Form No. DTMB-3522 (Rev. 2/2015)
AUTHORITY: Act 431 of 1984
COMPLETION: Required
PENALTY: Contract change will not be executed unless form is filed

STATE OF MICHIGAN
DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET
PROCUREMENT
P.O. BOX 30026, LANSING, MI 48909
OR
525 W. ALLEGAN, LANSING, MI 48933

CONTRACT NO. 071B5500093

between

THE STATE OF MICHIGAN

and

NAME & ADDRESS OF CONTRACTOR	PRIMARY CONTACT	EMAIL
Jeffery Alfano	Jeffery Alfano	jefferyalfano@gmail.com
1020 Goddard Rd. #32	PHONE	VENDOR TAX ID # (LAST FOUR DIGITS ONLY)
Lincoln Park, MI 48146	(734) 672-8605	5225

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
PROGRAM MANAGER	MDE	Collette Bauman	(517) 373-2887	baumanc@michigan.gov
CONTRACT ADMINISTRATOR	DTMB	Chelsea Edgett	(517) 284-7031	edgettc@michigan.gov

CONTRACT SUMMARY

DESCRIPTION:
Braille Transcription/Proofreading Services

INITIAL TERM	EFFECTIVE DATE	INITIAL EXPIRATION DATE	AVAILABLE OPTIONS
3 Years	April 4, 2015	April 3, 2018	2, one year

PAYMENT TERMS	F.O.B.	SHIPPED TO
NET45	N/A	N/A

ALTERNATE PAYMENT OPTIONS	EXTENDED PURCHASING
☐ P-card ☐ Direct Voucher (DV) ☐ Other	☐ Yes ☒ No

MINIMUM DELIVERY REQUIREMENTS:
N/A

MISCELLANEOUS INFORMATION:
N/A

ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION:	$150,000.00

For the Contractor:

_____ _____

Jeffery Alfano,
Contract Administrator

Date

For the State:

_____ _____

Sharon Walenga-Maynard,
DTMB Sourcing Director
State of Michigan

Date

STATE OF MICHIGAN

Contract No.071B5500093
Braille Transcription/Proofreading Services

EXHIBIT A
STATEMENT OF WORK
CONTRACT ACTIVITIES

This is a Contract for the Michigan Department of Education (MDE), Low Incidence Outreach Office for Braille transcription of new (current year) publisher titles for local and intermediate school districts for students with a visual impairment, at per page cost for editing, transcribing, and proofreading, as well as Braille transcription of new (current year) publisher titles for local and intermediate school districts for students at per page cost for tactiles.

Background

Before a Braille textbook/fiction book can be given to a student to use, it must be proofread by a certified proofreader and must be formatted properly. Transcription of Braille materials requires a highly qualified skill set, and is a very time consuming process. It is the responsibility of our agency to fulfill the requirement of providing textbooks to students with a visual impairment within the same time frame as their sighted peers.

Michigan Department of Education-Low Incidence Outreach (MDE-LIO) provides Braille textbooks to students with a visual impairment to ensure that students who are blind are given the same access to education as his/her sighted classmates.

Due to the new and higher academic standards set for graduation requirements for all Michigan students the request for higher level math and science textbooks has increased. Prior to these changes in graduation requirements many students opted out of higher math and science due to the difficulty of visual math concepts. That is no longer an option and they must have the Braille textbooks available in order to tactually visualize and comprehend the materials.

Literary Braille is used in all passages of written text. A different system called Nemeth Code is used when transcribing math and science textbooks. Nemeth allows complex mathematical equations that combine variables and symbols to be written in Braille. In addition, graphics are handmade into tactile graphics and thermoformed (copied) in order to transfer the information from the print examples. These are all high level skills that are a part of a transcriber's expertise. However, not all transcribers have these skills. In order for transcribers to fulfill the requirements from MDE-LIO's production they must be proficient in Nemeth Code, highly skilled in the production of tactile graphics, have materials proofread and be current with the latest requirements of the Braille Authority of North America (BANA). The pool of transcribers who meet these requirements is extremely limited. The United States has recently implemented a new code in which Braille texts will be being transcribed, this code is the Unified English Braille code (UEB) and all transcribers will be required to work toward obtaining proficiency in the utilization of this code, as outlined by the Braille Authority of North America (BANA).

