



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

**CONTRACT CHANGE NOTICE**

Change Notice Number 2  
 to  
 Contract Number 200000000393

<b>CONTRACTOR</b>	NovaRest, Inc.
	156 W Calle Guija
	Sahuarita, AZ 85629
	Wayne Novak
	520-990-7679
	wayne@novarest.com
	VS0064720

<b>STATE</b>	<b>Program Manager</b>	Karen Dennis	DIFS
		517-284-8696	
	dennisk1@Michigan.gov		
	<b>Contract Administrator</b>	Courtney Powell	DTMB
(517) 249-0452			
powellc11@michigan.gov			

**CONTRACT SUMMARY**

ACTUARIAL SERVICES FOR RATE REVIEWS - MULTI-AWARD CONTRACT - TIER 1

INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE
February 1, 2020	January 31, 2023	2 - 1 Year	January 31, 2023

PAYMENT TERMS	DELIVERY TIMEFRAME
	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"/>		January 31, 2023

CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE
\$400,000.00	\$0.00	\$400,000.00

**DESCRIPTION**

Effective June 15, 2021, the Section 6 Insurance Requirements of the Standard Contract Terms have been deleted and replaced with the attached.  
 All other terms, conditions, specifications and pricing remain the same. Per Contractor and Agency agreement, and DTMB Central Procurement Services approval.

# STATE OF MICHIGAN

## Standard Contract Terms – Section 6. Insurance Requirement Amendment

**Section 6. Insurance Requirements.** Contractor, at its sole expense, must maintain the insurance coverage identified below. All required insurance must: (a) protect the State from claims that may arise out of, are alleged to arise out of, or otherwise result from Contractor's or a subcontractor's performance; (b) be primary and non-contributing to any comparable liability insurance (including self-insurance) carried by the State; and (c) be provided by a company with an A.M. Best rating of "A-" or better, and a financial size of VII or better.

Required Limits	Additional Requirements
<b>Commercial General Liability Insurance</b>	
<b>Minimum Limits:</b> \$1,000,000 Each Occurrence \$1,000,000 Personal & Advertising Injury \$2,000,000 Products/Completed Operations \$2,000,000 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 using endorsement CG 20 10 11 85, or both CG 20 10 12 19 and CG 20 37 12 19.
<b>Automobile Liability Insurance</b>	
If a motor vehicle is used in relation to the Contractor's performance, the Contractor must have vehicle liability insurance on the motor vehicle for bodily injury and property damage as required by law.	
<b>Workers' Compensation Insurance</b>	
<b>Minimum Limits:</b> Coverage according to applicable laws governing work activities.	Waiver of subrogation, except where waiver is prohibited by law.
<b>Employers Liability Insurance</b>	
<b>Minimum Limits:</b> \$500,000 Each Accident \$500,000 Each Employee by Disease \$500,000 Aggregate Disease	
<b>Privacy and Security Liability (Cyber Liability) Insurance</b>	
<b>Minimum Limits:</b> \$1,000,000 Each Occurrence \$1,000,000 Annual Aggregate	Contractor must have their policy cover information security and privacy liability, privacy notification costs, regulatory defense and penalties, and website media content liability.
<b>Professional Liability (Errors and Omissions) Insurance</b>	
<b>Minimum Limits:</b>	

Required Limits	Additional Requirements
\$3,000,000 Each Occurrence \$3,000,000 Annual Aggregate	

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

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

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



**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 20000000393

<b>CONTRACTOR</b>	NovaRest, Inc.
	156 W Calle Guija
	Sahuarita, AZ 85629
	Wayne Novak
	520-990-7679
	wayne@novarest.com
	VS0064720

<b>STATE</b>	<b>Program Manager</b>	Karen Dennis	DIFS
		517-284-8696	
	dennisk1@Michigan.gov		
	<b>Contract Administrator</b>	Courtney Powell	DTMB
(517) 249-0452			
powellc11@michigan.gov			

**CONTRACT SUMMARY**

**ACTUARIAL SERVICES FOR RATE REVIEWS - MULTI-AWARD CONTRACT - TIER 1**

INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE
February 1, 2020	January 31, 2023	2 - 1 Year	January 31, 2023

PAYMENT TERMS	DELIVERY TIMEFRAME
	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"/>	N/A	<input type="checkbox"/>	N/A	N/A

CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE
\$400,000.00	\$0.00	\$400,000.00

**DESCRIPTION**

Effective January 1, 2021, pricing on this Contract is decreased, per Attachment Schedule B, Pricing.

Please note the Contract Administrator has been changed to Courtney Powell: Phone: 517-249-0452; Email: powellc11@michigan.gov, per Section 2 and 3 of Standard Contract Terms.

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

# STATE OF MICHIGAN

Contract No. 200000000393  
Financial and Insurance Actuarial Rate Review Services  
**SCHEDULE B**  
**PRICING**

Not-to-exceed Contract price below; pricing will be finalized in accordance with the second tier, competitive selection process as explained in Schedule A.

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

Quick payment terms: 10 % discount off invoice if paid within 25 days after receipt of invoice.

3. Pricing must be inclusive of all travel costs.

Staffing Role	Hourly Rate
ASA, MBA/Team Leader	\$240.00
FSA/Expert Actuary	\$245.00
FSA/Expert Actuary	\$240.00
FSA/ Senior Consultant	\$220.00
ASA/ Financial Analyst	\$160.00
Actuarial Student	\$140.00
Administration	\$60.00



**STATE OF MICHIGAN PROCUREMENT**  
 Department of Technology, Management, and Budget –  
 Central Procurement Services

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

**NOTICE OF CONTRACT**

NOTICE OF CONTRACT NO. 200000000393

between

THE STATE OF MICHIGAN

and

<b>CONTRACTOR</b>	NovaRest, Inc.
	156 W Calle Guija
	Sahuarita, AZ 85629
	Wayne Novak
	520-990-7679
	wayne@novarest.com
	VSS0064720

<b>STATE</b>	Program Manager	Karen Dennis	DIFS
		(517) 284-8696	
	dennisk1@michigan.gov		
	Contract Administrator	Lisa Spitzley	DTMB
(517) 249-0440			
spitzleyL4@michigan.gov			

<b>CONTRACT SUMMARY</b>			
<b>DESCRIPTION: Actuarial Services for Rate Reviews – Multi-Award Contract – Tier 1</b>			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
February 1, 2020	January 31, 2023	Two, 1-Year	
PAYMENT TERMS		DELIVERY TIMEFRAME	
10%Net25, Net 45		N/A	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-card <input type="checkbox"/> Payment Request (PRC) <input type="checkbox"/> Other			<input 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>\$400,000.00</b>

**FOR THE CONTRACTOR:**

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

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

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

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

**FOR THE STATE:**

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

**Lisa Spitzley, Category Analyst**  
\_\_\_\_\_  
**Name & Title**

**DTMB**  
\_\_\_\_\_  
**Agency**

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



# STATE OF MICHIGAN

## STANDARD CONTRACT TERMS

This STANDARD CONTRACT (“**Contract**”) is agreed to between the State of Michigan (the “**State**”) and NovaRest, Inc. (“**Contractor**”), a corporation of Illinois. This Contract is effective on Feb 1, 2020 (“**Effective Date**”), and unless terminated, expires on January 31, 2023.

