

State of Michigan
Department of Health and Human Services
Bureau of Grants Purchasing (BGP)
PO Box 30037, Lansing, MI 48909

Or
235 S. Grand Avenue, Suite 1201, Lansing, MI 48933

CONTRACT NUMBER: MA230000000616
Between
THE STATE OF MICHIGAN
DEPARTMENT OF HEALTH AND HUMAN SERVICES
And

CONTRACTOR		PRIMARY CONTACT	EMAIL
County of Genesee Prosecuting Attorney		John Potbury	jpotbury@geneseecountymi.gov
CONTRACTOR ADDRESS			TELEPHONE
900 S. Saginaw St, Room 200 Courthouse, Flint, MI 48502			810-257-3215
STATE CONTACT	NAME	TELEPHONE	EMAIL
Contract Administrator	Tina Root	231-357-9054	roott2@michigan.gov
BGP Analyst	Amanda Herren	517-335-0153	herrena1@michigan.gov

CONTRACT SUMMARY			
SERVICE DESCRIPTION	Legal Representation-Prosecuting Attorney Foster Care		
GEOGRAPHIC AREA	Genesee County		
INITIAL TERM	EFFECTIVE DATE*	EXPIRATION DATE	AVAILABLE OPTION YEARS
3 years	October 1, 2023	September 30, 2026	2, one-year options
MISCELLANEOUS INFORMATION	PROFC24		
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION	\$900,000.00		
CONTRACT TYPE	Unit Rate		

*The effective date of this Contract shall be the date listed in the "Effective Date" box above, or the date of Michigan Department of Health and Human Services (MDHHS) signature below, whichever is later.

The undersigned have the lawful authority to bind the Contractor and MDHHS to the terms set forth in this Contract. The Contractor's signature certifies that the Contractor is not an Iran linked business as defined in MCL 129.312.

FOR THE CONTRACTOR:

County of Genesee Prosecuting Attorney
Contractor

E-SIGNED by John Potbury
on 2023-06-26 16:42:39 EDT

Signature of Director or Authorized Designee

John Potbury

Print Name

2023-06-26 16:42:39 UTC

Date

FOR THE STATE:

MICHIGAN DEPARTMENT OF HEALTH AND
HUMAN SERVICES

E-SIGNED by Christine H. Sanches
on 2023-07-13 13:05:32 EDT

Signature of Director or Authorized Designee

Christine H. Sanches
Director, Bureau of Grants and Purchasing

Print Name

2023-07-13 13:05:32 UTC

Date

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This Contract will be in effect from the date of MDHHS signature through September 30, 2026. No service will be provided and no costs to the state will be incurred before October 1, 2023, or the effective date of the Contract, whichever is later. Throughout this Contract, the date of MDHHS signature or October 1, 2023, whichever is later, shall be referred to as the begin date.

At the discretion of MDHHS, this Contract may be renewed in writing by an amendment not less than 30 days before its expiration. This Contract may be renewed for up to two additional one-year periods.

<u>Contract Period</u>	<u>Amount</u>
Begin Date through September 30, 2026	\$900,000.00
Total Amount:	\$900,000.00

1. PROGRAM REQUIREMENTS

1.1. Client Eligibility Criteria

a. All clients must be involved in court proceedings regarding the abuse and neglect of children. Delinquency cases are not eligible for service under this Contract.

b. Determination of Eligibility

Eligibility is determined by MDHHS.

1.2. Reserved

2. CONTRACTOR RESPONSIBILITIES

2.1. Email Address

The Contractor authorizes MDHHS to use the contact information below to send Contract related notifications/information. The Contractor shall provide MDHHS with updated contact information if it changes.

Contact email address: jpotbury@geneseecountymi.gov

2.2. Geographic Area

The Contractor shall provide services described herein in the following geographic area: Genesee County

2.3. Location of Facilities

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The Contractor shall provide services described herein at the following location(s):

County Courthouse

MDHHS Local Office

Other locations determined by a court or the need of the child/ren

2.4. Credentials

The Contractor shall assure that appropriately credentialed or trained staff under its control, including Contractor employees and/or subcontractors, shall perform functions under this Contract.

The Prosecuting Attorney and his/her designee must possess a Law Degree from an accredited law school and be licensed to practice law in the State of Michigan by the Michigan Bar Association, with membership in good standing.

2.5. Services to be Delivered

Service #1 of 1: Legal Representation

a. Activities the Contractor shall perform:

The Contractor shall:

- 1) Provide legal representation to MDHHS and/or designee in court proceedings regarding the abuse/neglect of children. Notify MDHHS in the event that legal representation is not agreed upon, as described below in Service #1 of 1, 5).
- 2) Advise MDHHS staff and/or designee, when requested and within statutory time frames, on the legal sufficiency of the petition, information, and proofs.
- 3) Provide legal representation to MDHHS and/or designee throughout the court process, including, if necessary, any appeals.
- 4) Meet with MDHHS staff and/or designee for the purpose of:
 - a) Advising with regard to present sufficiency of evidence necessary to proceed to court.
 - b) Reviewing proposed petition for legal and evidentiary sufficiency and proofs, with regard to the disposition sought, prior to filing.
 - c) Providing appropriate assistance as determined by MDHHS and the Contractor in preparing for all phases of the court hearing process

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(i.e., preliminary hearing, adjudication, dispositional, review and permanency/termination).

