings and

receive hardcopy and/or electronic files to help maintain the continuity and consistency of the services required by the Contract.

2. The Contractor must acquire any software, if applicable, required to perform the Contract Activities under the Contract. This must include any documentation being used by the Contractor to perform the Contract Activities under the Contract. If the State transfers any software licenses to the Contractor, those licenses must, upon expiration of the Contract, transfer back to the State at their current revision level. Upon notification by the State, Contractor may be required to freeze all non-critical changes to Contract Activities.

## **1.2. Training**

The Contractor must provide onsite or web-based training. The Contractor must explain its training capabilities and any training that is included in its proposal.

The Contractor must provide documentation and training materials for systems used in the execution of this contract per DHHS request.

## **2. Acceptance**

### **2.1. Acceptance, Inspection and Testing**

The following criteria will be used by the State to determine Acceptance of the Services or Deliverables provided under this Contract. The Contractor must have the ability to:

1. Maintain a comprehensive PBM for the MIDAP clients that includes a POS claims adjudication system, make payment to pharmacies and provide data management services.
2. Maintain efficiency of the MIDAP pharmacy reimbursement process by submitting pharmacy invoices in real-time (on-line) to eliminating manual processing.
3. Maintain effectiveness of the MIDAP pharmacy reimbursement process by automating formulary pricing updates and eliminating manual pricing procedures.
4. Increase cost effectiveness by decreasing reimbursement rate for brand and generic drugs.
5. Maintain a Statewide pharmacy network, including mail order, and having the PBM maintain contracts with the individual pharmacies.
6. Provide MIDAP office staff with remote access to provide client enrollment and eligibility.
7. Ensure the Michigan MIDAP is payer of last resort.
8. Provide a means through which prescribing and dispensing pharmacies of prescription medications are able to recognize the potential for adverse drug reactions in the MIDAP client population because of prescription combinations and interactions with new or existing drugs.
9. Provide a client/system management module, which includes the review of services and analysis of drug utilization and client utilization.
10. Provide training to MIDAP staff on the use and management of the PBM system.
11. Provide a PBM system that is customizable to meet the business practices of the MIDAP.
12. Ability to adhere to MIDAP time schedule of system being fully implemented and operational upon a mutually agreed upon date.

## **3. Staffing**

### **3.1. Contractor Representative**

The Contractor must appoint an Account Manager, Customer Service Manager and a Financial Analyst,

specifically assigned to State of Michigan accounts, that will respond to State inquiries regarding the Contract Activities, answering questions related to ordering and delivery, etc. (the "Contractor Representative") (also see Section 3.5 – Key Personnel).

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

### **3.2. Customer Service Toll-Free Number**

1. The toll-free number for the State to make contact with the Contractor Representative is 855-855-7579. The Contractor Representative must be available for calls during the hours of 8:00 am to 5:00 pm EST.
2. The Contractor's must provide 24-hour, after hours and holiday "Help Desk" assistance to pharmacies, members, and physicians.

### **3.3. Technical Support, Repairs and Maintenance**

The Contractor's toll-free number for the State to make contact with the Contractor for technical support, repairs and maintenance is 855-855-7579. The Contractor must be available for calls and service during the hours of 8:00 am to 5:00 pm EST. When providing technical support, the Call Center must resolve the caller's issue within one hour. If the caller's issue cannot be resolved by close of the business day, on-site service must be scheduled. The on-site service must be performed within 24 hours of the time the issue was scheduled for service.

### **3.4. 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.

### **3.5. Key Personnel**

1. The Contractor must appoint the following Key Personnel:
  - a. Clinical Pharmacist  
Vikki Columbus
  - b. Account Manager  
Ime Ekpenyong
  - c. Customer Service Manager  
Lindsay Roth
  - d. Financial Analyst.  
Ime Ekpenyong

These individuals who will be directly responsible for the day to day operations of the Contract ("Key Personnel"). Key Personnel must be specifically assigned to the State account, be knowledgeable on the contractual requirements, and respond to State inquires within 24 hours.

2. Key Functions
  - a. General plan design, including pre- and post- implementation and overall plan maintenance.
  - b. Clinical guidance to include, but not limited to: formulary maintenance, drug interactions/contraindicated drug combinations, etc.
  - c. POS issues and troubleshooting to include, but not limited to: COB, claims submission, pharmacy network, pricing structure, prior authorization and eligibility issues.
  - d. Contractor mail order related issues (24 hour response time).
  - e. All "after hours" emergencies; i.e., nights, weekends and holidays.
  - f. Plan reporting needs.
  - g. Data feed maintenance.

3. Other personnel critical to implementing Contract Activities follow:

Account Coordinator  
Healthier Kosalski

Reporting  
Jean Christian

4. Contractor's Key Personnel must be on-site at their designated worksite during the following times: 8:00 am to 5:00 pm EST.
5. The Contractor may not remove or assign Key Personnel without the prior consent of the State. Prior consent is not required for reassignment for reasons beyond the Contractor's control, including illness, disability, death, leave of absence, personal emergency circumstances, resignation, or termination for cause. The State may request a résumé and conduct an interview before approving a change. The State may require a 30 calendar day training period for replacement personnel.
6. The State has the right to recommend and approve in writing the initial assignment, as well as any proposed reassignment or replacement, of any Key Personnel. Before assigning an individual to any Key Personnel position, Contractor will notify the State of the proposed assignment, introduce the individual to the State's Project Manager, and provide the State with a resume and any other information about the individual reasonably requested by the State. The State reserves the right to interview the individual before granting written approval. In the event the State finds a proposed individual unacceptable, the State will provide a written explanation including reasonable detail outlining the reasons for the rejection. The State may require a 30-calendar day training period for replacement personnel.

7. Contractor will not remove any Key Personnel from their assigned roles on this Contract without the prior written consent of the State. The Contractor's removal of Key Personnel without the prior written consent of the State is an unauthorized removal ("Unauthorized Removal"). An Unauthorized Removal does not include replacing Key Personnel for reasons beyond the reasonable control of Contractor, including illness, disability, leave of absence, personal emergency circumstances, resignation, or for cause termination of the Key Personnel's employment. Any Unauthorized Removal may be considered by the State to be a material breach of this Contract, in respect of which the State may elect to terminate this Contract for cause under Termination for Cause in the Standard Terms. It is further acknowledged that an Unauthorized Removal will interfere with the timely and proper completion of this Contract, to the loss and damage of the State, and that it would be impracticable and extremely difficult to fix the actual damage sustained by the State as a result of any Unauthorized Removal. Therefore, Contractor and the State agree that in the case of any Unauthorized Removal in respect of which the State does not elect to exercise its rights under Termination for Cause, Contractor will issue to the State the corresponding credits set forth below (each, an "Unauthorized Removal Credit"):