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

The parties agree as follows:

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

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

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

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

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

If to State:	If to Contractor:
Lisa Spitzley 525 W. Allegan 1 <sup>st</sup> Floor Lansing MI 48913 spitzleyl4@michigan.gov	Wayne Novak 156 W Calle Guja Sahuarita, AZ 85629 wayne@novarest.com



(517) 249-0440	520-990-7679
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3. **Contract Administrator.** The Contract Administrator for each party is the only person authorized to modify any terms of this Contract, and approve and execute any change under this Contract (each a “**Contract Administrator**”):

State:	Contractor:
Lisa Spitzley 525 W. Allegan 1 <sup>st</sup> Floor Lansing MI 48913 spitzleyl4@michigan.gov (517) 249-0440	Wayne Novak 156 W Calle Guija Sahuarita, AZ 85629 wayne@novarest.com 520-990-7679

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

State:	Contractor:
Karen Dennis 525 W. Allegan 6th Floor Lansing MI 48913 dennisk1@michigan.gov (517) 284-8696	Wayne Novak 156 W Calle Guija Sahuarita, AZ 85629 wayne@novarest.com 520-990-7679

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

Required Limits	Additional Requirements
<b>Commercial General Liability Insurance</b>	
<u>Minimum Limits:</u> \$1,000,000 Each Occurrence Limit \$1,000,000 Personal & Advertising Injury Limit \$2,000,000 General Aggregate Limit \$2,000,000 Products/Completed Operations  <u>Deductible Maximum:</u> \$50,000 Each Occurrence	Contractor must have their policy endorsed to add “the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents” as additional insureds using endorsement CG 20 10 11 85, or both CG 2010 07 04 and CG 2037 07 04.
<b>Umbrella or Excess Liability Insurance</b>	

<u>Minimum Limits:</u> \$5,000,000 General Aggregate	Contractor must have their policy follow form.
<b>Automobile Liability Insurance</b>	
<u>Minimum Limits:</u> \$1,000,000 Per Accident	Contractor must have their policy: (1) endorsed to add “the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents” as additional insureds; and (2) include Hired and Non-Owned Automobile coverage.
<b>Workers' Compensation Insurance</b>	
<u>Minimum 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>Minimum 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>Minimum Limits:</u> \$1,000,000 Each Occurrence \$1,000,000 Annual Aggregate	Contractor must have their policy: (1) endorsed to add “the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents” as additional insureds; and (2) cover information security and privacy liability, privacy notification costs, regulatory defense and penalties, and website media content liability.
<b>Crime (Fidelity) Insurance</b>	
<u>Minimum Limits:</u> \$1,000,000 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>	

<p><u>Minimum Limits:</u></p> <p>\$3,000,000 Each Occurrence</p> <p>\$3,000,000 Annual Aggregate</p> <p><u>Deductible Maximum:</u></p> <p>\$50,000 Per Loss</p>	
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If any of the required policies provide **claims-made** coverage, the Contractor must: (a) provide coverage with a retroactive date before the effective date of the contract or the beginning of Contract Activities; (b) maintain coverage and provide evidence of coverage for at least three (3) years after completion of the Contract Activities; and (c) if coverage is cancelled or not renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, Contractor must purchase extended reporting coverage for a minimum of three (3) years after completion of work.

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

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

- 7. **Administrative Fee and Reporting.** Contractor must pay an administrative fee of 1% on all payments made to Contractor under the Contract including transactions MiDEAL members, and other states (including governmental subdivisions and authorized entities). Administrative fee payments must be made by check payable to the State of Michigan and mailed to:

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

Contractor must submit an itemized purchasing activity report, which includes at a minimum, the name of the purchasing entity and the total dollar volume in sales. Reports should be mailed to [MiDeal@michigan.gov](mailto:MiDeal@michigan.gov).

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 impose an administrative fee and negotiate additional discounts based on any increased volume generated by such extensions.

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

9. **Independent Contractor.** Contractor is an independent contractor and assumes all rights, obligations and liabilities set forth in this Contract. Contractor, its employees, and agents will not be considered employees of the State. No partnership or joint venture relationship is created by virtue of this Contract. Contractor, and not the State, is responsible for the payment of wages, benefits and taxes of Contractor's employees and any subcontractors. Prior performance does not modify Contractor's status as an independent contractor. 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 and provide all necessary documentation and signatures.
14. **Change of Control.** Contractor will notify, at least 90 calendar days before the effective date, the State of a change in Contractor's organizational structure or ownership. For purposes of this Contract, a change in control means any of the following: (a) a sale of more than 50% of Contractor's stock; (b) a sale of substantially all of Contractor's assets; (c) a change in a majority of Contractor's board members; (d) consummation of a merger or consolidation of Contractor with any other entity; (e) a change in ownership through a transaction or series of transactions; (f) or the board (or the stockholders) approves a plan of complete liquidation. A change of control does not include any consolidation or merger effected exclusively to change the domicile of Contractor, or any transaction or series of transactions principally for bona fide equity financing purposes.

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

15. **Ordering.** Contractor is not authorized to begin performance until receipt of authorization as identified in Schedule A.

- 16. Acceptance.** Contract Activities are subject to inspection and testing by the State within 30 calendar days of the State's receipt of them ("**State Review Period**"), unless otherwise provided in Schedule A. If the Contract Activities are not fully accepted by the State, the State will notify Contractor by the end of the State Review Period that either: (a) the Contract Activities are accepted, but noted deficiencies must be corrected; or (b) the Contract Activities are rejected. If the State finds material deficiencies, it may: (i) reject the Contract Activities without performing any further inspections; (ii) demand performance at no additional cost; or (iii) terminate this Contract in accordance with Section 23, Termination for Cause.

Within ten (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 Schedule A. If the Contract Activities do not function as warranted during the warranty period, the State may return such non-conforming Contract Activities to the Contractor for a full refund.

- 20. Terms of Payment.** Invoices must conform to the requirements communicated from time-to-time by the State. All undisputed amounts are payable within 45 days of the State's receipt. Contractor may only charge for Contract Activities performed as specified in Schedule A. Invoices must include an itemized statement of all charges. The State is exempt from State sales tax for direct purchases and may be exempt from federal excise tax, if Services purchased under this Agreement are for the State's exclusive use. Notwithstanding the foregoing, all prices are inclusive of taxes, and Contractor is responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state, or local governmental entity on any amounts payable by the State under this Contract.

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

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

- 21. Liquidated Damages.** Liquidated damages, if applicable, will be assessed as described in Schedule A.

- 22. Stop Work Order.** The State may suspend any or all activities under the Contract at any time. The State will provide Contractor a written stop work order detailing the suspension. Contractor must comply with the stop work order upon receipt. Within 90 calendar days, or any longer period agreed to by Contractor, the State will either: (a) issue a notice authorizing Contractor to resume work, or (b) terminate the Contract or purchase order. The State will not pay for Contract Activities, Contractor's lost profits, or any additional compensation during a stop work period.

- 23. Termination for Cause.** The State may terminate this Contract for cause, in whole or in part, if Contractor, as determined by the State: (a) endangers the value, integrity, or security of any location, data, or personnel; (b) becomes insolvent, petitions for bankruptcy court proceedings, or has an involuntary bankruptcy proceeding filed against it by any creditor; (c) engages in any conduct that may expose the State to liability; (d) breaches any of its material duties or obligations; or (e) fails to cure a breach within the time stated in a notice of breach. Any reference to specific breaches being material breaches within this Contract will not be construed to mean that other breaches are not material.

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

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

- 24. Termination for Convenience.** The State may immediately terminate this Contract in whole or in part without penalty and for any reason, including but not limited to, appropriation or budget shortfalls. The termination notice will specify whether Contractor must: (a) cease performance of the Contract Activities immediately, or (b) continue to perform the Contract Activities in accordance with Section 25, Transition Responsibilities. If the State terminates this Contract for convenience, the State will pay all reasonable costs, as determined by the State, for State approved Transition Responsibilities.
- 25. Transition Responsibilities.** Upon termination or expiration of this Contract for any reason, Contractor must, for a period of time specified by the State (not to exceed 90 calendar days), provide all reasonable transition assistance requested by the State, to allow for the expired or terminated portion of the Contract Activities to continue without interruption or adverse effect, and to facilitate the orderly transfer of such Contract Activities to the State or its designees. Such transition assistance may include, but is not limited to: (a) continuing to perform the Contract Activities at the established Contract rates; (b) taking all reasonable and necessary measures to transition performance of the work, including all applicable Contract Activities, training, equipment, software, leases, reports and other documentation, to the State or the State's designee; (c) taking all necessary and appropriate steps, or such other action as the State may direct, to preserve, maintain, protect, or return to the State all materials, data, property, and confidential information provided directly or indirectly to Contractor by any entity, agent, vendor, or employee of the State; (d) transferring title in and delivering to the State, at the State's discretion, all completed or partially completed deliverables prepared under this Contract as of the Contract termination date; and (e) preparing an accurate accounting from which the State and Contractor may reconcile all outstanding accounts (collectively, "**Transition Responsibilities**"). This Contract will automatically be extended through the end of the transition period.
- 26. General Indemnification.** Contractor must defend, indemnify and hold the State, its departments, divisions, agencies, offices, commissions, officers, and employees harmless, without limitation, from and against any and all actions, claims, losses, liabilities, damages, costs, attorney fees, and expenses (including those required to establish the right to indemnification), arising out of or relating to: (a) any breach by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable) of any of the promises, agreements, representations, warranties, or insurance requirements contained in this Contract; (b) any infringement, misappropriation, or other violation of any intellectual property right or other right of any third party; (c) any bodily injury, death, or damage to real or tangible personal property occurring wholly or in part due to action or inaction by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable); and (d) any acts or omissions of Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable).