- d) Determining the witnesses, exhibits, and other evidence necessary for all hearings.
 - e) Ensuring that all witnesses are subpoenaed.
 - f) Advising with regard to any follow-up preparations required for future hearings.
 - g) Providing legal representation for any negotiations which pertain to plea agreements or settlements.
- 5) In the event that the Contractor determines that it cannot represent or continue its representation of MDHHS due to a conflict or fundamental disagreement as to the manner to proceed in a given case, the Contractor shall provide notification of such information, on a case by case basis, forty-eight hours prior to court proceedings so that MDHHS may obtain alternate counsel. The Contractor shall support MDHHS to adjourn hearings pending new counsel.
- 6) Prepare, record, and maintain any/all documentation required for the provision of service to eligible clients.
- b. Eligible activities:
- 1. Independent investigation of the facts of the case, including interacting with law enforcement
 - 2. Meeting with clients
 - 3. Attending case planning meetings
 - 4. Providing legal interpretations
 - 5. Preparing briefs, memos, and pleadings
 - 6. Obtaining transcripts
 - 7. Interviewing and preparing client and witnesses for hearings
 - 8. Hearing presentation
 - 9. Maintaining files
 - 10. Supervising attorneys, paralegals, investigators, peer partners or social workers that support an attorney in providing independent legal representation to prepare for and participate in all stages of foster care legal proceedings
 - 11. Filing child abuse and neglect petitions for candidates for foster care

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12. Court fees to file a petition for a judicial determination required under Title IV-E
13. Appellate work in reference to foster care legal proceedings
- c. Unit Definition: One unit equals one hour of the Prosecutor's and/or Assistant Prosecutor's time [exclusive of travel time] providing services to MDHHS staff or their designated agent as outlined above.

2.6. Expected Performance Outcomes

During the Contract, the Contractor shall demonstrate measurable progress toward the achievement of the outcomes listed below:

- a. MDHHS or designee shall receive legal representation from the Contractor at all proceedings the court requires the Contractor to attend, as agreed upon by the parties.
- b. MDHHS or designee shall receive legal representation from the Contractor for the purpose of providing evidence and testimony to the court for: contrary to the welfare, reasonable efforts, and permanency findings.
- c. MDHHS staff, which includes its designees, shall receive appropriate assistance from the Contractor in preparing for all court hearings, as agreed upon by the parties. MDHHS shall actively facilitate the contractual relationship between the Contractor and its designees relative to the legal representation provided herein.

2.7. Reporting Requirements

The Contractor shall submit to MDHHS reports that indicate the status and effectiveness of activities performed under this Contract as indicated:

- a. Supporting documentation that includes the number of actual hours of service delivered by the Prosecuting Attorney for the representation of referred child abuse/neglect cases, including the child's first and last name, and date[s] of service delivery. This documentation shall be submitted via an Electronic Payment Request (EPR).

2.8. Audit Requirements

Contractor/Vendor Relationship

This Contract constitutes a contractor/vendor relationship with MDHHS. No financial audit is required under this Contract by MDHHS. No financial audit costs are allowed to be billed to this Contract. In the event the Contractor elects to have

a financial audit performed, the submission of the audit report to MDHHS is not required nor desired unless there is a finding of a Going Concern.

The Contractor must immediately report to the MDHHS Bureau of Audit, Reimbursement, and Quality Assurance accounting irregularities including noncompliance with provisions of this Contract.

2.9. Client Records

For each eligible client served under this Contract, the Contractor shall maintain client case records consisting of:

- a. Eligibility certification documents.
- b. Date of contact with client.
- c. Problem identification.
- d. Methods of service delivery.
- e. Significant contacts with client and significant events.
- f. Other material related to this Contract as may be specified by MDHHS.

2.10. Reserved

2.11. Fiscal Requirements

The Contractor shall install and maintain an accounting system to identify and support all expenditures billed to MDHHS under this Contract. The accounting system must record all income and expenses for the Contractor's total program of which services provided under this Contract are a part. The accounting system, as a minimum, shall consist of a chart of accounts, cash receipts journal, cash disbursements journal, and general ledger. All expenditures and income must be supported by vouchers and receipts that detail the reason for the transaction.

2.12. Billing

The Contractor shall bill MDHHS using the unit rate established in the Schedule B Pricing Matrix.

All invoices submitted to MDHHS must include: (a) date, (b) Contract number, (c) Delivery Order Number (d) description and dates of Contract Activities performed, (e) unit price, (f) number of units, and (g) total cost. All invoices should reflect actual work done. Invoices must be submitted as directed by the fiscal year delivery order

2.13. Criminal Background Check

As a condition of this Contract, the Contractor certifies that the Contractor shall, prior to any individual performing work under this Contract, conduct or cause to

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be conducted an Internet Criminal History Access Tool (ICHAT) check and a national and state sex offender registry check for each new employee, employee, subcontractor, subcontractor employee, or volunteer who, under this Contract, works directly with clients or has access to client information.

Information about ICHAT can be found at <http://apps.michigan.gov/ichat>.

The Michigan Public Sex Offender Registry website address is <http://www.mipsor.state.mi.us>.

The National Sex Offender Public website address is <http://www.nsopw.gov>.

As a condition of this Contract, the Contractor certifies that the Contractor shall, prior to any individual performing work under this Contract, conduct or cause to be conducted a Central Registry (CR) check for each new employee, employee, subcontractor, subcontractor employee, or volunteer who, under this Contract, works directly with children.

Information about CR can be found at http://www.mi.gov/dhs/0,1607,7-124-5452_7119_48330-180331-,00.html.

The Contractor shall require each new employee, employee, subcontractor, subcontractor employee, or volunteer who, under this Contract, works directly with clients or who has access to client information to notify the Contractor in writing of criminal convictions (felony or misdemeanor), pending felony charges, or placement on the Central Registry as a perpetrator, at hire or within 10 days of the event after hiring.