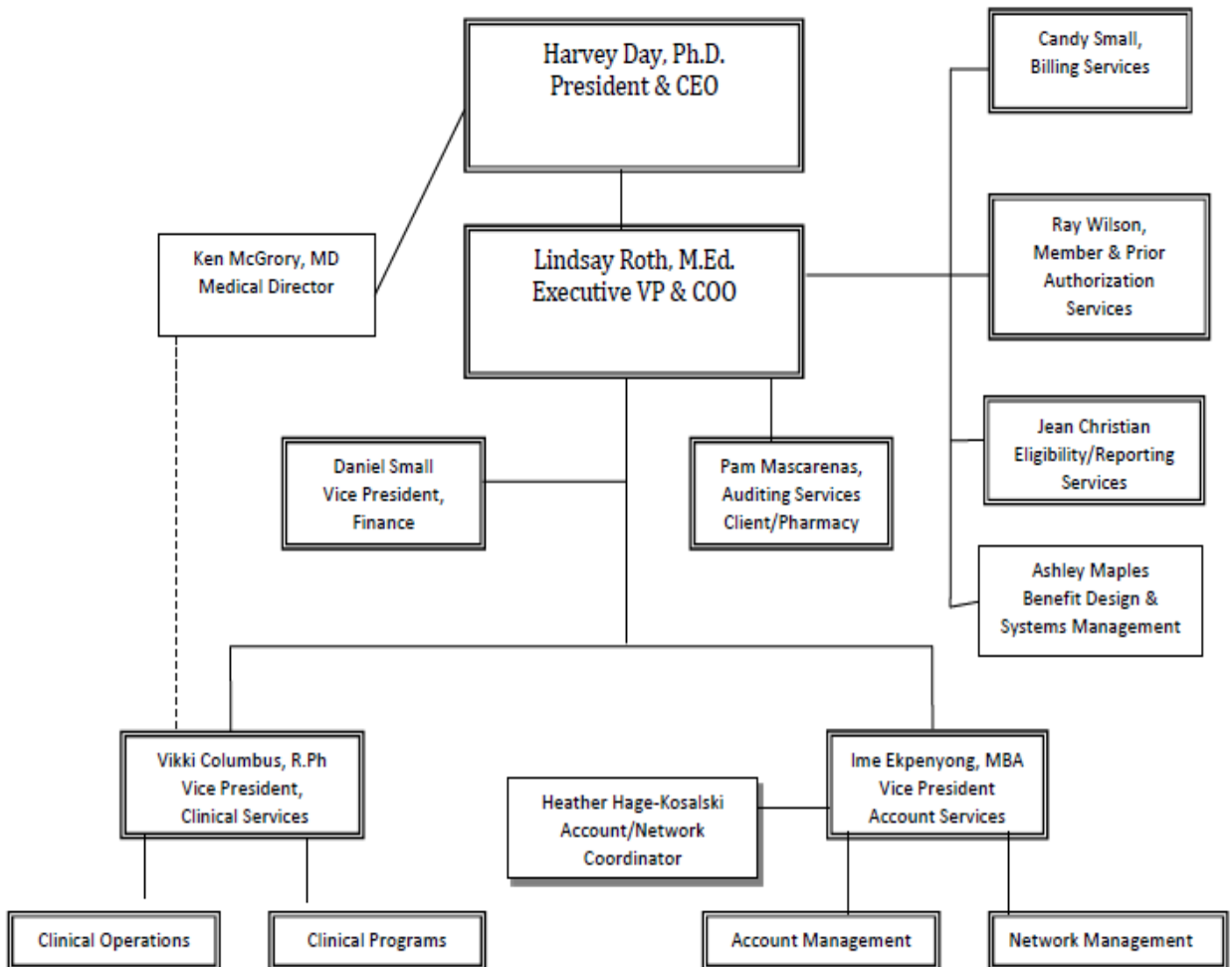
(i) For the Unauthorized Removal of any Key Personnel designated in the applicable Statement of Work, the credit amount will be \$25,000.00 per individual if Contractor identifies a replacement approved by the State and assigns the replacement to shadow the Key Personnel who is leaving for a period of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

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

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

### 3.6. Organizational Chart

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



### 3.7. Disclosure of Subcontractors

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

- The legal business name; address; telephone number
- Description of subcontractor's organization and the services it will provide
- 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.
- Price of the subcontractor's work.

2. Subcontractors

Health Management Systems (HMS)  
601 Washington Boulevard  
Detroit, MI 48226  
(800) 847-7240

Description of subcontractor's organization and services to be provided:

Provide private insurance verification services for the purpose of identify MIDAP clients that have other coverage through private insurance carriers.

**3.8. Security**

The Contractor's staff may be required to make deliveries to or enter State facilities. The Contractor must: (a) ensure the security of State facilities, and (b) perform background checks. The State may require the Contractor's personnel to wear State issued identification badges.

**4. Project Management**

**4.1. Project Plan**

The following project management processes or activities will be required:

1. Within five working days of the Contract Effective Date, the Contractor must submit a final work plan to the MDHHS/ADAP Program Manager for final approval. This final work plan must be consistent with responses to Section 1.0 Requirements, and be accepted by the State, and must include the following:
  - a. The Contractor's project organizational structure.
  - b. The Contractor's Staffing Plan with names and titles of personnel assigned to the project. This must be in agreement with staffing described in Section 3.5. Necessary substitutions due to change of employment status and other unforeseen circumstances may only be made with prior approval of the State.
  - c. The project breakdown showing sub-projects, activities and tasks and resources required and allocated to each.
  - d. The time-phased plan in the form of a graphic display, showing each event, task and decision point in the Contractor's work plan.

**4.2. Meetings**

The Contractor must attend the following meetings:

1. Monthly reporting meetings via conference call or onsite face-to-face meetings.
2. Quarterly update meeting (via face-to-face) regarding plan performance, environmental changes and drugs (with continued focus on cost containment).
3. The State may request other meetings, as it deems appropriate.

**4.3. Reporting**

1. The Contractor must provide comprehensive reporting to enable the MIDAP to manage resources, monitor and evaluate the MIDAP, and meet State and federal reporting requirements within five business days.
2. The Contractor must have the ability to provide access to ADHOC reporting (i.e. canned reporting packages, at no charge, to standard reporting access to MIDAP staff) within five business days of such a request.
3. The Contractor must provide access to dedicated staff to meet specific ad hoc reporting needs with limited time frames or reporting needs that cannot be accessed via reporting system; or may require additional training to access.
4. The Contractor's claims and eligibility system must have the capacity to capture the following data elements, and others as needed, based on State and Federal reporting purposes:
  - a. MIDAP Unique Member Number