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

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

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

27. **Infringement Remedies.** If, in either party's opinion, any piece of equipment, software, commodity, or service supplied by Contractor or its subcontractors, or its operation, use or reproduction, is likely to become the subject of a copyright, patent, trademark, or trade secret infringement claim, Contractor must, at its expense: (a) procure for the State the right to continue using the equipment, software, commodity, or service, or if this option is not reasonably available to Contractor, (b) replace or modify the same so that it becomes non-infringing; or (c) accept its return by the State with appropriate credits to the State against Contractor's charges and reimburse the State for any losses or costs incurred as a consequence of the State ceasing its use and returning it.
28. **Limitation of Liability and Disclaimer of Damages. IN NO EVENT WILL THE STATE'S AGGREGATE LIABILITY TO CONTRACTOR UNDER THIS CONTRACT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS CONTRACT, EXCEED THE MAXIMUM AMOUNT OF FEES PAYABLE UNDER THIS CONTRACT.** The State is not liable for consequential, incidental, indirect, or special damages, regardless of the nature of the action.
29. **Disclosure of Litigation, or Other Proceeding.** Contractor must notify the State within 14 calendar days of receiving notice of any litigation, investigation, arbitration, or other proceeding (collectively, "**Proceeding**") involving Contractor, a subcontractor, or an officer or director of Contractor or subcontractor, that arises during the term of the Contract, including: (a) a criminal Proceeding; (b) a parole or probation Proceeding; (c) a Proceeding under the Sarbanes-Oxley Act; (d) a civil Proceeding involving: (1) a claim that might reasonably be expected to adversely affect Contractor's viability or financial stability; or (2) a governmental or public entity's claim or written allegation of fraud; or (e) a Proceeding involving any license that Contractor is required to possess in order to perform under this Contract.
30. **Reserved.**
31. **State Data.**
  - a. **Ownership.** The State's data ("**State Data**," which will be treated by Contractor as Confidential Information) includes: (a) the State's data collected, used, processed, stored, or generated as the result of the Contract Activities; (b) personally identifiable information ("**PII**") collected, used, processed, stored, or generated as the result of the Contract Activities, including, without limitation, any information that identifies an individual, such as an individual's social security number or other government-issued identification number, date of birth, address, telephone number, biometric data, mother's maiden name, email address, credit card information, or an individual's name in combination with any other of the elements here listed; and, (c) personal health information ("**PHI**") collected, used, processed, stored, or generated as the result of the Contract Activities, which is defined under the Health Insurance Portability and Accountability Act (HIPAA) and its related rules and regulations. State Data is and will remain the sole and exclusive property of the State and all right, title, and interest in the same is reserved by the State. This Section survives the termination of this Contract.
  - b. **Contractor Use of State Data.** Contractor is provided a limited license to State Data for the sole and exclusive purpose of providing the Contract Activities, including a license to collect, process, store, generate, and display State Data only to the extent necessary in the provision of the Contract Activities. Contractor must: (a) keep and maintain State Data in strict confidence, using such degree of care as is appropriate and

consistent with its obligations as further described in this Contract and applicable law to avoid unauthorized access, use, disclosure, or loss; (b) use and disclose State Data solely and exclusively for the purpose of providing the Contract Activities, such use and disclosure being in accordance with this Contract, any applicable Statement of Work, and applicable law; and (c) not use, sell, rent, transfer, distribute, or otherwise disclose or make available State Data for Contractor's own purposes or for the benefit of anyone other than the State without the State's prior written consent. This Section survives the termination of this Contract.

- c. Extraction of State Data. Contractor must, within five (5) business days of the State's request, provide the State, without charge and without any conditions or contingencies whatsoever (including but not limited to the payment of any fees due to Contractor), an extract of the State Data in the format specified by the State.
- d. Backup and Recovery of State Data. Unless otherwise specified in Schedule A, Contractor is responsible for maintaining a backup of State Data and for an orderly and timely recovery of such data. Unless otherwise described in Schedule A, Contractor must maintain a contemporaneous backup of State Data that can be recovered within two (2) hours at any point in time.
- e. Loss or Compromise of Data. In the event of any act, error or omission, negligence, misconduct, or breach on the part of Contractor that compromises or is suspected to compromise the security, confidentiality, or integrity of State Data or the physical, technical, administrative, or organizational safeguards put in place by Contractor that relate to the protection of the security, confidentiality, or integrity of State Data, Contractor must, as applicable: (a) notify the State as soon as practicable but no later than twenty-four (24) hours of becoming aware of such occurrence; (b) cooperate with the State in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable law or as otherwise required by the State; (c) in the case of PII or PHI, at the State's sole election, (i) with approval and assistance from the State, notify the affected individuals who comprise the PII or PHI as soon as practicable but no later than is required to comply with applicable law, or, in the absence of any legally required notification period, within five (5) calendar days of the occurrence; or (ii) reimburse the State for any costs in notifying the affected individuals; (d) in the case of PII, provide third-party credit and identity monitoring services to each of the affected individuals who comprise the PII for the period required to comply with applicable law, or, in the absence of any legally required monitoring services, for no less than twenty-four (24) months following the date of notification to such individuals; (e) perform or take any other actions required to comply with applicable law as a result of the occurrence; (f) pay for any costs associated with the occurrence, including but not limited to any costs incurred by the State in investigating and resolving the occurrence, including reasonable attorney's fees associated with such investigation and resolution; (g) without limiting Contractor's obligations of indemnification as further described in this Contract, indemnify, defend, and hold harmless the State for any and all claims, including reasonable attorneys' fees, costs, and incidental expenses, which may be suffered by, accrued against, charged to, or recoverable from the State in connection with the occurrence; (h) be responsible for recreating lost State Data in the manner and on the schedule set by the State without charge to the State; and (i) provide to the State a detailed plan within ten (10) calendar days of the occurrence describing the measures Contractor will undertake to prevent a future occurrence. Notification to affected individuals, as described above, must comply with applicable law, be written in plain language, not be tangentially used for any solicitation purposes, and contain, at a minimum: name and contact information of Contractor's representative; a description of the nature of the loss; a list of the types of data involved; the known or approximate date of the loss; how such loss may affect the affected individual; what steps Contractor has taken to protect the affected individual; what steps the affected individual can take to protect himself or herself; contact information for major credit card reporting agencies; and, information regarding the credit and identity monitoring services to be provided by Contractor. The State will have the option to review and approve any notification sent to affected individuals prior to its delivery. Notification to any other party, including but not limited to public media outlets, must be reviewed and approved by the State in writing prior to its dissemination. This section survives termination or expiration of this Contract.

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

- a. Meaning of Confidential Information. For the purposes of this Contract, the term "**Confidential Information**" means all information and documentation of a party that: (a) has been marked "confidential" or with words of similar meaning, at the time of disclosure by such party; (b) if disclosed orally or not marked "confidential" or with words of similar meaning, was subsequently summarized in writing by the disclosing party and marked "confidential" or with words of similar meaning; and, (c) should reasonably be recognized as confidential



information of the disclosing party. The term "Confidential Information" does not include any information or documentation that was: (a) subject to disclosure under the Michigan Freedom of Information Act (FOIA); (b) already in the possession of the receiving party without an obligation of confidentiality; (c) developed independently by the receiving party, as demonstrated by the receiving party, without violating the disclosing party's proprietary rights; (d) obtained from a source other than the disclosing party without an obligation of confidentiality; or, (e) publicly available when received, or thereafter became publicly available (other than through any unauthorized disclosure by, through, or on behalf of, the receiving party). For purposes of this Contract, in all cases and for all matters, State Data is deemed to be Confidential Information.