Legal References: 20 U.S.C. Sec. 1412 (a) (23) (A) (B) The state must adopt the National Instructional Material Standards for the purpose of providing instructional materials to blind persons…in a timely manner…If a State educational agency chooses not to coordinate with the National Instructional Materials Access Center it shall provide an assurance… that it will provide instructional materials in a timely manner.

The people of the State of Michigan enact:
Sec. 1704. (1) This section shall be known and may be cited as the "blind pupil's Braille literacy law."
(4) The department shall accept and respond to requests from local and intermediate school districts and shall work with textbook publishers to obtain electronic file format versions of textbooks or Braille versions of

textbooks or both. The department may also, on behalf of local and intermediate school districts, request and arrange for converting an electronic file format version of a textbook to a **Braille** version. The department shall process and make these requests in a **timely manner.**

Braille Bill/ House Bill # 4497: Section: (4) A determination to provide other appropriate special education methods to a blind pupil does not preclude Braille use or instruction for the blind pupil.

MDE-LIO provides Braille textbooks to students who are blind or with a visual impairment. These textbooks are researched by our book production unit to see if they are currently available; if they are not available then MDE-LIO reproduces them. This process involves contacting a qualified transcriber and getting a quote for the transcription. As soon as we receive the purchase order with a print copy of the textbook from the requesting district; the process begins. In order to expedite the process we advertise to teachers to put their orders in a year ahead of time. It allows the time needed on lengthy math and science books to be completed on time, before school starts. That being said, we do get orders in the spring for books that are needed for the start of the school year.

MDE-LIO scans the book and waits for the approval process. Upon approval the book is sent to the transcriber. Upon completion of the text it is returned by electronic files to MDE-LIO where we then Braille the master copy of the textbook, thermoform the tactile graphics, print the cover sheets and assemble the multiple volumes.(For example: A recent Geometry textbook produced with many graphics was 90 volumes in Braille compared to the print textbook which contained around a thousand pages.) The Braille textbooks are then shipped to the student's school by MDE-LIO to expedite the delivery process.

Any awarded Contract(s) between the State and any awarded Contractor(s) is a separate document, whose terms are limited by the Standard Contract Terms.

1.0 Requirements

This Contract, once issued, could become a Statewide agreement for use by all State agencies for:

1. Braille translation services of text books, documents and brochures, etc.

2. Braille transcription in Literary, Nemeth Code Music, Computer and/or proficient in other codes as being defined necessary by specific material/subject matter being transcribed of textbooks and fiction books as requested.

1.1 Work and Deliverables

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

1. Provide Braille transcription of new (current year) publisher titles for local and intermediate school districts for students with a visual impairment.

2. Contractor must create the master Braille file for new (current year) publisher titles with the understanding that once created, the Michigan Department of Education, Low Incidence Outreach office has all rights for reproducing additional texts at a reduced rate to students with a visual impairment attending Michigan schools and are considered the "owner" of the master file.

3. Transcription must be performed by a Certified Braille Transcriptionists from the Library of Congress.

4. All proofreading must be done by a proofreading team which consists of a sighted person with knowledge of Braille, and a visually impaired person who also knows Braille. They must "read" all transcribed work together.

5. Approximately 5 to 10 volumes (depending on whether the Braille book contains tactile graphics) must be delivered each month from the beginning of the receipt of the print textbook.

6. Contractor must provide the following Deliverable(s):

    1. Timely, accurate and quality translation of text books as defined in Section 1.1.5. MDE-LIO provides Braille textbooks across the State of Michigan for the districts which pay for the textbooks out of their local funds. The timeline for delivery as previously stated in Section 1.1.5.

    2. MDE-LIO's production transcriber's must be proficient in Nemeth Code, highly skilled in the production of tactile graphics, have materials proofread and be current with the latest requirements of the Braille Authority of North America (BANA).

    3. The Contractor must complete and deliver Contracted materials within the MDE-LIO specified time frame in order to meet the law requirement of provision of Braille materials in a timely manner, as referenced in Section 1.1.6.1.

    4. Hard Copy Deliverables must meet the following packaging requirements:

        a. Each package cannot exceed thirty pounds.

        b. Packaging and containers must meet the current requirements of state and federal law applicable to rail and motor carrier freight classifications, which will permit application of the lowest freight rate.