- b. Race/Ethnicity
  - c. Age
  - d. Gender: male, female and/or transgender
  - e. Income (member FPL level)
  - f. Household size
  - g. County of residence
  - h. Level/Type of MIDAP coverage
  - i. Social Security Number
  - j. Name
  - k. Address
  - l. Primary and/or secondary insurance carrier information
  - m. Laboratory tests results including, but not limited to: CD4 count and HIV Viral Load
5. The Contractor must have the capability to integrate pharmacy data with medical data to enhance a patient's profile to be used to ensure optimal patient care, monitoring efforts, and to meet reporting requirements.
  6. The Contractor must provide an interface, or exported data in a flat file format to allow for importing standardized data variables into CAREWare, or other Access or SQL database developed, as required for State and/or federal reporting requirements.
  7. The Contractor must provide assistance and continued access to data in a format that allows the MIDAP to meet Federal reporting deadlines to assure continued funding. Specific reports include, but are not limited to:
    - c. Ryan White HIV/AIDS Program Service Report (RSR)
    - d. Ryan White HIV/AIDS Program MIDAP Report (ADR)
    - e. Annual MIDAP Drug Utilization Report
    - f. Client Level Data Report as specified by MIDAPs funding source
  8. The Contractor must provide assistance and continued access to data in a format that allows the MIDAP to submit quarterly 340B rebate claims and any other associated rebate claims to pharmaceutical manufacturers. Detailed drug utilization reports that exclude claims previously paid by MIDAP but were reimbursed from a third party are required within 90 days of the end of each calendar quarter.
    - g. For the period Jan 1 – March 31, report due by June 30
    - h. For the period April 1 – June 30, report due by September 30
    - i. For the period July 1 – September 30, report due by December 31
    - j. For the period October 1 – December 31, report due by March 31
  9. The Contractor must provide bi-weekly client level data reports regarding number of clients who have not picked up medications.
  10. All reports must be provided to MDHHS in electronic and/or hard copy formats as specified by the State during implementation (see Reporting under Section 4.3 and Section 1.1 Transition). The content, frequency, and number of copies for reports will be specified in more detail during implementation.

## **5. Ordering**

### **5.1. Authorizing Document**

A signed Blanket Purchase Order as well as an Agency issued Purchase Order.

## **6. Invoice and Payment**

### **6.1. Invoice Requirements**

1. All invoices submitted to the State must include: (a) date of invoice; (b) period covered; (c) invoice number; (d) approved ingredient cost; (e) approved dispensing fee; (f) total quantity of claims submitted; along with individual quantity totals for Direct Member Reimbursement (DMR) claims and Usual and Customary Fees (UCF) claims; (g) total invoice amount; along with individual monetary totals for DMR and UCF claims; (h) fees associated with recoupment from a primary payer when, and if, applicable; and (g) any standard unit prices for UCF claims.



Invoices that include overtime, holiday pay, and travel expenses will not be paid.

2. Supporting documentation must be included to support the invoice, and must include (a) an Excel file with all member claims that includes client-level detail, including DMR and UCF claims; (b) an Excel file with client-level detail for DMR claims only; (c) an Excel file with client-level detail for UCF claims only; (d) an Excel file with client-level detail for recoupments from primary payers; (e) an Excel file for group claims, which details the total cost of ADAP claims in each county; and (f) any other supporting documentation requested by the Michigan ADAP.
3. Invoices may be provided in any electronic format (Word, Excel, PDF, etc). Supporting documentation for the invoice must be provided using Microsoft Excel. All supporting documents, along with the invoice, will be saved in a zip file, and uploaded to the DHHS File Transfer. All supporting documents must be password protected.
4. The Contractor must provide payment to retail network pharmacies on a weekly or biweekly basis, in addition to providing detailed invoice information to the MIDAP on all charges incurred for each invoice period.

## **6.2. Payment Methods**

The State will make payment for Contract Activities through Electronic Funds Transfer (EFT) as stated in 1984 PA 431, all contracts that the State enters into for the purchase of goods and service must provide that payment will be EFT.

## **7. 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 \$5,000.00 and an additional \$100.00 per day for each day Contractor fails to remedy the late or improper completion of the Work in Sections 1 Requirements and 4 Project Management.

# STATE OF MICHIGAN

Contract No. 071B7700030

Pharmacy Benefits Management/Claims Adjudication Services for the Michigan AIDS Drug Assistance Program (MIDAP) for the Michigan Department of Health and Human Services.

## **EXHIBIT B GENERAL PROPOSAL REQUIREMENTS**

**Reserved**

# STATE OF MICHIGAN

Contract No. 071B7700030

Pharmacy Benefits Management/Claims Adjudication Services for the Michigan AIDS Drug Assistance Program (MIDAP) for the Michigan Department of Health and Human Services.

## EXHIBIT C PRICING

1. Price proposals must include all costs, including but not limited to, any one-time or set-up charges, fees, and potential costs that Contractor may charge the State (e.g., shipping and handling, per piece pricing, and palletizing).
2. Pricing Schedule

<b>Michigan Aids Drug Assistance Program (MIDAP) Price Schedule</b>			
<b>Required Services</b>	<b>Proposed Pricing Model*</b>	<b>Estimated Number per Year</b>	<b>Yearly Total</b>
<b>Retail Pharmacy</b>			
1. Discounts from AWP for generic drugs	AWP – 70%	See Estimated 3 Year Drug Claims Total	ee Estimated 3 Year Drug Claims Total
2. Discounts from AWP for brand drugs	AWP – 17.5%	ee Estimated 3 Year Drug Claims Total	ee Estimated 3 Year Drug Claims Total
3. Dispensing fee per Prescription	\$2.00	95,000	\$190,000
4. Transaction Fee	\$0	95,000	\$0
<b>Mail Order</b>			
1. Discount from AWP for generic drugs	AWP - 20%	N/A	N/A
2. Discounts from AWP for brand drugs	AWP - 73%	N/A	N/A
3. Dispensing fee per Prescription	\$0	95,000	\$0
4. Transaction fee	\$0	95,000	\$0
5. Specialty Drugs – Percent of AWP Discount plus dispense fee per Prescription	AWP – 17.5 % + \$0	50	\$0
6. Manual (Paper) Claim Fee per Prescription	\$0	95,000	\$0
7. Implementation Fee	\$0	1	\$0
8. Yearly (Monthly) Fees	\$0	1 (or 12 if Monthly)	\$0
9. Administration Fees	\$1.50	95,000	\$138,225
10. Training Fees	\$0	1	\$0

11. Reporting Fees	\$0	1	\$0
12. One Time Fees	\$0	1	\$0
13. Clinical Fees	\$0	1	\$0
Estimated Yearly Total:			\$328,225
Estimated Three (3) Year Total:			\$984,675
Estimated 3 Year Drug Claims Total			\$54,000,000
Grand Total 3 Year Contract Price			\$54,984,675

# STATE OF MICHIGAN

Contract No. 071B7700030  
Pharmacy Benefits Management/Claims Adjudication Services for the Michigan AIDS Drug Assistance  
Program (MIDAP) for the Michigan Department of Health and Human Services.

## EXHIBIT D HIPAA BUSINESS ASSOCIATE ADDENDUM [Rev. 9-20-13]

The parties to this Business Associate Addendum (Addendum) are the State of Michigan, acting by and through the Department of Technology, Management and Budget, on behalf of Department of Health & Human Services (State) and ScriptGuide Rx, Inc. (Contractor).