- b. Obligation of Confidentiality. The parties agree to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third parties other than employees, agents, or subcontractors of a party who have a need to know in connection with this Contract or to use such Confidential Information for any purposes whatsoever other than the performance of this Contract. The parties agree to advise and require their respective employees, agents, and subcontractors of their obligations to keep all Confidential Information confidential. Disclosure to a subcontractor is permissible where: (a) use of a subcontractor is authorized under this Contract; (b) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the subcontractor's responsibilities; and (c) Contractor obligates the subcontractor in a written contract to maintain the State's Confidential Information in confidence. At the State's request, any employee of Contractor or any subcontractor may be required to execute a separate agreement to be bound by the provisions of this Section.
- c. Cooperation to Prevent Disclosure of Confidential Information. Each party must use its best efforts to assist the other party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the foregoing, each party must advise the other party immediately in the event either party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Contract and each party will cooperate with the other party in seeking injunctive or other equitable relief against any such person.
- d. Remedies for Breach of Obligation of Confidentiality. Each party acknowledges that breach of its obligation of confidentiality may give rise to irreparable injury to the other party, which damage may be inadequately compensable in the form of monetary damages. Accordingly, a party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available, to include, in the case of the State, at the sole election of the State, the immediate termination, without liability to the State, of this Contract or any Statement of Work corresponding to the breach or threatened breach.
- e. Surrender of Confidential Information upon Termination. Upon termination of this Contract or a Statement of Work, in whole or in part, each party must, within five (5) calendar days from the date of termination, return to the other party any and all Confidential Information received from the other party, or created or received by a party on behalf of the other party, which are in such party's possession, custody, or control; provided, however, that Contractor must return State Data to the State following the timeframe and procedure described further in this Contract. Should Contractor or the State determine that the return of any Confidential Information is not feasible, such party must destroy the Confidential Information and must certify the same in writing within five (5) calendar days from the date of termination to the other party. However, the State's legal ability to destroy Contractor data may be restricted by its retention and disposal schedule, in which case Contractor's Confidential Information will be destroyed after the retention period expires.

### 33. Data Privacy and Information Security.

- a. Undertaking by Contractor. Without limiting Contractor's obligation of confidentiality as further described, Contractor is responsible for establishing and maintaining a data privacy and information security program, including physical, technical, administrative, and organizational safeguards, that is designed to: (a) ensure the security and confidentiality of the State Data; (b) protect against any anticipated threats or hazards to the security or integrity of the State Data; (c) protect against unauthorized disclosure, access to, or use of the State Data; (d) ensure the proper disposal of State Data; and (e) ensure that all employees, agents, and subcontractors of Contractor, if any, comply with all of the foregoing. In no case will the safeguards of Contractor's data privacy and information security program be less stringent than the safeguards used by the State, and Contractor must at all times comply with all applicable State IT policies and standards, which are available to Contractor upon request.
- b. Audit by Contractor. No less than annually, Contractor must conduct a comprehensive independent third-party audit of its data privacy and information security program and provide such audit findings to the State.

- c. Right of Audit by the State. Without limiting any other audit rights of the State, the State has the right to review Contractor's data privacy and information security program prior to the commencement of Contract Activities and from time to time during the term of this Contract. During the providing of the Contract Activities, on an ongoing basis from time to time and without notice, the State, at its own expense, is entitled to perform, or to have performed, an on-site audit of Contractor's data privacy and information security program. In lieu of an on-site audit, upon request by the State, Contractor agrees to complete, within 45 calendar days of receipt, an audit questionnaire provided by the State regarding Contractor's data privacy and information security program.
- d. Audit Findings. Contractor must implement any required safeguards as identified by the State or by any audit of Contractor's data privacy and information security program.
- e. State's Right to Termination for Deficiencies. The State reserves the right, at its sole election, to immediately terminate this Contract or a Statement of Work without limitation and without liability if the State determines that Contractor fails or has failed to meet its obligations under this Section.

34. **Reserved.**

35. **Reserved**

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

Within ten (10) calendar days of providing notice, the State and its authorized representatives or designees have the right to enter and inspect Contractor's premises or any other places where Contract Activities are being performed, and examine, copy, and audit all records related to this Contract. Contractor must cooperate and provide reasonable assistance. If any financial errors are revealed, the amount in error must be reflected as a credit or debit on subsequent invoices until the amount is paid or refunded. Any remaining balance at the end of the Contract must be paid or refunded within 45 calendar days.

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

37. **Warranties and Representations.** Contractor represents and warrants: (a) Contractor is the owner or licensee of any Contract Activities that it licenses, sells, or develops and Contractor has the rights necessary to convey title, ownership rights, or licensed use; (b) all Contract Activities are delivered free from any security interest, lien, or encumbrance and will continue in that respect; (c) the Contract Activities will not infringe the patent, trademark, copyright, trade secret, or other proprietary rights of any third party; (d) Contractor must assign or otherwise transfer to the State or its designee any manufacturer's warranty for the Contract Activities; (e) the Contract Activities are merchantable and fit for the specific purposes identified in the Contract; (f) the Contract signatory has the authority to enter into this Contract; (g) all information furnished by Contractor in connection with the Contract fairly and accurately represents Contractor's business, properties, finances, and operations as of the dates covered by the information, and Contractor will inform the State of any material adverse changes; (h) all information furnished and representations made in connection with the award of this Contract is true, accurate, and complete, and contains no false statements or omits any fact that would make the information misleading; and that (i) Contractor is neither currently engaged in nor will engage in the boycott of a person based in or doing business with a strategic partner as described in 22 USC 8601 to 8606. A breach of this Section is considered a material breach of this Contract, which entitles the State to terminate this Contract under Section 23, Termination for Cause.
38. **Conflicts and Ethics.** Contractor will uphold high ethical standards and is prohibited from: (a) holding or acquiring an interest that would conflict with this Contract; (b) doing anything that creates an appearance of impropriety with respect to the award or performance of the Contract; (c) attempting to influence or appearing to influence any State employee by the direct or indirect offer of anything of value; or (d) paying or agreeing to pay

any person, other than employees and consultants working for Contractor, any consideration contingent upon the award of the Contract. Contractor must immediately notify the State of any violation or potential violation of these standards. This Section applies to Contractor, any parent, affiliate, or subsidiary organization of Contractor, and any subcontractor that performs Contract Activities in connection with this Contract.

39. **Compliance with Laws.** Contractor must comply with all federal, state and local laws, rules and regulations.
40. **Reserved.**
41. **Reserved.**
42. **Nondiscrimination.** Under the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, *et seq.*, the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, *et seq.*, and Executive Directive 2019-09, Contractor and its subcontractors agree not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex (as defined in Executive Directive 2019-09), height, weight, marital status, partisan considerations, any mental or physical disability, or genetic information that is unrelated to the person's ability to perform the duties of a particular job or position. Breach of this covenant is a material breach of this Contract.
43. **Unfair Labor Practice.** Under MCL 423.324, the State may void any Contract with a Contractor or subcontractor who appears on the Unfair Labor Practice register compiled under MCL 423.322.
44. **Governing Law.** This Contract is governed, construed, and enforced in accordance with Michigan law, excluding choice-of-law principles, and all claims relating to or arising out of this Contract are governed by Michigan law, excluding choice-of-law principles. Any dispute arising from this Contract must be resolved in Michigan Court of Claims. Contractor consents to venue in Ingham County, and waives any objections, such as lack of personal jurisdiction or *forum non conveniens*. Contractor must appoint agents in Michigan to receive service of process.
45. **Non-Exclusivity.** Nothing contained in this Contract is intended nor will be construed as creating any requirements contract with Contractor. This Contract does not restrict the State or its agencies from acquiring similar, equal, or like Contract Activities from other sources.
46. **Force Majeure.** Neither party will be in breach of this Contract because of any failure arising from any disaster or acts of God that are beyond their control and without their fault or negligence. Each party will use commercially reasonable efforts to resume performance. Contractor will not be relieved of a breach or delay caused by its subcontractors. If immediate performance is necessary to ensure public health and safety, the State may immediately contract with a third party.
47. **Dispute Resolution.** The parties will endeavor to resolve any Contract dispute in accordance with this provision. The dispute will be referred to the parties' respective Contract Administrators or Program Managers. Such referral must include a description of the issues and all supporting documentation. The parties must submit the dispute to a senior executive if unable to resolve the dispute within 15 business days. The parties will continue performing while a dispute is being resolved, unless the dispute precludes performance. A dispute involving payment does not preclude performance.  
  