The Contractor further certifies that the Contractor shall not submit claims for or assign duties under this Contract to any new employee, employee, subcontractor, subcontractor employee, or volunteer based on a determination by the Contractor that the results of a positive ICHAT and/or a CR response or reported criminal felony conviction or perpetrator identification make the individual ineligible to provide the services.

The Contractor must have a written policy describing the criteria on which its determinations shall be made and must document the basis for each determination. The Contractor may consider the recency and type of crime when making a determination. Failure to comply with this provision may be cause for immediate cancellation of this Contract. In addition, the Contractor must further have a clearly defined written policy regarding acceptable screening practices of new staff members and volunteers who have direct access to clients and/or client's personal information. These screening practices serve to protect the organization and its clients. The Contractor must also assure that any subcontractors have both of these written policies.

If MDHHS determines that an individual provided services under this Contract for any period prior to completion of the required checks as described above, MDHHS may require repayment of any and/or all billed services for the period that the required checks had not been completed.

2.14. Reserved

2.15. Recoupment of Funding and Repayment of Debts

a. Recoupment of Funding

If the Contractor fails to comply with requirements as set forth in this Contract, or fails to submit a revised invoice within allotted time frames established by MDHHS in consultation with the Contractor, MDHHS may, at its discretion, recoup or require the Contractor to reimburse payments made under this Contract which MDHHS has determined that the Contractor has been overpaid. The Contractor is liable for any cost incurred by MDHHS in the recoupment of any funding.

Upon notification by MDHHS that repayment is required, the Contractor shall make payment directly to MDHHS within 30 days or MDHHS may withhold current or future payments made under this or any other agreements, current or future, between MDHHS and the Contractor.

If the Contractor fails to: (1) correct noncompliance activities identified by MDHHS, (2) submit revised billings as requested as part of a corrective action plan when required; or (3) remit overpayments or make arrangements to have the overpayments deducted from future payments within 30 days, such failure shall constitute grounds to terminate immediately any or all of MDHHS' agreements with the Contractor. MDHHS shall also report noncompliance of the Contractor to Michigan's Department of Technology, Management and Budget. Such report may result in the Contractor's debarment from further contracts with the state of Michigan.

b. Repayment of Debts and Other Amounts due MDHHS

By entering into this Contract, the Contractor agrees to honor all prior repayment agreements established by MDHHS with the Contractor or Contractor's predecessors. If the Contractor has an outstanding debt due to MDHHS but does not have a repayment agreement, the Contractor agrees to make monthly payments to MDHHS at an amount not less than 5% of any outstanding balance and to begin on the date this Contract is executed.

If the Contractor fails to honor prior repayment agreements, or the Contractor fails to begin repayment on an obligation due MDHHS that is not subject to a repayment agreement, MDHHS will initiate the administrative process to

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reduce payments to the Contractor under this Contract to recoup the debt. The payment reduction will be made at the amount originally established in the repayment agreement or at an amount not less than 5% of any outstanding balance effective on the date this Contract is executed.

2.16 Ordering

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

3. MDHHS RESPONSIBILITIES

3.1. Maximum Amount of Contract

MDHHS hereby agrees to pay the Contractor an amount not to exceed the total contract amount in Schedule B Pricing Matrix for services performed in accordance with the terms of this Contract exclusively during the period identified in Schedule B Pricing Matrix.

Refer to Schedule B Pricing Matrix for established pricing.

3.2. Performance Evaluation and Monitoring

The services provided by the Contractor under this Contract shall be evaluated and assessed at least annually by MDHHS on the basis of the criteria outlined in Section 2.6.

MDHHS shall perform contract monitoring through activities such as:

- a. Auditing expenditure reports.
- b. Conducting on-site monitoring.
- c. Reviewing and analyzing reports.

4. STANDARD TERMS

4.1 Duties of Contractor

Contractor must perform the services and provide the deliverables (the "Contract Activities") described in Sections 1 and 2. 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, unless otherwise specified in Section 2.5 – Services to be Delivered.

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 this Contract;
- c. Provide all Contract Activities in good quality, with no material defects;
- d. Not interfere with MDHHS's operations;
- e. Obtain and maintain all necessary licenses, permits or other authorizations necessary for the performance of this Contract;
- f. Cooperate with MDHHS, including MDHHS's quality assurance personnel, and any third party to achieve the objectives of this Contract;
- g. Return to MDHHS any State-furnished equipment or other resources in the same condition as when provided when no longer required for this Contract;
- h. Assign to MDHHS 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 this Contract;
- i. Comply with all State physical and IT security policies and standards which will be made available upon request; and
- j. Provide MDHHS priority in performance of this Contract except as mandated by federal disaster response requirements.

Any breach under this provision 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.

4.2 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.

4.3 Reserved

4.4 Reserved

4.5 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 a Statement of Work) if, in the opinion of the State, it will ensure performance of the Contract.

4.6 Reserved

4.7 Liability

The Contractor assumes all liability to third parties, loss, or damage as a result of claims, demands, costs, or judgments arising out of activities, such as direct activity delivery, to be carried out by the Contractor in the performance of this agreement, under the following conditions:

- A. The liability, loss, or damage is caused by, or arises out of, the actions of or failure to act on the part of the Contractor, any of its subcontractors, or anyone directly or indirectly employed by the grantee.
- B. Nothing herein shall be construed as a waiver of any governmental immunity that has been provided to the Contractor or its employees by statute or court decisions.

The Department is not liable for consequential, incidental, indirect or special damages, regardless of the nature of the action.

4.8 Extended Purchasing Program

This contract is extended to MiDEAL members. MiDEAL members include local units of government, school districts, universities, community colleges, and nonprofit hospitals. A current list of MiDEAL members is available at www.michigan.gov/mideal. Upon written agreement between MDHHS 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. MDHHS reserves the right to impose an administrative fee and negotiate additional discounts based on any increased volume generated by such extensions.