For purposes of this Addendum, the State is (check one):

- Covered Entity (CE)
- Business Associate (Associate)

and the Contractor is (check one):

- Covered Entity (CE)
- Business Associate (Associate)

### RECITALS

- A. Under the terms of the Contract, CE wishes to disclose certain information to Associate, some of which may constitute Protected Health Information or Personally Identifiable Information (collectively, Protected Information). In consideration of the receipt of such information, Associate agrees to protect the privacy and security of the information as set forth in this Addendum.
- B. CE and Associate intend to protect the privacy and provide for the security of Protected Information disclosed to Associate under the Contract in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (HIPAA), the Health Information Technology for Economic and Clinical Health Act (HITECH Act), Public Law 111-5, regulations promulgated by the U.S.

Department of Health and Human Services (DHHS) (HIPAA Rules) and other applicable laws, as amended.

- C. As part of the HIPAA Rules, the Privacy Rule and the Security Rule (defined below) require CE to enter into a contract containing specific requirements with Associate prior to the disclosure of Protected Health Information, as set forth in, but not limited to, 45 CFR Parts 160 and 164 and the HITECH Act, and as otherwise contained in this Addendum.

In consideration of the mutual promises below and the exchange of information pursuant to this Addendum, the parties agree as follows:

1. Definitions.

- a. Except as otherwise defined herein, capitalized terms in this Addendum have the same meaning as those terms under HIPAA, the HITECH Act, and the HIPAA Rules.
- b. “Agent” has the same meaning given to the term under the federal common law of agency.
- c. “Agreement” means the Contract and this Addendum, as read together.
- d. “Breach” means the acquisition, access, Use or Disclosure of Protected Health Information or Personal Identifying Information in a manner not permitted under the Privacy Rule or the Michigan Identify Theft Protection Act, as applicable, which compromises the security or privacy of such information.
- e. “Contract” means the underlying written agreement or purchase order between the parties for the goods or services to which this Addendum is added. Contract also includes all amendments and addendums to the original contract, both effective before and effective after the date of this Addendum.
- f. “Designated Record Set” has the same meaning as the term under 45 CFR §164.501.

g. “Disclosure” means, the release, transfer, provision of access to, or divulging of Protected Information in any manner outside the entity holding the information.

h. “Electronic Health Record” has the same meaning as the term under Section 13400 of the HITECH Act.

i. “Electronic Protected Health Information” or “Electronic PHI” has the same meaning as the term under 45 CFR §160.103, limited to the information created, received, maintained or transmitted by Associate on behalf of CE.

j. “HIPAA Rules” means the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

k. “HITECH Act” means The Health Information Technology for Economic and Clinical Health Act, part of the American Recovery and Reinvestment Act of 2009, specifically Division A: Title XIII Subtitle D—Privacy, and its corresponding regulations as enacted under the authority of the Act.

l. “Identity Theft Protection Act” means Public Act 452 of 2004, MCL 445.61, *et seq.*

m. “Individual” has the same meaning as the term under 45 CFR §160.103 and includes a person who qualifies as a personal representative in accordance with 45 CFR §165.502(g).

n. “Personal Identifying Information” or “PII” has the same meaning as the term Section 3(q) of the Identity Theft Protection Act.

o. “Privacy Rule” means the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.

p. “Protected Health Information” or “PHI” has the meaning given to the term under the Privacy Rule, 45 CFR §160.103, limited to the information created, received, maintained or transmitted by Associate on behalf of CE.

q. “Protected Information” means PHI and PII created, received, maintained or transmitted by Associate on behalf of CE.

r. “Security Incident” means the attempted or successful unauthorized access, Use, Disclosure, modification, or destruction of Protected Information or interference with system operations in an information system.

s. “Security Rule” means the Standards for Security of Electronic Protected Health Information at 45 CFR Part 160 and Subparts A and C of Part 164.

t. “Subcontractor” means a person or entity that creates, receives, maintains, or transmits Protected Information on behalf of Associate and who is now considered a Business Associate, as the latter term is defined in 45 CFR §160.103.

u. “Unsecured Protected Health Information” or “Unsecured PHI” means Protected Health Information that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of technology or methodology specified by DHHS as defined in the Breach Rule, 45 CFR §164.402.

v. “Use” means, with respect to Protected Information, the sharing, employment, application, utilization, examination, or analysis of such information within an entity that maintains such information.

## 2. Obligations and Activities of Associate.

a. Permitted Uses and Disclosures. Associate may Use and Disclose Protected Information only as necessary to perform services owed CE under the Contract and meet its obligations under this Addendum, provided that such Use or Disclosure would not violate the Privacy Rule, the privacy provisions of the HITECH Act or the Identity Theft Protection Act, if done by CE. All other Uses or Disclosures by Associate not authorized by this Addendum, or by specific written instruction of CE, are prohibited. Except as otherwise limited by this Addendum, Associate may Use and Disclose Protected Information as follows:

- i. Associate may Use Protected Information for the proper management and administration of the Associate or to carry out the legal responsibilities of the Associate.



- ii. Associate may Disclose Protected Information for the proper management and administration of the Associate, provided that Disclosures are Required by Law; or Associate obtains reasonable assurances from the person to whom the information is Disclosed that it will remain confidential and Used, or further Disclosed, only as Required by Law, or for the purpose for which it was Disclosed to the person, and the person notifies the Associate of any instances of which it is aware that the confidentiality of the information has been breached.
- iii. Associate may Use Protected Health Information to provide Data Aggregation services to CE for the Health Care Operations of CE, as permitted by 45 CFR §164.504(e)(2)(i)(B). Associate agrees that said services shall not be provided in a manner that would result in Disclosure of Protected Health Information to another CE who was not the originator or lawful possessor of said information. Further, Associate agrees that any such wrongful Disclosure of Protected Health Information constitutes a Breach and shall be reported to CE in accordance with this Addendum.
- iv. Associate may Use Protected Health Information to report violations of law to appropriate federal and state authorities, consistent with 45 CFR §164.502(j)(1).

b. Appropriate Safeguards. Associate must implement appropriate safeguards to protect against the Use or Disclosure of Protected Information other than as permitted by this Addendum so as to comply with the HIPAA Rules, the HITECH Act, and applicable state laws and maintain written policies concerning the same. Associate must implement and maintain administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Protected Information, including specifically Electronic PHI, as provided for in the Security Rule and as mandated by Section 13401 of the HITECH Act. These safeguards shall include, at minimum:

- i. Achieving and maintaining compliance with the HIPAA Security Rule, as necessary in conducting operations on behalf of CE under this Addendum.