Litigation to resolve the dispute will not be instituted until after the dispute has been elevated to the parties' senior executive and either concludes that resolution is unlikely or fails to respond within 15 business days. The parties are not prohibited from instituting formal proceedings: (a) to avoid the expiration of statute of limitations period; (b) to preserve a superior position with respect to creditors; or (c) where a party makes a determination that a temporary restraining order or other injunctive relief is the only adequate remedy. This Section does not limit the State's right to terminate the Contract.
48. **Media Releases.** News releases (including promotional literature and commercial advertisements) pertaining to the Contract or project to which it relates must not be made without prior written State approval, and then only in accordance with the explicit written instructions of the State.
49. **Website Incorporation.** The State is not bound by any content on Contractor's website unless expressly incorporated directly into this Contract.

50. **Entire Agreement and Order of Precedence.** This Contract, which includes Schedule A – Statement of Work, and expressly incorporated schedules and exhibits, is the entire agreement of the parties related to the Contract Activities. This Contract supersedes and replaces all previous understandings and agreements between the parties for the Contract Activities. If there is a conflict between documents, the order of precedence is: (a) first, this Contract, excluding its schedules, exhibits, and Schedule A – Statement of Work; (b) second, Schedule A – Statement of Work as of the Effective Date; and (c) third, schedules expressly incorporated into this Contract as of the Effective Date. NO TERMS ON CONTRACTOR'S INVOICES, ORDERING DOCUMENTS, WEBSITE, BROWSE-WRAP, SHRINK-WRAP, CLICK-WRAP, CLICK-THROUGH OR OTHER NON-NEGOTIATED TERMS AND CONDITIONS PROVIDED WITH ANY OF THE CONTRACT ACTIVITIES WILL CONSTITUTE A PART OR AMENDMENT OF THIS CONTRACT OR IS BINDING ON THE STATE FOR ANY PURPOSE. ALL SUCH OTHER TERMS AND CONDITIONS HAVE NO FORCE AND EFFECT AND ARE DEEMED REJECTED BY THE STATE, EVEN IF ACCESS TO OR USE OF THE CONTRACT ACTIVITIES REQUIRES AFFIRMATIVE ACCEPTANCE OF SUCH TERMS AND CONDITIONS.
51. **Severability.** If any part of this Contract is held invalid or unenforceable, by any court of competent jurisdiction, that part will be deemed deleted from this Contract and the severed part will be replaced by agreed upon language that achieves the same or similar objectives. The remaining Contract will continue in full force and effect.
52. **Waiver.** Failure to enforce any provision of this Contract will not constitute a waiver.
53. **Survival.** The provisions of this Contract that impose continuing obligations, including warranties and representations, termination, transition, insurance coverage, indemnification, and confidentiality, will survive the expiration or termination of this Contract.
54. **Contract Modification.** This Contract may not be amended except by signed agreement between the parties (a “**Contract Change Notice**”). Notwithstanding the foregoing, no subsequent Statement of Work or Contract Change Notice executed after the Effective Date will be construed to amend this Contract unless it specifically states its intent to do so and cites the section or sections amended.

## Federal Provisions Addendum

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

### 1. Federally Assisted Construction Contracts

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

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

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

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

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

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

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

(6) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

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

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

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

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

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

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

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

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

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

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

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

## **6. Clean Air Act**

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

## **7. Debarment and Suspension**

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

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

If this Contract **exceeds \$100,000**, bidders and the Contractor must file the certification required under 31 USC 1352.

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

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

## Byrd Anti-Lobbying Certification

The following certification and disclosure regarding payments to influence certain federal transactions are made under FAR 52.203-11 and 52.203-12 and [31 USC 1352](#), the "Byrd Anti-Lobbying Amendment." Hyperlinks are provided for convenience only; broken hyperlinks will not relieve Contractor from compliance with the law.

1. FAR 52.203-12, "Limitation on Payments to Influence Certain Federal Transactions" is hereby incorporated by reference into this certification.
2. The bidder, by submitting its proposal hereby certifies to the best of his or her knowledge and belief that:
  - a. No 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 on his or her behalf 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;
  - b. If any funds **other than federal appropriated funds** (including profit or fee received under a covered federal transaction) 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 on his or her behalf **in connection with this solicitation**, the bidder must complete and submit, with its proposal, OMB standard form LLL, Disclosure of Lobbying Activities, to the Solicitation Manager; and
  - c. He or she will include the language of this certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of \$150,000 must certify and disclose accordingly.
2. This certification is a material representation of fact upon which reliance is placed at the time of Contract award. Submission of this certification and disclosure is a prerequisite for making or entering into this Contract under [31 USC 1352](#). Any person making an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision is subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

Signed by:

\_\_\_\_\_

[Type name and title]

[Type company name]

Date: \_\_\_\_\_



# STATE OF MICHIGAN

Contract No. 200000000393  
Financial and Insurance Rate Review Actuarial Services

## SCHEDULE A STATEMENT OF WORK CONTRACT ACTIVITIES

### Background/Scope

This Contract is for Insurance Actuarial Contractors to perform Life/Health, Property/Casualty Rate Review Services, and Public Policy and Research Actuarial Services.

The Department of Insurance and Financial Services (DIFS) is responsible for the regulation of life and health (L&H) and property and casualty (P&C) insurance companies as authorized under the [Michigan Insurance Code of 1956, PA 218 of 1956 \(Code\)](#). DIFS is charged with the responsibility for ensuring that all rate development complies with statutory standards. DIFS needs P&C actuaries to opine to the adequacy, compliance, and actuarially soundness of rates, rating methodologies, classifications, and rating rules filed by P&C insurers. Additionally, DIFS needs L & H actuaries to opine to the adequacy, compliance, and actuarially soundness of rates and rating methodologies filed by individual and group health insurers.

Contractor qualifications will be accessed by DIFS and projects will be awarded based on the information obtained during the RFP process that resulted in this Contract Including Specific rate review assignments, relative to the identified qualifications provided. Projects will be referred to the awarded contractors on a rotating basis unless one of the following conditions occurs:

1. There is a conflict of interest. The actuarial firms or individuals assisting DIFS with specific rate reviews must not be associated, either financially or contractually, with the entity being reviewed and there must be no financial or contractual relationship, either written or oral, for two years prior to, during the life of and for two years after, any contract awarded or any subsequent contract work order without the written consent of DIFS. Failure by the Contractor to comply with this provision may result in the cancellation of services and/or the Contact
2. The Contractor has previously reviewed an insurer's rate filing. DIFS seeks to ensure efficiencies in rate filing reviews so may refer filings from a specific insurer to a Contractor who has recently reviewed that insurer's filings.
3. The Contractor demonstrates special expertise. DIFS recognizes some Contractors develop special expertise in a particular line of insurance. If that expertise results in efficiencies during rate filing reviews, DIFS may utilize that Contractor more heavily.

Below is a description of the Offices in DIFS that will utilize the Contract:

### 1.1 Office of Insurance Rates and Forms (IRF)

IRF is responsible for the review of insurance rate and form filings and includes a P & C section and a L & H section.

**Property and Casualty Section:**

Pursuant to MCL 500.2408 and MCL 500.2608, insurers must be notified in writing within 10 days if the filing is not accompanied by information in support of the filing and if the director does not have sufficient information to determine if the filing meets the requirements. Pursuant to MCL 500.2608, “prior approval” rate filings that are not disapproved by DIFS by the 15<sup>th</sup> day are deemed approved. The initial 15 days can be extended by DIFS for an additional 15 days, for a total of 30 days. After that time, filings that have not been disapproved by DIFS are deemed approved. Once deemed approved, the insurer can immediately use the rates and continue to do so until DIFS either becomes aware of a non-compliance concern and re-opens the rate filing or it receives a decision in its favor from the highest level court after all appeals have been exhausted (possibly the Michigan Supreme Court).

Pursuant to MCL 500.2108, MCL 500.2430, and MCL 500.2628, insurers can immediately use classifications and rates submitted on a “file and use” basis. As noted for “prior approval” rate filings, insurers can continue to use the classifications and rates until DIFS either becomes aware of a non-compliance concern and re-opens the rate filing or it receives a decision in its favor from the highest level court after all appeals have been exhausted (possibly the Michigan Supreme Court).