    5. The State of Michigan reserves the right to add Contractors to this Contract throughout the duration of the Contract. All potential additional Contractors added will be subject to submit a response to the RFP and the test sample review. This process will occur through the new submission samples having been submitted by prospective vendors and once the material is approved by the approval committee (assuring a score of 80% or better is able to be met).

7. The Coordinator is on site and the transcribers are located in their respective place(s) of business due to specialized adaptive equipment required to reproduce the Braille text. On occasion, Contractor staff may be required to deliver tactile graphics or braille materials to the MDE-LIO offices in order to expedite the process of completion of the textbooks.

8. Coordinate transcription with MDE-LIO on-site staff members who scan, thermoform the tactile graphics, insert the graphics into the textbook, print the cover sheets, assemble the multiple volumes and bind the books.

9. Ship the textbooks to MDE-LIO.

10. Communicate with MDE-LIO staff members during normal working hours (40 hours per week, 8:00am-5:00pm, 7:00am-4:00pm, etc.). Currently staff involved in the book production department includes 4-full time staff and 2 part time staff.

1.2 Training

The Contractor must obtain Continuing Education Units (CEU's) in order to define their level of understanding to current code and formatting implementations as they are released.

2.0 Staffing

2.1 Contractor Representative

1. The Contractor appoints the following individual, specifically assigned to State of Michigan accounts, that will respond to State inquiries regarding the Contract Activities, answering questions related to ordering and delivery, etc. (the "Contractor Representative").

Jeffery Alfano; 1020 Goddard Rd. #32, Lincoln Park, MI 48146

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

2.2 Key Personnel

1. The Contractor appoints the following 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 inquires within 48 hours.

2. Contractor must list the location of all facilities that will be involved in performing the Contract.

1020 Goddard Rd. #32, Lincoln Park, MI 48146

3. The Contractor may not remove or assign Key Personnel without the prior consent of the State. Prior consent is not required for reassignment for reasons beyond the Contractor's control, including illness, disability, death, leave of absence, personal emergency circumstances, resignation, or termination for cause. The State may request a résumé and conduct an interview before approving a change. The State may require a 30-calendar day training period for replacement personnel.

2.3 Organizational Chart - Reserved

2.4 Disclosure of Subcontractors

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

1. 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.

2. The relationship of the subcontractor to the Contractor.

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

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

5. Of the total bid, the price of the subcontractor's work.

3.0 Project Management

3.1 Project Plan

1. The Braille Textbook Coordinator (Program Manager) manages, delegates and oversees provision of translation services with approval from the supervisor of MDE-LIO.

2. The process for completion of Braille textbook translation follows:

- As soon as the State receives the purchase order with a print copy of the textbook from the requesting district; the process begins. In order to expedite the process the State advertises to teachers to put their orders in a year ahead of time. It allows the time needed on lengthy math and science books to be completed on time, before school starts. It also allows the production of more books to be completed by planning a year ahead.

- Textbooks are researched by the State's book production unit to see if they are currently available, if they are not available then the State will reproduce them.

- The Coordinator contacts a qualified transcriber and gets a quote for the transcription and explains the parameters set by MDE-LIO of quality and timeliness of production. Availability, willingness to accept a project, willingness to work in coordination with another transcriber in order to be able to assist in expediting a specific students need, how many projects a specific transcriber may currently be responsible for at any one given time are all factors of how the transcriber is selected/awarded a specific project.

- Availability of the transcriber is also determined by the Coordinator and time lines are set.

- MDE-LIO scans the book and waits for the approval process from DTMB.

- Upon approval the book is sent to the transcriber.

- In completion of the text, proofreading completed and corrected, it is returned by electronic files to MDE-LIO by the transcriber

- Upon receipt of the Braille the master copy of the textbook, MDE-LIO staff emboss the textbook Master file, thermoform the tactile graphics, insert the graphics into the textbook, print the cover sheets, assemble the multiple volumes and bind the book.

- The Braille textbooks are next shipped to the student's school to expedite the delivery process.

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

3.2 Meetings

1. The Contractor must attend meetings when deemed necessary in the implementation of the new UEB code, as defined by the Braille Authority of North America.