- ii. Providing a level and scope of security that is at least comparable to the level and scope of security established by the National Institute of Standards and Technology (NIST) in NIST 800-53, Recommended Security Controls for Federal Information Systems, Annex 2: Consolidated Security Controls-Moderate Baseline. The oldest acceptable version is the most recently approved version of NIST that has been approved for 6 months or more; however, Associate is encouraged to adopt newly approved versions of NIST as soon as practicable. If Associate chooses to use the Control Objectives for Information and Related Technology (COBIT), Information Systems Audit and Control Association (ISACA), or International Organization for Standardization (ISO) standards, Associate must demonstrate and document how each aspect of the chosen standard comports with the applicable version of NIST and make such documentation available to CE upon request. If Associate uses a standard other than those described in this subsection, Associate must demonstrate and document how each aspect of the chosen standard comports with the appropriate version of NIST and present to CE for review and approval. Additionally, whichever standard is chosen must comport with HIPAA Rules, including specifically the Security Rule and Privacy Rule.
- iii. Achieving and maintaining compliance with the Michigan Information Technology Security Policies set forth by the Office of Michigan Cyber Security and Infrastructure Protection.
- iv. In case of a conflict between any of the security standards contained in any of these enumerated sources, the most stringent shall apply. The most stringent means those safeguards that provide the highest level of protection to Protected Information from unauthorized Disclosure. Further, Associate must comply with changes to these standards that occur after the effective date of this Addendum.

- v. Upon request, Associate must provide CE with all information security and privacy policies, disaster recovery and business continuity policies, network connectivity diagrams, and all other security measures implemented by Associate.

c. Security Incidents. Associate must notify and report to CE in the manner described herein any Security Incident, whether actual or suspected, and any Use or Disclosure of Protected Information in violation of this Addendum, and take the following actions:

- i. Notice to CE. Associate must notify CE, via e-mail and telephone, within five (5) business days of the discovery of any Security Incident or any Use or Disclosure of Protected Information in violation of this Addendum. Associate must follow its notification to CE with a report that meets the requirements outlined immediately below.
- ii. Investigation; Report to CE. Associate must promptly investigate any Security Incident. Within ten (10) business days of the discovery, Associate must submit a preliminary report to CE identifying, to the extent known at the time, any information relevant to ascertaining the nature and scope of the Security Incident. Within fifteen (15) business days of the discovery of the Security Incident and unless otherwise directed by CE in writing, Associate must provide a complete report of the investigation to CE. Such report shall identify, to the extent possible: (a) each individual whose Protected Information has been, or is reasonably believed by Associate to have been accessed, acquired, Used or Disclosed; (b) the type of Protected Information accessed, Used or Disclosed (e.g., name, social security number, date of birth) and whether such information was Unsecured; (c) who made the access, Use, or Disclosure; and (d) an assessment of all known factors relevant to a determination of whether a Breach occurred under applicable provisions of HIPAA, the HIPAA Rules, the HITECH Act, or a Breach of Security under the Identity Theft Protection Act, and any other applicable federal or state regulations. The report shall also include a full, detailed corrective action plan, including information on

measures that were taken to halt and contain any improper Use or Disclosure. If CE requests information in addition to that listed in the report, Associate shall make reasonable efforts to provide CE with such information. Associate agrees that CE reserves the right to review and recommend changes to any corrective action plan and make a final determination as to whether a Breach of PHI or PII occurred and whether any notifications may be required under applicable state or federal regulations, including Section 13402 of the HITECH Act. In the event of a Breach of Unsecured PHI, as determined by CE, Associate agrees, consistent with 45 CFR §164.404(c), Section 13402 of the HITECH Act and Section 12 of the Identity Theft Protection Act, as applicable, to provide CE with information and documentation in its control necessary to meet the requirements of said sections, and in a manner and format to be reasonably specified by CE.

- iii. Mitigation. Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Associate of a Security Incident or a Use or Disclosure of Protected Information in violation of the requirements of this Addendum. Associate must take: (a) prompt corrective action to cure any such violation and (b) any other action pertaining to such unauthorized Use or Disclosure required by applicable federal and state laws and regulations.

d. Responsibility for Notifications. If the cause of a Breach of Protected Information is attributable to Associate or its Agents or Subcontractors, Associate is responsible for all required reporting and notifications of the Breach as specified in and in accordance with Section 13402 of the HITECH Act and the Identity Theft Protection Act, as applicable, unless CE notifies Associate in writing that CE intends to be responsible for said reporting and notifications. In all cases, CE's authorized representative shall approve the time, manner, and content of any such notification and its approval must be obtained before the notification is made. In the event of such Breach, and without limiting Associate's obligations of indemnification as further described in this Addendum, Associate must indemnify, defend, and hold harmless CE for any and all claims or losses, including reasonable attorneys' fees, costs, and expenses incidental thereto,

which may be suffered by, accrued against, charged to, or recoverable from CE in connection with the occurrence.

e. Associate's Agents and Subcontractors. If Associate uses one or more Subcontractors or Agents to provide services under the Agreement, and such Agents or Subcontractors receive or have access to Protected Information, each Subcontractor or Agent must sign an agreement with Associate containing substantially the same provisions as this Addendum and in conformance with 45 CFR §164.504(e)(2), and to assume toward Associate all of the obligations and responsibilities that the Associate, by this Addendum, assumes toward CE. Associate agrees to provide said Agents or Subcontractors PHI in accordance with the HIPAA Rules, the HITECH Act, and PII in accordance with applicable federal and state law and must: (i) implement and maintain sanctions against Subcontractors and Agents that violate such restrictions and conditions; and (ii) mitigate, to the extent practicable, the effects of any such violation.

f. Access to Protected Health Information. Associate agrees to make PHI regarding an Individual maintained by Associate or its Agents or Subcontractors in a Designated Record Set available to such Individual for inspection and copying in order to meet CE's obligations under 45 CFR §164.524. An Individual's request for access must be submitted on standard request forms available from Associate. If CE receives a request for access, CE, in addition to addressing the request on its behalf, will forward the request in writing to Associate in a timely manner. If Associate or its Agents or Subcontractors maintain Electronic Health Records for CE, then Associate must provide, where applicable, electronic access to the Electronic Health Records to CE.

g. Amendment of Protected Health Information. Associate agrees to make any amendment(s) to PHI in a Designated Record Set to meet CE's obligations under 45 CFR §164.526. An Individual's amendment request must be submitted on standard forms available from Associate. If CE receives a request for an amendment, CE, in addition to addressing the request on its behalf, will forward the request in writing to Associate in a timely manner.

h. Accounting Rights. Associate agrees to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR §164.528. Associate must maintain necessary and sufficient documentation of Disclosures of PHI and information related to such Disclosures as would be required for CE to respond to a request by an

Individual for an accounting of Disclosures under 45 CFR §164.528. An Individual's request for a report of accounting must be submitted on standard request forms available from Associate. If CE receives a request for an accounting, CE, in addition to addressing the request on its own behalf, will forward the request in writing to Associate in a timely manner. Associate must also comply with the requirements of Section 13405(c) of the HITECH Act, as applicable.

i. Access to Records and Internal Practices. Unless otherwise protected or prohibited from discovery or Disclosure by law, Associate must make its internal practices, books, and records, including policies and procedures (collectively, Compliance Information), relating to the Use or Disclosure of PHI and PII and the protection of same, available to CE or to the Secretary of DHHS (Secretary) for purposes of the Secretary determining CE's compliance with the HIPAA Rules and the HITECH Act. Associate shall have a reasonable time within which to comply with requests for such access, consistent with this Addendum. In no case shall access be required in less than five (5) business days after Associate's receipt of such request, unless otherwise designated by the Secretary.

j. Minimum Necessary. Associate (and its Agents or Subcontractors) shall only request, Use and Disclose the minimum amount of Protected Information necessary to accomplish the purpose of the request, Use or Disclosure, in accordance with the Minimum Necessary requirements of the Privacy Rule, including, but not limited to 45 CFR §§ 164.502(b) and 164.514(d) and the HITECH Act.

k. Compliance.