Pursuant to PA 21 and PA 22 of 2019, the exception to “file and use” for automobile insurance rates effective after July 2, 2020 is a manual or plan must remain on file for a waiting period of 90 days before it becomes effective.

Therefore, it behooves state government to identify classification and rate problems as soon as possible in order to take necessary action to protect Michigan consumers from non-compliant classifications and rates.

The actuarial rate reviews provide DIFS with the actuarial expertise it needs, and that DIFS analytical staff cannot provide.

Michigan Insurance Code chapters and other regulations that the Contractor will need to understand and utilize regarding the acceptability of classifications and rates are:

- Chapter 21
- Chapter 22
- Chapter 23
- Chapter 24
- Chapter 26
- Chapter 27
- Chapter 28
- Chapter 29
- Chapter 31
- Chapter 33
- Administrative Rules R 500.811
- Administrative Rules R 500.1201 thru R 500.1210
- Administrative Rules R 500.1301 thru R 500.1310
- Administrative Rules R 500.1501 thru R 500.1507

The DIFS Contract Project Manager or other people designated by the DIFS Director or Chief Deputy Director must submit a written or electronic communication to the Contractor that contains the insurance company SERFF Tracking Number and identifies the specific project to be engaged pursuant to **Section 2, Statement of Work**, below.

The Contractor must acknowledge receipt of the communication and that work will begin immediately after acceptance of Contractors cost and time projections.

### **Life and Health Section:**

Pursuant to MCL 500.2242, MCL 500.3474, and MCL 500.3525, "prior approval" health rate filings are not disapproved by the 60th day after receipt, they are deemed approved and the insurer can immediately use the rates and continue to do so until DIFS either re-opens the rate filing pursuant to MCL 500.2242 or it receives a decision in its favor from the highest level court after all appeals have been exhausted (possibly the Michigan Supreme Court).

Pursuant to MCL 500.3926 and MCL 500.2236, "prior approval" long term care and Medicare supplement rate filings are not disapproved by the 30<sup>th</sup> day after receipt, they are deemed approved and the insurer can immediately use the rates and continue to do so until DIFS either re-opens the rate filing pursuant MCL 500.3926 and MCL 500.2236 or it receives a decision in its favor from the highest level court after all appeals have been exhausted (possibly the Michigan Supreme Court).

It behooves state government to identify rate and rating methodology problems as soon as possible in order to take necessary action to protect Michigan consumers from non-compliant rates.

The actuarial rate reviews provide DIFS with the actuarial expertise that it needs, and that DIFS analytical staff cannot provide.

Michigan Insurance Code chapters and other regulations that the Contractor will need to understand and utilize regarding the acceptability of classifications and rates are:

- Chapter 20
- Chapter 22
- Chapter 34
- Chapter 35
- Chapter 37
- Chapter 38
- Chapter 39
- Administrative R 500.801 thru R 500.806
- Administrative R 550.201 thru R 500.221
- 45 CFR 140 thru 159

The DIFS Contract Project Manager or other people designated by the DIFS Director must submit a written or electronic communication to the Contractor that contains the insurance company SERFF Tracking Number and identifies the specific project to be engaged pursuant to **Section 2, Statement of Work**, below.

The Contractor must acknowledge receipt of the communication and that work will begin immediately after acceptance of Contractors cost and time projections.

## **1.2 Office of Policy, Research and Communication (OPRC)**

OPRC develops and implements legislation, regulatory policy, and performs research and analysis of regulatory related issues. During the review of legislative or policy proposals, and research of regulatory issues, an actuarial study or analysis may be required to determine the financial or rate impact if the proposed legislation and policy are adopted or to provide other necessary information.

### **Statutory Reports and Public Policy and Research Actuarial Services**

The DIFS Contract Project Manager or other people designated by the DIFS Director or Chief Deputy Director shall submit a written or electronic communication to the Contractor that contains the legislative or policy proposals or regulatory issue which identifies the specific project to be engaged pursuant to **Section 2, Statement of Work**, below

The Contractor must acknowledge receipt of the communication and that work will begin immediately after acceptance of Contractors cost and time projections.

## 2. Requirements

### 2.1 General Requirements

- A. DIFS will refer specific rate filing review assignments on a rotating basis according to the qualifications of the specific lines of insurance being reviewed. In the table below, you must indicate either “Qualified” or “Not Qualified” for each the given line types. If you would prefer not to receive referral of certain rate review assignments, indicate Not Qualified or leave the response to that line blank.

Contractor must provide response for 2.1.A in the “Qualified or Not Qualified” column in table below:

Type	Line	Qualified or Not Qualified
Life / Health	Major Medical (ACA) individual and small group	Qualified
Life / Health	HMO large group	Qualified
Life / Health	Long term care (individual and group)	Not Qualified
Life / Health	Medicare supplement (individual and group)	Qualified
Property & Casualty	Auto (new No Fault legislation PA 21 & 22)	Not Qualified
Property & Casualty	Home	Not Qualified
Property & Casualty	Workers Compensation	Not Qualified

Insert sample work

- B. Each rate review assignment will contain unique service levels, requirements and general deliverables which may include, but are not limited to, services outlined in Background/Scope section, Section 1 Requirements, and Section 1.2 Work and Deliverables.
- C. DIFS is frequently presented with complicated legislation and public policy proposals developed by industry proponents or the legislature that rely on actuarial analysis of applicable data. Having the ability to independently evaluate these proposals and test the actuarial and/or economic modeling and assumptions used is critical information to DIFS. In most cases, proposals require review on an accelerated basis. The Contractor should understand that tight timeframes for delivery of analysis would be required. Because time is of the essence in performing the duties associated with the Contract, it will be necessary for the Contractor to work closely with DIFS staff to accurately and specifically identify:
- Information resources required to perform the task
  - Information DIFS is required to provide or obtain
  - The timeframes in which deliverables will be submitted
  - The form the final project product will take (report; analysis memo; spreadsheet; etc.).

Work performed for these services will be on “as-needed” basis, and project frequency will be wholly dependent on the need for analysis to be performed as outlined herein. When specific actuarial services are required, the DIFS Project Manager will prepare a written SOW detailing the work to be performed by the Contractor.

## 2.2 Work and Deliverables

Contractor must provide services and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth below:

### A. Property/Casualty and Life/Health Rate Review Actuarial Services

1) Rate Filing Actuarial Review

Contractor must review, using sound actuarial principles in conjunction with Michigan law, and federal law when applicable, the insurance company rate filing and other data submitted to determine whether the filing information and/or data justifies the proposed classifications and rating methodology to be used and the rates that will be charged. This would include, whenever possible, identifying the rates or rate levels that are justified based on the data contained in the filings. DIFS staff will forward the filing to be examined to the Contractor. When mutually agreed upon, the Contractor may be allowed to obtain information and data directly from the insurer being examined.

2) Review Michigan Rating Laws and Regulations

Contractor must review and understand Michigan legal classification and rating requirements identified in Background section above for the Office of Insurance Rates and Forms in order to properly complete actuarial rate reviews. Each separate project may identify other regulations the Contractor must consider when reviewing filings and data and rendering an actuarial opinion.

3) Consult with DIFS Staff

The Contractor must be available for regular consultation on an ongoing basis, and work with DIFS staff to identify the form of the final project product (report; analysis memo; spreadsheet; etc.).

4) Information to be Provided To Contractor by DIFS

DIFS will include in its rate filing referral the System for Electronic Rate and Form Filing (SERFF) tracking number. Contractor access to SERFF will be on a read-only basis. DIFS will include in its referral a description of what it desires, if necessary, to augment items 1-3 above.

5) Project Cost and Projections

Unless DIFS specifically provides a longer time frame for response, the Contractor must submit within 48 hours of receipt of the referral: A Work Order identifying the total hours and cost for completing a rate review and report pertaining to the filing(s), information, and/or data along with the name and credentials of the supervising actuary. These amounts will be maximum "not to exceed" amounts. If the analysis takes less time, the Contractor must bill for the actual cost based on the predetermined charges identified in the bid that was approved.

- a) A list of the services that any Subcontractor(s) will provide and the names, titles, and credentials of the Subcontractor's staff working on the project.

6) Commencement of Rate Review

Contractor will begin work once the DIFS Project Manager reviews and agrees to terms with the Contractor and notifies the Contractor to begin the work.