4.9 Relationship of the Parties

The relationship between the parties is that of independent contractors. Contractor, its employees, and agents will not be considered employees of MDHHS. No partnership or joint venture relationship is created by virtue of this Contract. Contractor, and not MDHHS, 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. Neither party has authority to contract for nor bind the other party in any manner whatsoever.

4.10 Intellectual Property Rights

If Section 2.5, Services to be Delivered, requires Contractor to create any intellectual property, 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.

4.11 Subcontracting

Contractor may not delegate any of its obligations under this Contract without the prior written approval of MDHHS. Contractor must notify MDHHS at least 90 calendar days before the proposed delegation, and provide MDHHS 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. MDHHS, in its sole discretion, may require the replacement of any subcontractor.

4.12 Staffing

MDHHS's Contract Administrator may require Contractor to remove or reassign personnel providing services by providing a notice to Contractor.

4.13 Reserved

4.14 Assignment

Contractor may not assign this Contract to any other party without the prior approval of MDHHS. Upon notice to Contractor, MDHHS, in its sole discretion, may assign in whole or in part, its rights or responsibilities under this Contract to any other party. If MDHHS determines that a novation of this Contract to a

third party is necessary, Contractor will agree to the novation and provide all necessary documentation and signatures.

4.15 Change of Control

Contractor will notify MDHHS, within 30 days of any public announcement or otherwise once legally permitted to do so, 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; or
- f. 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 t.

4.16 Ordering

Contractor is not authorized to begin performance until receipt of authorization as identified in a Statement of Work.

4.17 Acceptance

Contract Activities are subject to inspection and testing by MDHHS within 30 calendar days of MDHHS's receipt of them ("State Review Period"), unless otherwise provided in Section 2.5 – Services to be Delivered. If the Contract Activities are not fully accepted by MDHHS, MDHHS 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 MDHHS 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 4.23, 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 MDHHS. 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 this 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, MDHHS may cancel the order in whole or in part. MDHHS, or a third party identified by MDHHS, may perform the Contract Activities and recover the difference between the cost to cure and the Contract price plus an additional 10% administrative fee.

4.18 Reserved

4.19 Reserved

4.20 Reserved

4.21 Invoices and Payment

Invoices must conform to the requirements communicated from time-to-time by MDHHS. All undisputed amounts are payable within 45 days of MDHHS's receipt. Contractor may only charge for Contract Activities provided as specified in Section 2.5 – Services to be Delivered. Invoices must include an itemized statement of all charges. MDHHS is exempt from State sales tax for direct purchases and may be exempt from federal excise tax, if Services purchased under this Contract are for MDHHS's exclusive use. Notwithstanding the foregoing, all fees are exclusive 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 MDHHS under this Contract.

MDHHS has the right to withhold payment of any disputed amounts until the parties agree as to the validity of the disputed amount. MDHHS will notify Contractor of any dispute within a reasonable time. Payment by MDHHS 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 MDHHS constitutes a waiver of all claims by Contractor against MDHHS for payment under this Contract, other than those claims previously filed in writing on a timely basis and still disputed.

MDHHS will only disburse payments under this Contract through Electronic Funds Transfer (EFT). Contractor must register with the State at <http://www.michigan.gov/SIGMAVSS> to receive electronic fund transfer payments. If Contractor does not register, MDHHS is not liable for failure to

provide payment. Without prejudice to any other right or remedy it may have, MDHHS reserves the right to set off at any time any amount then due and owing to it by Contractor against any amount payable by MDHHS to Contractor under this Contract.

Excluding federal government charges and terms, Contractor warrants and agrees that each of the fees, economic or product terms or warranties granted pursuant to this Contract are comparable to or better than the equivalent fees, economic or product term or warranty being offered to any commercial or government customer (including any public educational institution within the State of Michigan) of Contractor. If Contractor enters into any arrangements with another customer of Contractor to provide the products or services, available under this Contract, under more favorable prices, as the prices may be indicated on Contractor's current U.S. and International price list or comparable document, then this Contract will be deemed amended as of the date of such other arrangements to incorporate those more favorable prices, and Contractor will immediately notify the State of such fee and formally memorialize the new pricing in a change notice.

4.22 Liquidated Damages

Liquidated damages, if applicable, will be assessed as described in a Statement of Work. The parties understand and agree that any liquidated damages (which includes but is not limited to applicable credits) set forth in this Contract are reasonable estimates of the State's damages in accordance with applicable law. The parties acknowledge and agree that Contractor could incur liquidated damages for more than 1 event. The assessment of liquidated damages will not constitute a waiver or release of any other remedy the State may have under this Contract for Contractor's breach of this Contract, including without limitation, the State's right to terminate this Contract for cause under Section 4.24 and the State will be entitled in its discretion to recover actual damages caused by Contractor's failure to perform its obligations under this Contract. However, the State will reduce such actual damages by the amounts of liquidated damages received for the same events causing the actual damages. Amounts due the State as liquidated damages may be set off against any fees payable to Contractor under this Contract, or the State may bill Contractor as a separate item and Contractor will promptly make payments on such bills.

4.23 Stop Work Order

MDHHS may suspend any or all activities under this Contract at any time. MDHHS 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, MDHHS will either: (a) issue a notice authorizing Contractor to resume work, or (b) terminate this Contract or purchase order. MDHHS will not pay for

Contract Activities, Contractor's lost profits, or any additional compensation during a stop work period.