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

3.3 Reporting

The Contractor must submit, to the Program Manager the following periodic written reports (annually):

- Usage reports, including
  - o Quantity and dollars for State work performed.
  - o Error Sheets for each project logging errors found and corrected in required translations.

4.0 Acceptance

4.1 Acceptance, Inspection, and Testing

The State will use the following criteria to determine acceptance of the Contract Activities:

Contractor to provide textbooks and/or fiction books transcribed as requested prior to payments being made.

Acceptance of deliverables:

- Review for acceptance is determined by the proofreaders based on how many mistakes are made in the transcription process and corrected prior to being given to MDE-LIO.

- Timeliness is assessed based on providing the transcription within the timeframe determined by the Coordinator for production as stated in the purchase order issued for the specific job and in accordance with provisions laid out within the Contract.

The deliverables must be error-free, proof readers will utilize an error sheet to log errors requiring correction. A sample error sheet will be distributed after the listed bid opening date to Contractors who have submitted proposals .

All Deliverable(s) must be completed by Contractor within the time frame specified by the purchase order (as quickly as possible- in a timely manner to meet the law). Individual textbooks, depending upon the number of pages and tactile graphics require a differing amount of time. The amount of Days after receipt of order will be mutually agreed upon based on each individual textbook between the Coordinator and the Contractor prior to issuance of the purchase order. The receipt of order date is governed in the same manner as notices sent under Standard Contract Terms Section 2. The Contractor must explain in detail its various delivery programs (e.g., standard delivery and quick-ship), including any limitations such as quantity.

5.0 Ordering

5.1 Authorizing Document

The State will issue a Purchase Order to request and order Deliverable(s) from this Contract. The Contractor is not authorized to begin performance until receipt of a Purchase Order.

The State is not obligated to purchase in any specific quantity.

6.0 Invoice and Payment

6.1 Invoice Requirements

1. All invoices submitted to the State must include: (a) date; (b) purchase order/Contract Number; (c) quantity; (d) description of the Contract Activities; (e) unit price; (f) shipping cost (if any); and (g) total price.

2. Payment rate is as defined in Exhibit C.

6.2 Payment Methods

The State will make payment for Contract Activities by electronic funds transfer.

6.3 Procedure

Invoices to be submitted for approval and payment to the following address:

MDE-LIO
PO Box 30742
Lansing, MI 48909

STATE OF MICHIGAN

Contract No.071B5500093
Braille Transcription/Proofreading Services

EXHIBIT B – Reserved

STATE OF MICHIGAN

Contract No.071B5500093
Braille Transcription/Proofreading Services

EXHIBIT C
PRICING

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

2. Braille transcription of new (current year) publisher titles for local and intermediate school districts for students with a visual impairment at per page cost for editing, transcribing and proofreading, estimated at 10,000 pages

    - cost per braille page literary code: $2.50 max
    - cost per braille page foreign language code: $3.00 max
    - cost per braille page Nemeth code: $3.75 max
    - cost per braille page music code: $6.00 max

3. Braille transcription of new (current year) publisher titles for local and intermediate school districts for students with a visual impairment at per page cost for tactile, estimated at 10,000 pages

    - cost per braille page: $3.00 max

STATE OF MICHIGAN

STANDARD CONTRACT TERMS

This STANDARD CONTRACT ("**Contract**") is agreed to between the State of Michigan (the "**State**") and Jeffery Alfano. This Contract is effective on April 4, 2015 and unless terminated, expires on April 3, 2018.

This Contract may be renewed for up to two additional one year period(s). Renewal must be by written agreement of the parties.