7) Describe Additional Information Necessary for Insurers to Show Compliance

Contractor must describe additional information that should be provided by the insurer to DIFS in order to show compliance with Michigan, and federal where applicable, rating laws and actuarial standards in case further examination of classifications, rates, and rating methodologies is deemed warranted by DIFS in the future. It will be necessary for the Contractor to keep the DIFS Project Manager abreast of the findings and pertinent information regarding the review. After the initial actuarial opinion has been provided by the Contractor, DIFS may request the Contractor to perform additional actuarial review taking into consideration additional information provided by the insurer.

The Contractor may be asked to assist DIFS in drafting filing requirements or rules ensure to assist DIFS in describing the type of information that is necessary to be submitted within rate filings that will be helpful in completing the rate review projects undertaken by the Contractor with regard to accepted proposals under this Contract.

8) Provide Actuarial Report and Certified Opinion of Compliance or Non-compliance

For each assignment, the Contractor will provide an actuarial report and certified opinion of compliance or non-compliance and/or a certified opinion in line with DIFS' rate filing review request.

9) Present Findings to DIFS Non-actuarial Analytical Staff

The Contractor may be asked to provide a presentation to DIFS staff and other parties designated by DIFS to attend the presentation. The goal of this meeting is to acquaint each person with the actuarial reports and help them use the findings to communicate reasons for disapproval or withdrawal of approval for classifications and rates that are not actuarially sound and in compliance with Michigan, and federal where applicable, classification, rating and rating methodology laws .

10) Provide Expert Actuarial Testimony

The Contractor's supervising actuary and/or staff who worked on specific projects may be asked to provide expert actuarial testimony in compliance cases and any legal challenges related to opinions rendered. The Michigan Attorney General's office may represent the Director in any legal disputes or lawsuits and the Contractor may have to work directly with its staff concerning legal issues that relate to specific projects. The legal services expected to be provided by the Contractor related to examinations or rate filing reviews performed, reports submitted, and opinions rendered under the Contract will be specifically requested and monitored by DIFS. The Contractor must bill for the actual cost based on the predetermined charges identified in the proposal that was approved.

**B. Additional Requirements**

When a Rate Review project is referred, the Contractor must provide a description of the services that will be provided for each project under the Contract in accordance with Work and Deliverables Sections 2.1.A.1. through 2.1. A.10., including the Details of Cost listed below.

1) Detail of Costs by:

- a) Staff assigned to project
- b) Estimated hours assigned for each project-staff person
- c) The hourly rate per staff person
- d) Total projected costs for each separate rate filing review project under the Contract.

- 2) If awarded the project assignment, Contractor will carry out this project under the direction and control of DIFS and will:
- a) Perform specific rate filing reviews identified in the rate filing referral to determine rate justification in compliance with Michigan, and federal where applicable, insurance laws, regulations and bulletins and generally accepted actuarial standards for the type of insurance being analyzed. At DIFS' request, the Contractor must explain its analysis and results to DIFS staff and other parties approved by DIFS.
  - b) Work in conjunction with DIFS Project Manager or other people designated by DIFS Director or Chief Deputy Director.
  - c) As directed by DIFS, communicate with staff or actuarial firms contracted by the insurer being reviewed to obtain pertinent information and details for making necessary actuarial justification and support judgments, and rendering opinions.
  - d) Keep costs down to the lowest amount possible by using Contractor staff appropriately throughout the course of project work.
  - e) Document all work performed and review findings in work-papers, ensuring that all analysis and work-papers generated during the rate filing review meet its established analysis and work-paper quality standards, best practices for actuarial rate filing review work, and DIFS work-paper standards (all work-papers will be reviewed by the Contractor's fully accredited supervising actuary and by the DIFS Project Manager or other people designated by the DIFS' Director or Chief Deputy Director. All work-papers shall become the property of DIFS after the examination, even when the Contractor is allowed to maintain them).
  - f) Be responsible for using its own supplies and equipment to perform reviews and complete each project.
  - g) Contractor must NOT contact the insurance company about the project prior to the start of the review without written authorization from DIFS.
  - h) Identify any items of non-compliance with state, and federal where applicable, statutes and regulations that become apparent during the rate filing review.
  - i) Identify any findings concerning how the insurer classification, rating methodology, and rate development process could be improved. DIFS will make the final determination about which items should then be discussed with the insurer and whether that item should be included in the final actuarial report.
  - j) Work with, and under the direction of the DIFS Project Manager, or other people designated by the DIFS Director or Chief Deputy Director, to prepare a draft copy of the actuarial report.
  - k) Submit the actuarial report to DIFS no later than the agreed upon date. Be prepared to submit work papers as requested by DIFS.
  - l) Make requested changes to the report as agreed to following discussions with DIFS.

- m) If necessary, be available for a meeting, telephone, and/or video conference with DIFS and the insurer to discuss any findings or comments arising from the rate filing review. After the meeting, adjust the draft report based subsequent pertinent information received by DIFS and submit the final draft report and management letter to DIFS within 10 calendar days of approval of the draft by the DIFS Project Manager or other people designated by the DIFS Director or Chief Deputy Director. In most instances, DIFS staff will communicate findings to the insurer(s) and the Contractor will only be involved if the insurer appeals action taken by DIFS based on the actuarial rate review findings.
- n) The Contractor must remain available to answer any inquiries concerning the rate filing review and findings and must assist DIFS during any administrative or court proceedings involving the rate filing review findings, actuarial opinion, or any matter related to the Contractor's work under the Contract.
- o) Upon notice by DIFS, the Contractor must appear, or be available to appear for testimony in any administrative or court proceedings involving the rate filing review and reports or any matter related to the Contractor's work under the Contract; DIFS will pay for this type of service outside the cost proposed under the Contract (See § Out of Scope); however, DIFS will only pay the individual hourly rates agreed to within the Contract. These services will only be provided at the request of the DIFS Project Manager or other people designated by the DIFS Director or Chief Deputy Director. A total agreed-upon price will be determined before any services are rendered. No additional costs will be provided above the amount agreed to by the Contract Administrator.
- p) DIFS may be audited by the State of Michigan Office of the Auditor General. The Auditor General may desire to review the Contractor's work-papers. If DIFS is audited during the Contract period, the Contractor must remain available to answer any questions or provide any additional documentation requested by the auditor general's office. The Contractor need only make its staff available at the request of the DIFS Project Manager or other people designated by the DIFS Director or Chief Deputy Director. DIFS will pay for this type service outside the cost proposed under the Contract. The rate charged by the Contractor for these services, however, must be the hourly rates agreed to in the Contract. A total estimated price per hour based on the Contractor's staff necessary to respond to the Auditor General's inquiry price will be estimated and approved by DIFS prior to the Contractor rendering this service.
- q) DIFS will pay for all insurance rate filing actuarial services by the Contractor that are provided according to the terms of the Contract. The Contractor shall not charge an insurance company being reviewed for work under the Contract.

**C. Office of Policy, Research and Communication**

A Statement of Work will be issued for each specific project as the work needed will vary as will the timeframes and final product.

**3. Acceptance**

The State will use the following criteria to determine acceptance of the Contract Activities:  
Section 16, Acceptance, of the Standard Contract Terms.



## **4. Staffing**

### **4.1 Contractor Representative**

The Contractor must appoint an individual specifically assigned to State of Michigan accounts, who will respond to State inquiries regarding the Contract Activities, answering questions related to ordering and delivery, etc. (the "Contractor Representative").

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

The actuarial firms or individuals assisting DIFS with specific examinations or rate filing reviews may not be associated, either financially or contractually, with the entity being examined and there must be no financial or contractual relationship, either written or oral, for two years prior to, during the life of and for two years after, any contract awarded or any subsequent contract work order without the written consent of DIFS. Failure by the Contractor to comply with this provision may result in the cancellation of services and/or the Contract.

The Contractor Representative is:

*Wayne Novak*  
*wayne@novarest.com*  
*520-990-7679*

### **4.2 Customer Service Toll-Free Number**

The Contractor must specify its toll-free number through which the State contacts the Contractor Representative. The Contractor Representative must be available for calls during the hours of 8 am to 5 pm EST.

The Contractor's toll-free number is 800-977-8002.

### **4.3 Work Hours**

The Contractor must provide Contract Activities during the State's normal working hours Monday – Friday, 8:00 a.m. to 5:00 p.m. EST, and possible night and weekend hours depending on the requirements of the project.