4.24 Termination for Cause

MDHHS may terminate this Contract for cause, in whole or in part, if Contractor, as determined by MDHHS:

- a. Endangers the value, integrity, or security of any facility, 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 MDHHS to liability;
- d. Breaches any of its material duties or obligations under this Contract; or
- e. Fails to cure a breach within the time stated by MDHHS in a notice of breach, if in its sole discretion MDHHS has chosen to provide a time to cure.

Any reference to specific breaches being material breaches within this Contract will not be construed to mean that other breaches are not material.

If MDHHS terminates this Contract under this Section, MDHHS will issue a termination notice specifying whether Contractor must: (a) cease performance immediately. Contractor must submit all invoices for Contract Activities accepted by the State within 30 days of the date of termination. Failure to submit an invoice within that timeframe will constitute a waiver by Contractor for any amounts due to Contractor for Contract Activities accepted by the State under this Contract, or (b) continue to perform for a specified period. If it is later determined that Contractor was not in breach of this Contract, the termination will be deemed to have been a Termination for Convenience, effective as of the same date, and the rights and obligations of the parties will be limited to those provided in Section 4.24, Termination for Convenience.

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

4.25 Termination for Convenience

MDHHS may immediately terminate this Contract in whole or in part without penalty and for any reason or no 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. Contractor must submit all invoices for Contract Activities accepted by MDHHS within 30 days of the date of termination. Failure to submit an invoice within that timeframe will constitute a waiver by Contractor for any amounts due Contractor for Contract Activities accepted by MDHHS under this Contract or (b) continue to perform the A Contract Activities in accordance with Section 4.25, Transition Responsibilities. If MDHHS terminates this Contract for convenience, MDHHS will pay all reasonable costs, as determined by MDHHS, for MDHHS approved Transition Responsibilities to the extent the funds are available.

The Contractor may terminate this Contract upon 30 days written notice to MDHHS at any time prior to the completion of the Contract period.

4.26 Transition Responsibilities

Upon termination or expiration of this A Contract for any reason, Contractor must, for a period of time specified by MDHHS (not to exceed 90 calendar days), provide all reasonable transition assistance requested by MDHHS, 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 MDHHS 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 MDHHS or MDHHS's designee;
- c. Transferring title in and delivering to MDHHS, at MDHHS's discretion, all completed or partially completed deliverables prepared under this Contract as of the Contract termination date; and
- d. Preparing an accurate accounting from which MDHHS and Contractor may reconcile all outstanding accounts (collectively, "Transition Responsibilities").

This Contract will automatically be extended through the end of the transition period.

4.27 Return of State Property

Upon termination or expiration of this Contract for any reason, Contractor must take all necessary and appropriate steps, or such other action as MDHHS may direct, to preserve, maintain, protect, or return to MDHHS all materials, data,

property, and confidential information provided directly or indirectly to the Contractor by any entity, agent, vendor, or employee of the State.

4.28 Reserved

4.29 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 MDHHS 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 MDHHS with appropriate credits to MDHHS against Contractor's charges and reimburse MDHHS for any losses or costs incurred as a consequence of MDHHS ceasing its use and returning it.

4.30 Limitation of Liability and Disclaimer of Damages

In no event will the state's aggregate liability to contractor under this contract, regardless of the form of action, whether in contract, tort, negligence, strict liability or by statute or otherwise, for any claim related to or arising under this contract, exceed the maximum amount of fees payable under this contract. MDHHS is not liable for consequential, incidental, indirect, or special damages, regardless of the nature of the action.

4.31 Disclosure of Litigation, or Other Proceeding

Contractor must notify MDHHS 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 this 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

- 3) Any complaint filed in a legal or administrative proceeding alleging the Contractor or its subcontractors discriminated against its employees, subcontractors, vendors, or suppliers during the term of this Contract; or
- e. A Proceeding involving any license that Contractor is required to possess in order to perform under this Contract.

4.32 State Data

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

4.33 State Data

- a. Ownership. MDHHS's data ("**State Data**," which will be treated by Contractor as Confidential Information) includes:

- 1) MDHHS's data, user data, and any other data collected, used, processed, stored, or generated as the result of the Contract Activities;
- 2) 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,
- 3) Protected 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 MDHHS and all right, title, and interest in the same is reserved by MDHHS.

- 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:

- 1) 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;
- 2) 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;
 - 3) Keep and maintain State Data in the continental United States and
 - 4) Not use, sell, rent, transfer, distribute, commercially exploit, or otherwise disclose or make available State Data for Contractor's own purposes or for the benefit of anyone other than MDHHS without MDHHS's prior written consent. Contractor's misuse of State Data may violate state or federal laws, including but not limited to MCL 752.795.
- c. Extraction of State Data. Contractor must, within five business days of MDHHS's request, provide MDHHS, 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 MDHHS.
- d. Backup and Recovery of State Data. Unless otherwise specified in Section 2.5 – Services to be Delivered, Contractor is responsible for maintaining a backup of State Data and for an orderly and timely recovery of such data. Unless otherwise described in Section 2.5 – Services to be Delivered, Contractor must maintain a contemporaneous backup of State Data that can be recovered within two hours at any point in time.
- e. Loss or Compromise of Data. In the event of any act, error or omission, negligence, misconduct, or breach on the part of Contractor that compromises or is suspected to compromise the security, confidentiality, or integrity of State Data or the physical, technical, administrative, or organizational safeguards put in place by Contractor that relate to the protection of the security, confidentiality, or integrity of State Data, Contractor must, as applicable:
- 1) Notify MDHHS as soon as practicable but no later than 24 hours of becoming aware of such occurrence;
 - 2) Cooperate with MDHHS 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 MDHHS;
 - 3) In the case of PII or PHI, at MDHHS's sole election, (i) with approval and assistance from MDHHS, 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 MDHHS for any costs in notifying the affected individuals;