- i. To the extent that Associate carries out one or more of CE's obligations under the HIPAA Rules, Associate must comply with all requirements that would be applicable to CE.
- ii. Associate must honor all restrictions consistent with 45 CFR §164.522 that CE or the Individual makes Associate aware of, including the Individual's right to restrict certain Disclosures of PHI to a health plan where the Individual pays out of pocket or in full for the healthcare item or service, in accordance with Section 13405(a) of the HITECH Act.

l. Data Ownership. Unless otherwise specified in this Addendum, Associate agrees that Associate has no ownership rights with respect to the Protected Information and that CE retains all rights with respect to ownership of such information. Associate further agrees not to receive remuneration, directly or indirectly, in exchange for Protected Information, except with the prior written consent of CE.

m. Retention of Protected Information. Notwithstanding Section 5(d) of this Addendum, Associate and its Subcontractors or Agents shall retain all Protected Information throughout the term of the Contract and shall continue to maintain the information required under Section 2(h) of this Addendum for a period of six (6) years from the date of creation or the date when it last was in effect, whichever is later, or as Required by Law. This obligation shall survive the termination of the Contract.

n. Destruction of Protected Information. Associate must implement policies and procedures for the final disposition of Protected Information, including electronic PHI, and the hardware and equipment on which it is stored, including but not limited to, removal before re-Use, in accordance with the Security Rule, the HITECH Act, and other applicable laws relating to the final disposition of Protected Information.

o. Audits, Inspection, and Enforcement. Within ten (10) days of a written request by CE, Associate and its Agents or Subcontractors must allow CE to conduct a reasonable inspection of the facilities, systems, books, records, agreements, policies and procedures relating to the Use or Disclosure of Protected Information pursuant to this Addendum for the purpose of determining whether Associate has complied with this Addendum; provided, however, that: (i) Associate and CE shall mutually agree in advance upon the scope, timing and location of such an inspection; (ii) CE shall protect the confidentiality of all confidential and proprietary information of Associate to which CE has access during the course of such inspection; and (iii) CE or Associate shall execute a nondisclosure agreement, if requested by Associate or CE. The fact that CE inspects, or fails to inspect, or has the right to inspect, Associate's facilities, systems, books, records, agreements, policies and procedures does not relieve Associate of its responsibility to comply with this Addendum, nor does CE's (i) failure to detect or (ii) detection, but failure to notify Associate or require Associate's remediation of any unsatisfactory practices, constitute acceptance of such practice or a waiver of CE's enforcement rights under this Addendum. If Associate is the subject of an audit, compliance review, or complaint investigation by DHHS that is related to the performance of its obligations pursuant to this Addendum, Associate

must notify CE and provide CE with a copy of any PHI that Associate provides to DHHS concurrently with providing such information to DHHS. If, as a result of an audit or other investigation of Associate, DHHS assesses any civil penalties, Associate shall pay such penalties.

p. Audit Findings. Associate must implement any appropriate Safeguards, as identified by CE in an audit conducted under paragraph 2(o).

q. Reserved.

r. Safeguards During Transmission. Associate must utilize safeguards that reasonably and appropriately maintain and ensure the confidentiality, integrity, and availability of Protected Information transmitted to CE under this Addendum, in accordance with the standards and requirements of the HIPAA Rules and other applicable federal or state regulations, until such Protected Information is received by CE, and in accordance with any specifications set forth in Attachment A.

s. Due Diligence. Associate must exercise due diligence and take reasonable steps to ensure that it remains in compliance with this Addendum and is in compliance with applicable provisions of HIPAA, the HIPAA Rules, the HITECH Act and other applicable laws or regulations pertaining to Protected Information, and that its Agents, Subcontractors and vendors are in compliance with their obligations as required by this Addendum.

t. Sanctions and Penalties. Associate understands that a failure to comply with the provisions of HIPAA, the HITECH Act, the HIPAA Rules or any other state or federal regulation that is applicable to Associate may result in the imposition of sanctions or penalties on Associate under HIPAA, the HIPAA Rules, the HITECH Act, or any other applicable laws or regulations pertaining to PHI and PII.

u. Indemnification. Associate shall indemnify, hold harmless and defend CE from and against any and all claims, losses, liabilities, costs and other expenses resulting from, or relating to, the acts or omissions of Associate or its Agents or Subcontractors in connection with the representations, duties, and obligations of Associate under this Addendum, including but not limited to any unauthorized Use or Disclosure of Protected Information. This includes credit-monitoring services, third party audits of Associate's handling and remediation of the Breach, and reimbursement for State employee time spent handling the Security Incident, as reasonably



deemed appropriate by CE. The parties' respective rights and obligations under this subsection shall survive termination of the Agreement.

3. Obligations of CE.

a. Safeguards During Transmission. CE must utilize safeguards that reasonably and appropriately maintain and ensure the confidentiality, integrity, and availability of Protected Information transmitted to Associate under this Addendum, in accordance with the standards and requirements of the HIPAA Rules and other applicable federal or state regulations, until such Protected Information is received by Associate, and in accordance with any specifications set forth in Attachment A.

b. Notice of Limitations and Changes. CE must notify Associate of any limitations in its notice of privacy practices in accordance with 45 CFR §164.520, or any restriction to the Use or Disclosure of PHI that CE has agreed to in accordance with 45 CFR §164.528, to the extent that such limitation may affect Associate's Use or Disclosure of PHI. CE must also notify Associate of any changes in, or revocation of, permission by Individual to Use or Disclose PHI of which it becomes aware, to the extent that such changes may affect Associate's Use or Disclosure of PHI.

4. Term. This Addendum shall continue in effect as to each Contract to which it applies until such Contract is terminated or is replaced with a new contract between the parties containing provisions meeting the requirements of the HIPAA Rules and the HITECH Act, whichever first occurs. However, certain obligations will continue as specified in this Addendum.