### **4.4 Key Personnel**

The Contractor must appoint an individual who will be directly responsible for the day-to-day operations of the Contract ("Key Personnel"). Key Personnel must be specifically assigned to the State account, be knowledgeable on the contractual requirements, and respond to State inquiries within 48 hours.

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

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

The Contractor must identify the Key Personnel, indicate where they will be physically located, describe the functions they will perform, and provide current chronological résumés.

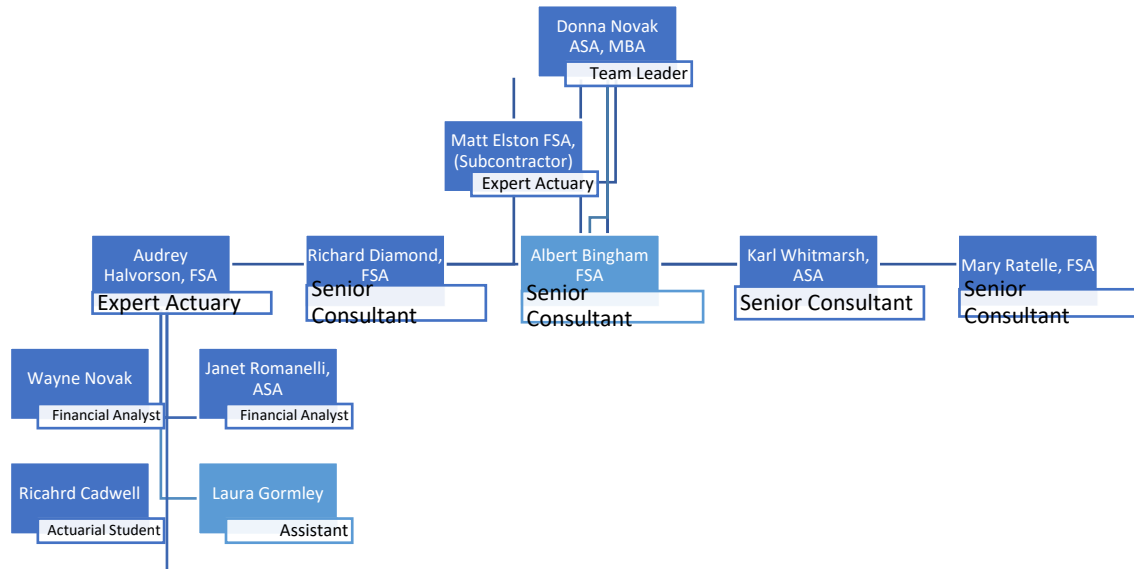
The Contractor’s Key Personnel are:

Donna Novak is the President and CEO of NovaRest. She is located in the Sahuarita, AZ office of NovaRest.

Matt Elston is a Senior Consultant of Diamond Consulting Group. He is located in Columbus, OH.

### 4.5 Organizational Chart

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



## **4.6. Disclosure of Subcontractors**

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

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

The relationship of the subcontractor to the Contractor and whether the Contractor had a previous working experience with the subcontractor. If yes, provide the details of that previous relationship.

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

The Contractor subcontracts with:

Diamond Consulting Group (Diamond)

1335 Dublin Road Suite 209B

Columbus, OH, 43215

(614) 481-0200

Diamond is organized as an S Corporation. It has 4 employees.

Matt Elston of Diamond Consulting Group works with Contractor on insurance reviews including but not limited to rate reviews, which includes efforts to enhance rate review and implement new requirements, examination of health carriers, rulemaking and rule review, actuarial support for legislative and policy decisions, supporting market conduct and consent orders, and communicating analysis to stakeholders and interested parties with various technical backgrounds. Mr. Elston will stay up to date on all emergent guidance and regulations.

## **4.7. Security**

The Contractor must explain any additional security measures in place to ensure the security of State facilities.

The contractor's staff may be required to make deliveries to or enter State facilities. The Contractor must: (a) explain how it intends to ensure the security of State facilities, (b) whether it uses uniforms and ID badges, etc., (c) identify the company that will perform background checks, and (d) the scope of the background checks. The State may require the Contractor's personnel to wear State issued identification badges.

The Contractor utilizes E-Verify and Been Verified to perform background checks on employees.

## **5.0 Project Management**

### **5.1 Project Plan**

DIFS will identify the project plan and how it will be managed or ask Contractor to propose a project plan upon being awarded a project assignment. Project plans should identify items such as the required contact personnel; the date the project plan must be submitted to the State; project management process; project breakdown identifying sub-projects, tasks, and resources required; expected frequency and mechanisms for updates/progress reviews; process for addressing issues/changes; and individuals responsible for receiving/reacting to the requested information.

### **5.2. Meetings**

The State may request meetings, as it deems appropriate. Contractor must attend requested meetings (Generally meetings are held via phone).

### **5.3. Reporting**

The Contractor must submit, to the Project Manager, the following written reports:

### **5.3.1 Office of Insurance Rates and Forms**

#### *Property/Casualty and Life/Health Rate Review Actuarial Services*

Reporting requirements will be identified when projects awarded. Each project report under the Contract may include a certified actuarial opinion, analysis statement and other necessary tools (spreadsheets, graphs, etc.) in an easy-to-read-and-understand format that helps DIFS staff communicate findings to the insurer and/or other parties via disapprovals, withdrawals of approvals of the filing, and/or other communications.

### **5.3.2 Office of Policy, Research and Communication Actuarial Services: Statutory Reports and Public Policy and Research Services**

Each project report under the Contract may include a certified actuarial opinion, analysis statement and other necessary tools (spreadsheets, graphs, etc.) in an easy-to-read-and-understand format that helps DIFS staff communicate findings to the insurer and/or other parties via disapprovals, withdrawals of approvals of the filing, and/or other communications.

## **6. Pricing**

### **6.1. Price Term**

Pricing, as listed in Schedule B, is firm for the entire length of the Contract.

### **6.2. Price Changes**

Adjustments will be based on changes in actual Contractor costs. Any request must be supported by written evidence documenting the change in costs. The State may consider sources such as the Consumer Price Index; Producer Price Index; other pricing indices as needed; economic and industry data; manufacturer or supplier letters noting the increase in pricing; and any other data the State deems relevant.

Following the presentation of supporting documentation, both parties will have 30 days to review the information and prepare a written response. If the review reveals no need for modifications, pricing will remain unchanged unless mutually agreed to by the parties. If the review reveals that changes are needed, both parties will negotiate such changes, for no longer than 30 days, unless extended by mutual agreement.

The Contractor remains responsible for Contract Activities at the current price for all orders received before the mutual execution of a Change Notice indicating the start date of the new Pricing Period.

## **7. Ordering**

### **7.1. Authorizing Document**

The appropriate authorizing document for the Contract will be via delivery order (DO).

## **8. Invoice and Payment**

### **8.1. Invoice Requirements**

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

### **8.2. Payment Methods**

The State will make payment for Contract Activities via EFT.

## **9. Service Level Agreements (SLAs)**

### **A. Service Level Agreement**

The Contractor must produce and deliver 100% accurate and complete Actuarial Report and Certified Opinion of Compliance or Non-Compliance in an editable electronic format and/or printed format, including an Overall report, Service-specific reports, All data points and information and content related to the data contained in the reports must be free of errors, mistakes, miscalculations and omissions.

The Contractor will credit the State of Michigan 50% of the actual total project cost on the invoice for incomplete Actuarial Reports or Certified Opinions submitted past the deadline agreed to with DIFS Program Manager.

# STATE OF MICHIGAN

Contract No. 200000000393

Financial and Insurance Actuarial Rate Review Services

## SCHEDULE B

### PRICING

Not-to-exceed Contract price below; pricing will be finalized in accordance with the second tier, competitive selection process as explained in Schedule A.

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

Quick payment terms: 10% discount off invoice if paid within 25 days after receipt of invoice.

3. Pricing must be inclusive of all travel costs.

Staffing Role	Hourly Rate
ASA, MBA/Team Leader	\$245.00
FSA/Expert Actuary	\$250.00
FSA/Expert Actuary	\$240.00
FSA/ Senior Consultant	\$222.00
ASA/ Financial Analyst	\$165.00
Actuarial Student	\$145.00
Administration	\$65.00