- 4) 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;
- 5) Perform or take any other actions required to comply with applicable law as a result of the occurrence;
- 6) Pay for any costs associated with the occurrence, including but not limited to any costs incurred by MDHHS in investigating and resolving the occurrence, including reasonable attorney's fees associated with such investigation and resolution;
- 7) Without limiting Contractor's obligations of indemnification as further described in this Contract, indemnify, defend, and hold harmless MDHHS for any and all claims, including reasonable attorneys' fees, costs, and incidental expenses, which may be suffered by, accrued against, charged to, or recoverable from MDHHS in connection with the occurrence;
- 8) Be responsible for recreating lost State Data in the manner and on the schedule set by MDHHS without charge to MDHHS; and,
- 9) Provide to MDHHS 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, not be tangentially used for any solicitation purposes, and contain, at a minimum: name and contact information of Contractor's representative; a description of the nature of the loss; a list of the types of data involved; the known or approximate date of the loss; how such loss may affect the affected individual; what steps Contractor has taken to protect the affected individual; what steps the affected individual can take to protect himself or herself; contact information for major credit card reporting agencies; and, information regarding the credit and identity monitoring services to be provided by Contractor. MDHHS will have the option to review and approve any notification sent to affected individuals prior to its delivery. Notification to any other party, including but not limited to public media outlets, must be reviewed and approved by MDHHS in writing prior to its dissemination. The parties agree that any damages relating to a breach of this Section 4.32 are to be considered direct damages and not consequential damages.

- f. State's Governance, Risk and Compliance (GRC) platform. Contractor is required to assist the State with its security accreditation process through the development, completion and ongoing updating of a system security plan using the State's automated GRC platform and implement any required safeguards or remediate any security vulnerabilities as identified by the results of the security accreditation process.

4.34 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.

a. Meaning of Confidential Information. For the purposes of this Contract, the term “**Confidential Information**” means all information and documentation of a party that:

- 1) Has been marked “confidential” or with words of similar meaning, at the time of disclosure by such party;
- 2) If disclosed orally or not marked “confidential” or with words of similar meaning, was subsequently summarized in writing by the disclosing party and marked “confidential” or with words of similar meaning; or,
- 3) Should reasonably be recognized as confidential information of the disclosing party.

The term “Confidential Information” does not include any information or documentation that was or is:

- 1) Subject to disclosure under the Michigan Freedom of Information Act (FOIA);
- 2) Already in the possession of the receiving party without an obligation of confidentiality;
- 3) Developed independently by the receiving party, as demonstrated by the receiving party, without violating the disclosing party’s proprietary rights;
- 4) Obtained from a source other than the disclosing party without an obligation of confidentiality; or,
- 5) 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:

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- 1) Use of a subcontractor is authorized under this Contract;
- 2) The disclosure is necessary or otherwise naturally occurs in connection with work that is within the subcontractor's responsibilities; and
- 3) Contractor obligates the subcontractor in a written contract to maintain MDHHS's Confidential Information in confidence.

At MDHHS'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 MDHHS, at the sole election of MDHHS, the immediate termination, without liability to MDHHS, 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 MDHHS following the timeframe and procedure described further in this Contract. Should Contractor or MDHHS determine that the return of any Confidential Information is not feasible, such party must destroy the Confidential Information and must certify the same in writing within five calendar days from the date of termination to the other party. However, MDHHS's legal ability to destroy Contractor data may be restricted by its retention and disposal schedule, in which case Contractor's Confidential Information will be destroyed after the retention period expires.

4.35 Reserved

4.36 Reserved

4.37 Reserved

4.38 Records Maintenance, Inspection, Examination, and Audit

Pursuant to MCL 18.1470, MDHHS or its designee may audit Contractor to verify compliance with this Contract. Contractor must retain, and provide to MDHHS or its designee and the auditor general upon request, all records related to this Contract through the term of this 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, MDHHS 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 this 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.

4.39 Representations and Warranties

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 MDHHS 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 this Contract;

- f. The Contract signatory has the authority to enter into this Contract;
- g. All information furnished by Contractor in connection with this Contract fairly and accurately represents Contractor's business, properties, finances, and operations as of the dates covered by the information, and Contractor will inform MDHHS 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; and that;
- i. Contractor is neither currently engaged in nor will engage in the boycott of a person based in or doing business with a strategic partner as described in 22 USC 8601 to 8606.

4.40 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 this 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 this Contract.

Contractor must immediately notify MDHHS 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.

4.41 Compliance with Laws

Contractor must comply with all federal, state and local laws, rules and regulations.

4.42 Reserved

4.43 Reserved

4.44 Nondiscrimination

Under the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, et seq., the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, et seq., and Executive Directive 2019-09, Contractor and its subcontractors agree not to discriminate against an employee or applicant for employment

with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex (as defined in Executive Directive 2019-09), height, weight, marital status, partisan considerations, any mental or physical disability, or genetic information that is unrelated to the person's ability to perform the duties of a particular job or position. Breach of this covenant is a material breach of this Contract.

4.45 Unfair Labor Practice

Under MCL 423.324, MDHHS may void any Contract with a Contractor or subcontractor who appears on the Unfair Labor Practice register compiled under MCL 423.322.

4.46 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. Complaints against the State must be initiated in Ingham County, Michigan. Contractor waives any objections, such as lack of personal jurisdiction or forum non conveniens. Contractor must appoint an agent in Michigan to receive service of process.

4.47 Non-Exclusivity

Nothing contained in this Contract is intended nor is to be construed as creating any requirements contract with Contractor, nor does it provide Contractor with a right of first refusal for any future work. This Contract does not restrict the State or its agencies from acquiring similar, equal, or like Contract Activities from other sources.