5. Termination.

a. Material Breach. Except as otherwise provided in the Contract, a breach by Associate of any provision of this Addendum, as determined by CE, shall constitute a material breach of the Agreement and provide grounds for CE to terminate the Agreement for cause, subject to section 5(b):

i. Default. If Associate refuses or fails to timely perform any of the provisions of this Addendum, CE may notify Associate in writing of the non-performance, and if not corrected within thirty (30) days, CE may immediately terminate the Agreement. Associate agrees to continue performance of the Agreement to the extent it is not terminated.

ii. Duties. Notwithstanding termination of the Agreement, and subject to any reasonable directions from the CE, Associate agrees to take timely, reasonable and necessary action to protect and preserve property in the possession of the Associate in which CE has an interest.

iii. Erroneous Termination for Default. If after such termination it is determined, for any reason, that Associate was not in default, or that Associate's action or inaction was excusable, such termination shall be treated as a termination for convenience, and the rights and obligations of the parties shall be the same as if the Contract had been terminated for convenience, as described in this Addendum or in the Contract.

b. Reasonable Steps to Cure Breach. If CE knows of a pattern of activity or practice of Associate that constitutes a material breach or violation of the Associate's obligations under the provisions of this Addendum or another arrangement and does not terminate the Agreement under Section 5(a), then CE shall take reasonable steps to cure such breach or end such violation, as applicable. If CE's efforts to cure such breach or end such violation are unsuccessful, CE shall either (i) terminate the Agreement, if feasible or (ii) if termination of the Agreement is not feasible, CE shall report Associate's breach or violation to the Secretary.

c. Reserved.

d. Effect of Termination.

(i) At the direction of CE, and except as provided in section 5(d)(ii), upon termination of the Agreement for any reason, Associate must return or destroy all Protected Information that Associate or its Agents or Subcontractors still maintain in any form, and shall retain no copies of such information. If CE directs Associate to destroy the Protected Information, Associate must certify in writing to CE that such information has been destroyed. If CE directs associate to return such information, Associate must do so promptly in any format reasonably specified by CE.

(ii) If Associate believes that returning or destroying the Protected Information is not feasible, including but not limited to, a finding that record retention requirements provided by law make return or destruction infeasible, Associate must promptly provide CE written notice of the conditions making return or destruction infeasible. Upon mutual agreement of CE and Associate that return or destruction of Protected

Information is infeasible, Associate must continue to extend the protections of this Addendum to such information, and must limit further Use of such Protected Information to those purposes that make the return or destruction of such Protected Information infeasible.

6. Reserved.

7. No Waiver of Immunity. No term or condition of this Addendum shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of applicable laws, including the Michigan Governmental Immunity Act, MCL 691.1401, *et seq.*, the Court of Claims Act, MCL 600.6401, *et seq.*, the Federal Tort Claims Act, 28 U.S.C. 2671, *et seq.*, or the common law, as applicable, as now in effect or hereafter amended.

8. Reserved.

9. Disclaimer. CE makes no warranty or representation that compliance by Associate with this Addendum, HIPAA, the HIPAA Rules, the HITECH Act or other applicable laws pertaining to Protected Information will be adequate or satisfactory for Associate's own purposes. Associate is solely responsible for all decisions made by Associate regarding the safeguarding of Protected Information.

10. Reserved.

11. Amendment.

a. Amendment to Comply with Law. The parties agree to take such action as is necessary to amend this Addendum from time to time as may be necessary for CE and Associate to comply with and implement the standards and requirements of HIPAA, the Privacy Rule, the Security Rule, the Breach Rule, the HITECH Act, the Identity Theft Protection Act, and other applicable laws relating to the security or privacy of PHI and PII. Upon the request of either party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to this Addendum embodying written assurances consistent with the standards and requirements of HIPAA, the Privacy Rule, the Security Rule, the Breach Rule, the HITECH Act, the Identity Theft Protection Act, or other applicable laws. Either party may terminate the Agreement upon thirty (30) days written notice if (i) the other does not promptly enter into negotiations to amend this Agreement when requested by the requesting party under this

Section or (ii) the non-requesting party does not enter into an amendment to this Agreement when requested providing assurances regarding the safeguarding of PHI and PII that the requesting party, in its sole discretion, deems sufficient to satisfy the standards and requirements of HIPAA, the HIPAA Rules, the HITECH Act, the Identity Theft Protection Act, and other applicable laws.

b. Amendment of Attachment A. Attachment A may be modified or amended by mutual agreement of the parties in writing from time to time without formal amendment of this Addendum.

12. Assistance in Litigation or Administrative Proceedings. Associate must make itself, and any Subcontractors, employees or Agents assisting it in the performance of its obligations under this Addendum available to CE, at no cost to CE, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against a party, its directors, officers or employees, departments, agencies, or divisions based upon a claimed violation of HIPAA, the HITECH Act, the HIPAA Rules, the Identity Theft Protection Act, or other laws relating to security and privacy of Protected Information, except where the other party or its Subcontractor, employee or Agent is a named adverse party.

13. No Third Party Beneficiaries. Nothing express or implied in this Addendum is intended to confer, nor shall anything herein confer, upon any person other than CE, Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

14. Effect on Contract. Except as specifically required to implement the purposes of this Addendum, or to the extent inconsistent with this Addendum, all other terms of the Contract shall remain in force and effect. This Addendum is incorporated into the Contract as if set forth in full therein. The parties expressly acknowledge and agree that sufficient mutual consideration exists to make this Addendum legally binding in accordance with its terms. Associate and CE expressly waive any claim or defense that this Addendum is not part of the Agreement between the parties under the Contract.

15. Interpretation and Order of Precedence. This Addendum is incorporated into and becomes part of each Contract identified herein. Together, this Addendum and each separate Contract constitute the Agreement of the parties with respect to their Business Associate relationship under HIPAA, the HIPAA Rules, and the HITECH Act. The

provisions of this Addendum shall prevail over any provisions in the Contract that may conflict or appear inconsistent with any provision in this Addendum. This Addendum and the Contract shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HITECH Act, the HIPAA Rules, and applicable state laws. The parties agree that any ambiguity in this Addendum shall be resolved in favor of a meaning that complies and is consistent with HIPAA, the HITECH Act, and the HIPAA Rules. This Addendum supersedes and replaces any previous separately executed HIPAA addendum between the parties. In the event of any conflict between the mandatory provisions of the HIPAA Rules and the HITECH Act and the provisions of this Addendum, the HIPAA Rules and the HITECH Act shall control. Where the provisions of this Addendum differ from those mandated by the HIPAA Rules or the HITECH Act, but are nonetheless permitted by the HIPAA Rules and the HITECH Act, the provisions of this Addendum shall control.

16. Effective Date. This Addendum is effective upon receipt of the last approval necessary and the affixing of the last signature required.

17. Survival of Certain Contract Terms. Notwithstanding anything herein to the contrary, Associate's obligations under Section 2(d) (Responsibility for Notifications), Section 2(u) (Indemnification), Section 5(d) (Effect of Termination), Section 12 (Assistance in Litigation or Administrative Proceedings), Section 13 (No Third Party Beneficiaries), and applicable record retention laws shall survive termination of this Agreement and shall be enforceable by CE as provided herein in the event of such failure to perform or comply by the Associate.