The parties agree as follows:

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

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

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

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

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

If to State:	If to Contractor:
Chelsea Edgett *525 W. Allegan St., 1st Floor* *Lansing, MI 48909* *Email: edgettc@michigan.gov* *Phone: (517) 284-7031*	*Jeffery Alfano* *1020 Goddard Rd. #32* *Lincoln Park, MI 48146* *Email: Jefferyalfano@gmail.com* *(734) 672-8605*

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

If to State:	If to Contractor:
Chelsea Edgett *525 W. Allegan St., 1st Floor* *Lansing, MI 48909* *Email: edgettc@michigan.gov* *Phone: (517) 284-7031*	*Jeffery Alfano* *1020 Goddard Rd. #32* *Lincoln Park, MI 48146* *Email: Jefferyalfano@gmail.com* *(734) 672-8605*

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**"):

If to State:	If to Contractor:
Collette Bauman *P.O. Box 30742* *Lansing, MI 48909* *Email: BaumanC@michigan.gov* *Phone: (517)373-2887* *Fax: (517)373-1632*	*Jeffery Alfano* *1020 Goddard Rd. #32* *Lincoln Park, MI 48146* *Email: Jefferyalfano@gmail.com* *(734) 672-8605*

5. **Performance Guarantee**. Contractor must at all times have financial resources sufficient, in the opinion of the State, to ensure performance of the Contract and must provide proof upon request. The State may require a performance bond (as specified in Exhibit A) if, in the opinion of the State, it will ensure performance of the Contract.

6. **RESERVED**

7. **RESERVED**

8. **RESERVED**

9. **Independent Contractor.** Contractor is an independent contractor and assumes all rights, obligations and liabilities set forth in this Contract. Contractor, its employees, and agents will not be considered employees of the State. No partnership or joint venture relationship is created by virtue of this Contract. Contractor, and not the State, is responsible for the payment of wages, benefits and taxes of Contractor's employees and any subcontractors. Prior performance does not modify Contractor's status as an independent contractor.

10. **Subcontracting.** Contractor may not delegate any of its obligations under the Contract without the prior written approval of the State. Contractor must notify the State at least 90 calendar days before the proposed delegation, and provide the State any information it requests to determine whether the delegation is in its best interest. If approved, Contractor must: (a) be the sole point of contact regarding all contractual matters, including payment and charges for all Contract Activities; (b) make all payments to the subcontractor; and (c) incorporate the terms and conditions contained in this Contract in any subcontract with a subcontractor. Contractor remains responsible for the completion of the Contract Activities, compliance with the terms of this Contract, and the acts

and omissions of the subcontractor. The State, in its sole discretion, may require the replacement of any subcontractor.

11. **Staffing.** The State's Contract Administrator may require Contractor to remove or reassign personnel by providing a notice to Contractor.

12. **Background Checks.** Upon request, Contractor must perform background checks on all employees and subcontractors and its employees prior to their assignment. The scope is at the discretion of the State and documentation must be provided as requested. Contractor is responsible for all costs associated with the requested background checks. The State, in its sole discretion, may also perform background checks.

13. **Assignment.** Contractor may not assign this Contract to any other party without the prior approval of the State. Upon notice to Contractor, the State, in its sole discretion, may assign in whole or in part, its rights or responsibilities under this Contract to any other party. If the State determines that a novation of the Contract to a third party is necessary, Contractor will agree to the novation, provide all necessary documentation and signatures, and continue to perform, with the third party, its obligations under the Contract.

14. **Change of Control.** Contractor will notify, at least 90 calendar days before the effective date, the State of a change in Contractor's organizational structure or ownership. For purposes of this Contract, a change in control means any of the following: (a) a sale of more than 50% of Contractor's stock; (b) a sale of substantially all of Contractor's assets; (c) a change in a majority of Contractor's board members; (d) consummation of a merger or consolidation of Contractor with any other entity; (e) a change in ownership through a transaction or series of transactions; (f) or the board (or the stockholders) approves a plan of complete liquidation. A change of control does not include any consolidation or merger effected exclusively to change the domicile of Contractor, or any transaction or series of transactions principally for bona fide equity financing purposes.

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

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

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

    Within 10 business days from the date of Contractor's receipt of notification of acceptance with deficiencies or rejection of any Contract Activities, Contractor must cure, at no additional cost, the deficiency and deliver unequivocally acceptable Contract Activities to the State. If acceptance with deficiencies or rejection of the Contract Activities impacts the content or delivery of other non-completed Contract Activities, the parties' respective Program Managers must determine an agreed to number of days for re-submission that minimizes the overall impact to the Contract. However, nothing herein affects, alters, or relieves Contractor of its obligations to correct deficiencies in accordance with the time response standards set forth in this Contract.