4.48 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, MDHHS may immediately contract with a third party.

4.49 Dispute Resolution

The parties will endeavor to resolve any Contract dispute in accordance with this provision. 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 MDHHS's right to terminate this Contract.

4.50 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 the prior written approval of MDHHS, and then only in accordance with the explicit written instructions of MDHHS.

4.51 Schedules

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

Schedule B Pricing Matrix

4.52 Entire Agreement and Order of Precedence

This Contract, which includes Schedule B Pricing Matrix, is the entire agreement of the parties related to the Contract Activities. This Contract supersedes and replaces all previous understandings and agreements between the parties for the Contract Activities. If there is a conflict between documents, the order of precedence is: (a) first, this Contract, excluding its schedules, (b) second, Schedule B Pricing Matrix. NO TERMS ON CONTRACTOR'S INVOICES, ORDERING DOCUMENTS, WEBSITE, OR OTHER NON-NEGOTIATED TERMS AND CONDITIONS PROVIDED WITH ANY OF THE CONTRACT ACTIVITIES, OR DOCUMENTATION HEREUNDER, EVEN IF ATTACHED TO THE STATE'S DELIVERY OR PURCHASE ORDER, WILL CONSTITUTE A PART OR AMENDMENT OF THIS CONTRACT OR IS BINDING ON THE STATE OR ANY AUTHORIZED USER FOR ANY PURPOSE. ALL SUCH OTHER TERMS AND CONDITIONS

HAVE NO FORCE AND EFFECT AND ARE DEEMED REJECTED BY THE STATE AND THE AUTHORIZED USER, EVEN IF ACCESS TO OR USE OF THE CONTRACT ACTIVITIES REQUIRES AFFIRMATIVE ACCEPTANCE OF SUCH TERMS AND CONDITIONS.

4.53 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.

4.54 Waiver

Failure to enforce any provision of this Contract will not constitute a waiver.

4.55 Survival

Any right, obligation or condition that, by its express terms or nature and context is intended to survive, will survive the termination or expiration of this Contract; such rights, obligations, or conditions include, but are not limited to, those related to transition responsibilities; indemnification; disclaimer of damages and limitations of liability; State Data; non-disclosure of Confidential Information; representations and warranties; insurance and bankruptcy.

4.56 Contract Modification

This Contract may not be amended except by signed agreement between the parties. Notwithstanding the foregoing, no subsequent Statement of Work or amendment executed after the effective date will be construed to amend this Contract unless it specifically states its intent to do so and cites the section or sections amended.

The Contractor shall, upon request of MDHHS and receipt of a proposed amendment, amend this Contract, if and when required in the opinion of MDHHS, due to the revision of federal or state laws or regulations.

4.57 Certification Regarding Debarment, Suspension, and Other Responsibility Matters

Assurance is hereby given to MDHHS that the Contractor will comply with Federal Regulation, 2 CFR part 180 and certifies to the best of its knowledge and belief that it, its employees and its subcontractors:

- a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or contractor;
- b. Have not within a five-year period preceding this Contract been convicted of or had civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) or private transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice;
- c. Are not presently indicted or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in section 2;
- d. Have not within a five-year period preceding this Contract had one or more public transactions (federal, state or local) terminated for cause or default; and
- e. Have not committed an act of so serious or compelling a nature that it affects your present responsibilities.

Where the parties are unable to certify to any of the statements in this certification, the Contractor shall attach an explanation to this Contract.

The Contractor shall include Section 4.55 (Certification Regarding Debarment, Suspension, and Other Responsibility Matters) language as written above in all subcontracts with other parties.

The Contractor shall require each primary subcontractor, whose subcontract will exceed \$25,000, to disclose to the Contractor, in writing, whether at the time of the award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the state of Michigan. The Contractor shall then inform MDHHS of the subcontractor's status and reasons for the Contractor's decision to use such subcontractor, if the Contractor so decides.

If it is determined that the Contractor knowingly rendered an erroneous certification under this provision, in addition to the other remedies available to the state, MDHHS may immediately terminate this Contract.

If the state finds that grounds to debar exist, it shall send notice to the Contractor of proposed debarment indicating the grounds for proposed debarment and the procedures for requesting a hearing. If the Contractor does not respond with a written request for a hearing within 20 calendar days, the state shall issue the decision to debar without a hearing. The debarment period may be of any length up to eight years.

5. FEDERAL PROVISIONS ADDENDUM

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. Contractor agrees to comply with all obligations under federal rules or regulations for such funding, including but not limited to the provisions contained in this addendum. If any provision below conflicts with the State's terms and conditions, including any attachments, schedules, or exhibits to this 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. Further, Contractor agrees to, through a Contract Change Notice, append or modify specific federal provisions to this Contract, if reasonably necessary to keep the State and Contractor in compliance with federal funding requirements, and comply with the terms set forth therein. Hyperlinks are provided for convenience only; broken hyperlinks will not relieve Contractor from compliance with the law.

A. Equal Employment Opportunity

This Contract is not a **"federally assisted construction contract"** as defined in 41 CFR Part 60-1.3.

B. Davis-Bacon Act (Prevailing Wage)

This Contract is not a **"federally assisted construction contract"** as defined in 41 CFR Part 60-1.3, nor is it a prime construction contract in excess of \$2,000.

C. Copeland "Anti-Kickback" Act

This Contract is not a **"federally assisted construction contract"** as defined in 41 CFR Part 60-1.3, nor is it a prime construction contract in excess of \$2,000 where the Davis-Bacon Act applies.