18. Representatives and Notice.

a. Representatives. For the purpose of this Addendum, the individuals identified in the Contract shall be the representatives of the respective parties. If no representatives are identified in the Contract, the individuals listed below are hereby designated as the parties' respective representatives for purposes of this Addendum. Either party may from time to time designate in writing new or substitute representatives.

b. Notices. Except as otherwise provided in this Addendum, all required notices shall be in writing and shall be hand delivered or given by certified or registered mail to the representatives at the addresses set forth below.

Covered Entity Representative:

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Department: \_\_\_\_\_  
Division: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Business Associate Representative:

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Department: \_\_\_\_\_  
Division: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Any notice given to a party under this Addendum shall be deemed effective, if addressed to such party, upon: (i) delivery, if hand delivered; or (ii) the third (3<sup>rd</sup>) business day after being sent by certified or registered mail.

IN WITNESS WHEREOF, the parties hereto have duly executed this Addendum as of the Addendum Effective Date.

**Associate**

**Covered Entity**

[INSERT NAME]

[INSERT NAME]

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

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

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

## ATTACHMENT A

This Attachment sets forth additional terms to the HIPAA Business Associate Addendum dated \_\_\_\_\_, between \_\_\_\_\_ and \_\_\_\_\_ (Addendum) and is effective as of \_\_\_\_\_ (the Attachment Effective Date). This Attachment applies to the specific contracts listed below covered by the Addendum. This Attachment may be amended from time to time as provided in Section 11(b) of the Addendum.

1. Specific Contract Covered. This Attachment applies to the following specific contract covered by the Addendum:

\_\_\_\_\_

2. Additional Permitted Uses. In addition to those purposes set forth in Section 2(a) of the Addendum, Associate may Use Protected Information as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. Additional Permitted Disclosures. In addition to those purposes set forth in Section 2(b) of the Addendum, Associate may Disclose Protected Information as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. Subcontractor(s). The parties acknowledge that the following subcontractors or agents of Associate shall receive Protected Information in the course of assisting Associate in the performance of its obligations under the Contract and the Addendum:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5. Receipt. Associate's receipt of Protected Information pursuant to the Contract and Addendum shall be deemed to occur as follows, and Associate's obligations under the Addendum shall commence with respect to such Protected Information upon such receipt:

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6. Additional Restrictions on Use of Data. CE is a Business Associate of certain other Covered Entities and, pursuant to such obligations of CE, Associate shall comply with the following restrictions on the Use and Disclosure of Protected Information:

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7. Additional Terms. *[This section may include specifications for disclosure format, method of transmission, use of an intermediary, use of digital signatures or PKI, authentication, additional security of privacy specifications, de-identification or re-identification of data and other additional terms.]*

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<b>Associate</b>	<b>Covered Entity</b>
[INSERT NAME]	[INSERT NAME]
By: _____	By: _____
Print Name: _____	Print Name: _____
Title: _____	Title: _____
Date: _____	Date: _____



# STATE OF MICHIGAN

Contract No. 071B7700030

Pharmacy Benefits Management/Claims Adjudication Services for the Michigan AIDS Drug Assistance Program (MIDAP) for the Michigan Department of Health and Human Services.

## EXHIBIT E Service Level Agreements (SLA's) – Pharmacy

Contractor must ensure that the SLAs are measurable using the Contractor's standard management information systems. Contractor must also provide process documentation detailing out the Contractor's internal processes used to gather and measure the data used to verify the Contractor's performance. This process documentation must be provided to the State no later than the end of the first quarter of the Contract period and anytime thereafter when a significant change is made to the process.

Every SLA must have a report provided that has been approved by the State to verify the SLA has been met; SLAs without a corresponding report will be deemed unmet and subject to the penalty. Samples of reports that will be used for SLA compliance are required in advance for State's prior approval. The State reserves the right to independently verify the Contractor's assessment of its performance, either by State employee or third party review. Disagreements regarding SLAs will be subject to Dispute Resolution (Standard Contract Terms, Section 47).

Quarterly SLA reports are due 45 Days after the end of each calendar quarter. Annual SLA reports are due 90 days after the close of the plan year. The Contractor must provide the State with completed SLA tracking tool, provided by State, self-reporting the Contractor's performance under each SLA for the State, and within 75 Days after the end of each calendar quarter. The Contractor must approve penalty amounts for any applicable penalties to the State based on the provided documentation. Any metric that is reported must be accompanied by supporting documentation.

Unless stated otherwise, any missed measurement period will result in the stated penalty being assessed. For instance, if an SLA is measured monthly and reported/assessed quarterly and one month is missed, the entire quarterly penalty will be assessed.

The following SLAs are related to ongoing Services and will apply throughout the duration of the Contract, including any optional renewal periods (if exercised). SLAs are for all Services provided under this Contract for the State. No individual SLA will be assessed more than one penalty for the month, quarter, or year in which performance was assessed.

State has the right to reallocate the total amount at risk among the various individual guarantees annually. Reallocation cannot increase the annual value of any one component by more than 10% of the original value. Reallocation will not increase the overall aggregate value of the penalties. Any such reallocation must be received by Contractor at least 10 business days prior to the applicable calendar year, otherwise attempted reallocations will be of no effect.

### **SLA 1 – Membership Cards Guarantee**

Membership Cards for all new Contract Holders must be mailed within 10 Days of being approved for MIDAP. Performance must be substantiated by documentation providing proof of receipt date and mailing date.

Membership Cards must have an accuracy rate of 100.00%. Accuracy must be measured by sampling ID card production to ensure 100.00% accuracy of information.

The Contractor must measure monthly and report its performance on this SLA on a quarterly basis.

**Penalty**

The penalty for failure to meet this SLA is \$10,000.00 quarterly.

**SLA 2 – Point-of-Sale Claims Payment Accuracy - Retail Guarantee**

The claims accuracy rate must be calculated on a monthly basis by using a statistically significant sampling method to produce 95.00% confidence in the results and +/- 3.00% precision. The resultant accuracy rate (as defined as the number of claims in the sample containing a financial error divided by the total number of claims in the sample) must not exceed 3.00%; 97.00% accuracy rate.

**Penalty**

The penalty for failure to meet this SLA is \$40,000 annually.

Bidder Response:

**SLA 3 – Point-of-Sale Pharmacy Network - Desk Audits Guarantee**

The Contractor must perform desk audits on the top 10.00% of participating pharmacies by Claim volume (with a minimum of 600 claims per year) at the end of each quarter.

**Penalty**

The penalty for failure to meet this SLA is \$10,000.

**SLA 4 – Point-of-Sale Pharmacy Network - On-site Audits Guarantee**

Contractor must perform on-site audits on the top 5.00% of network participating pharmacies (Contractor National Network) by Claim volume with a minimum of 600 claims per year through on-site compliance audits

**Penalty**

The penalty for failure to meet this SLA is \$10,000.