    If Contractor is unable or refuses to correct the deficiency within the time response standards set forth in this Contract, the State may cancel the order in whole or in part. The State, or a third party identified by the State, may perform the Contract Activities and recover the difference between the cost to cure and the Contract price plus an additional 10% administrative fee.

17. **Delivery.** Contractor must deliver all Contract Activities F.O.B. destination, within the State premises with transportation and handling charges paid by Contractor, unless otherwise specified in Exhibit A. All containers and packaging becomes the State's exclusive property upon acceptance.

18. **Risk of Loss and Title.** Until final acceptance, title and risk of loss or damage to Contract Activities remains with Contractor. Contractor is responsible for filing, processing, and collecting all damage claims. The State will record and report to Contractor any evidence of visible damage. If the State rejects the Contract Activities, Contractor must remove them from the premises within 10 calendar days after notification of rejection. The risk of loss of rejected or non-conforming Contract Activities remains with Contractor. Rejected Contract Activities

not removed by Contractor within 10 calendar days will be deemed abandoned by Contractor, and the State will have the right to dispose of it as its own property. Contractor must reimburse the State for costs and expenses incurred in storing or effecting removal or disposition of rejected Contract Activities.

19. **Warranty Period**. The warranty period, if applicable, for Contract Activities is a fixed period commencing on the date specified in Exhibit A. If the Contract Activities do not function as warranted during the warranty period the State may return such non-conforming Contract Activities to the Contractor for a full refund.

20. Terms of Payment. Invoices must conform to the requirements communicated from time-to-time by the State. All undisputed amounts are payable within 45 days of the State's receipt. Contractor may only charge for Contract Activities performed as specified in Exhibit A. Invoices must include an itemized statement of all charges. The State is exempt from State sales tax for direct purchases and may be exempt from federal excise tax, if Contract Activities purchased under the Contract are for the State's exclusive use. Prices are exclusive of all taxes, and Contractor is solely responsible for payment of any applicable taxes.

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

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

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

21. Liquidated Damages. Liquidated damages, if applicable, will be assessed as described in Exhibit A.

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

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

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

The State will only pay for amounts due to Contractor for Contract Activities accepted by the State on or before the date of termination, subject to the State's right to set off any amounts owed by the Contractor for the State's

reasonable costs in terminating this Contract. The Contractor must pay all reasonable costs incurred by the State in terminating this Contract for cause, including administrative costs, attorneys' fees, court costs, transition costs, and any costs the State incurs to procure the Contract Activities from other sources.

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

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

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

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

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

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

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

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

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

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

31. **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 one (1) business day of the State's request, provide the State, without charge and without any conditions or contingencies whatsoever (including but not limited to the payment of any fees due to Contractor), an extract of the State Data in the format specified by the State.

d. Backup and Recovery of State Data. Unless otherwise specified in Exhibit A, Contractor is responsible for maintaining a backup of State Data and for an orderly and timely recovery of such data. Unless otherwise described in Exhibit A, Contractor must maintain a contemporaneous backup of State Data that can be recovered within two (2) hours at any point in time.

e. Loss of Data. In the event of any act, error or omission, negligence, misconduct, or breach that compromises or is suspected to compromise the security, confidentiality, or integrity of State Data or the physical, technical, administrative, or organizational safeguards put in place by Contractor that relate to the protection of the security, confidentiality, or integrity of State Data, Contractor must, as applicable: (a) notify the State as soon as practicable but no later than 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) 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 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) without limiting Contractor's obligations of indemnification as further described in this Contract, indemnify, defend, and hold harmless the State for any and all claims, including reasonable attorneys' fees, costs, and expenses incidental thereto, which may be suffered by, accrued against, charged to, or recoverable from the State in connection with the occurrence; (g) be responsible for recreating lost State Data in the manner and on the schedule set by the State without charge to the State; and, (h) provide to the State a detailed plan within 10 calendar days of the occurrence describing the measures Contractor will undertake to prevent a future occurrence. Notification to affected individuals, as described above, must comply with applicable law, be written in plain language, and contain, at a minimum: name and contact information of Contractor's representative; a description of the nature of the loss; a list of the types of data involved; the known or approximate date of the loss; how such loss may affect the affected individual; what steps Contractor has taken to protect the affected individual; what steps the affected individual can take to protect himself or herself; contact information for major credit card reporting agencies; and, information regarding the credit and identity monitoring services to be provided by Contractor. This Section survives the termination of this Contract.