D. Contract Work Hours and Safety Standards Act

The Contract does not involve the employment of mechanics or laborers.

E. Rights to Inventions Made Under a Contract or Agreement

If this 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.

F. 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 7401-7671g) and the Federal Water Pollution Control Act (33 USC 1251-1387), and during performance of this Contract the Contractor agrees as follows:

(1) Clean Air Act

- (i) 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.
- (ii) 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.
- (iii) 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.

(2) Federal Water Pollution Control Act

- (i) 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.
- (ii) 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.
- (iii) 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.

G. 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.

- (1) This Contract is a covered transaction for purposes of 2 C.F.R. Part 180 and 2 C.F.R. Part 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).

- (2) The Contractor must comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- (3) 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. Part. 180, subpart C and 2 C.F.R. Part. 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.
- (4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C while this offer is valid and 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.

H. Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)

Contractor has applied or bid for an award of **more than \$100,000** and shall file the required certification in *Exhibit 1 – Byrd Anti-Lobbying Certification* attached to the end of this Addendum. Each tier certifies to the tier above that it will not and has not used federally 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 federal awarding agency.

I. Procurement of Recovered Materials

If this Contract is a procurement to purchase products or items designated by the EPA under 40 C.F.R. part 247 during the course of a fiscal year, then under 2 CFR 200.323, Contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.

- (1) 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.
- (2) 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>.
- (3) The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

J. Prohibition on Contracting for Covered Telecommunications Equipment or Services

Contractor acknowledges and agrees that Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232 (the "McCain Act"), and 2 C.F.R. §200.216, prohibit the obligation or expending of federal award funds on certain telecommunication products or with certain entities for national security reasons on or after August 13, 2020.

During performance of this Contract, the Contractor agrees as follows:

- (a) *Definitions.* As used in this Section J. Prohibition on Contracting for Covered Telecommunications Equipment or Services ("Section J"):
 - (1) the terms "backhaul," "critical technology," "interconnection arrangements," "reasonable inquiry," "roaming," and "substantial or essential component" have the meanings defined in 48 CFR § 4.2101;
 - (2) the term "covered foreign country" has the meanings defined in § 889(f)(2) of the McCain Act; and
 - (3) the term "covered telecommunications equipment or services" has the meaning defined in § 889(f)(3) of the McCain Act.
- (b) *Prohibitions.*
 - (1) Unless an exception in paragraph (c) of this Section J applies, neither the Contractor nor any of its subcontractors may use funds received under this Contract to:
 - (i) Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
 - (ii) Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

(iii) Enter into, extend, or renew a contract with an entity that uses any covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or

(iv) Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(c) *Exceptions.*

(1) This Section J does not prohibit Contractor from providing—

(i) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(ii) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(d) *Reporting requirement.*

(1) In the event the Contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the contractor is notified of such by a subcontractor at any tier or by any other source, the Contractor shall report the information in paragraph (d)(2) of this Section J to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information.

(2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this Section J:

(i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this Section J: Any further available information about mitigation actions undertaken or recommended. In addition, the contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

- (e) *Subcontracts*. The Contractor shall insert the substance of this Section J, including this paragraph (e), in all subcontracts and other contractual instruments.

K. Domestic Preferences for Procurements

As appropriate, and to the extent consistent with law, the Contractor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products.

For purposes of this Section K – **Domestic Preferences for Procurements**:

“Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

“Manufactured products” mean items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

L. Affirmative Socioeconomic Steps

For all contracts utilizing federal funding sources subject to Title 2 of the Code of Federal Regulations (C.F.R.) Part 200 issued on or after November 12, 2020, if subcontracts are to be let, the prime contractor is required to take all necessary steps identified in 2 C.F.R. § 200.321(b)(1)-(5) to ensure that small and minority businesses, women’s business enterprises, and labor surplus area firms are used when possible.

M. Copyright and Data Rights

Pursuant to 2 CFR § 200.315(b), the State may copyright any work which is subject to copyright and was developed, or for which ownership was acquired, under a Federal award. The Federal awarding agency reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so.

N. Additional FEMA Contract Provisions

This Contract does not involve purchases that will be paid for in whole or in part with funds obtained from the Federal Emergency Management Agency (FEMA).

O. Other Federal Contract Provisions

No additional federal provisions currently apply to this Contract.

EXHIBIT 1
BYRD ANTI-LOBBYING CERTIFICATION

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. C. 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.

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The Contractor 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.

E-SIGNED by John Potbury
on 2023-06-26 16:42:50 EDT

Signature of Contractor's Authorized Official

John Potbury Authorized Official

Name and Title of Contractor's Authorized Official

2023-06-26 16:42:50 UTC

Date

Contract Number: MA230000000616

**State of Michigan
Michigan Department of Health and Human Services**

Legal Representation – Prosecuting Attorney Foster Care

**SCHEDULE B
PRICING MATRIX**

MDHHS shall make payments to the Contractor based upon the following rates per unit of service delivered as identified below:

<u>Unit Title</u>	<u>Rate</u>
Legal Representation	\$175/hour

Payments must not exceed the amounts allocated as identified below. Payments made above the allocated amounts identified will require an amendment to the contract.

Contract Period	Contract Amount
Begin Date through September 30, 2026	\$900,000.00

- 1) Dollar amounts allocated for services are identified in the annual fiscal year Delivery Order (DO).
- 2) The annual fiscal year DO number must be included on all invoices.

Monthly Payment = Unit Rate x 50% (*statewide IV-E penetration rate* + General Fund contribution) x 50% (*County Share*)

Costs incurred outside of the term of this Contract shall not be eligible for reimbursement. The unit rate(s) established in this Contract shall remain fixed for the initial term of the Contract.