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

a. Meaning of Confidential Information. For the purposes of this Contract, the term "**Confidential Information**" means all information and documentation of a party that: (a) has been marked "confidential" or with words of similar meaning, at the time of disclosure by such party; (b) if disclosed orally or not marked "confidential" or with words of similar meaning, was subsequently summarized in writing by the disclosing party and marked "confidential" or with words of similar meaning; and, (c) should reasonably be recognized as confidential information of the disclosing party. The term "Confidential Information" does not include any information or documentation that was: (a) subject to disclosure under the Michigan Freedom of Information Act (FOIA); (b) already in the possession of the receiving party without an obligation of confidentiality; (c) developed independently by the receiving party, as demonstrated by the receiving party, without violating the disclosing party's proprietary rights; (d) obtained from a source other than the disclosing party without an obligation of confidentiality; or, (e) publicly available when received, or thereafter became publicly available (other than through any unauthorized disclosure by, through, or on behalf of, the receiving party). For purposes of this Contract, in all cases and for all matters, State Data is deemed to be Confidential Information.

b. Obligation of Confidentiality. The parties agree to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third parties other than employees, agents, or subcontractors of a party who have a need to know in connection with this Contract or to use such Confidential Information for any purposes

whatsoever other than the performance of this Contract. The parties agree to advise and require their respective employees, agents, and subcontractors of their obligations to keep all Confidential Information confidential. Disclosure to a subcontractor is permissible where: (a) use of a subcontractor is authorized under this Contract; (b) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the subcontractor's responsibilities; and (c) Contractor obligates the subcontractor in a written contract to maintain the State's Confidential Information in confidence. At the State's request, any employee of Contractor or any subcontractor may be required to execute a separate agreement to be bound by the provisions of this Section.

c. Cooperation to Prevent Disclosure of Confidential Information. Each party must use its best efforts to assist the other party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the foregoing, each party must advise the other party immediately in the event either party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Contract and each party will cooperate with the other party in seeking injunctive or other equitable relief against any such person.

d. Remedies for Breach of Obligation of Confidentiality. Each party acknowledges that breach of its obligation of confidentiality may give rise to irreparable injury to the other party, which damage may be inadequately compensable in the form of monetary damages. Accordingly, a party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available, to include, in the case of the State, at the sole election of the State, the immediate termination, without liability to the State, of this Contract or any Statement of Work corresponding to the breach or threatened breach.

e. Surrender of Confidential Information upon Termination. Upon termination of this Contract or a Statement of Work, in whole or in part, each party must, within 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 non-State Data Confidential Information is not feasible, such party must destroy the non-State Data Confidential Information and must certify the same in writing within 5 calendar days from the date of termination to the other party.

33. Data Privacy and Information Security.

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

b. Audit by Contractor. No less than annually, Contractor must conduct a comprehensive independent third-party audit of its data privacy and information security program and provide such audit findings to the State.

c. Right of Audit by the State. Without limiting any other audit rights of the State, the State has the right to review Contractor's data privacy and information security program prior to the commencement of Contract Activities and from time to time during the term of this Contract. During the providing of the Contract Activities, on an ongoing basis from time to time and without notice, the State, at its own expense, is entitled to perform, or to have performed, an on-site audit of Contractor's data privacy and information security program. In lieu of an on-site audit, upon request by the State, Contractor agrees

to complete, within 45 calendar days of receipt, an audit questionnaire provided by the State regarding Contractor's data privacy and information security program.

d. Audit Findings. Contractor must implement any required safeguards as identified by the State or by any audit of Contractor's data privacy and information security program.

e. State's Right to Termination for Deficiencies. The State reserves the right, at its sole election, to immediately terminate this Contract or a Statement of Work without limitation and without liability if the State determines that Contractor fails or has failed to meet its obligations under this Section.

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 7 years after the latter of termination, expiration, or final payment under this Contract or any extension ("**Audit Period**"). If an audit, litigation, or other action involving the records is initiated before the end of the Audit Period, Contractor must retain the records until all issues are resolved.

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

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

37. Warranties and Representations. Contractor represents and warrants: (a) Contractor is the owner or licensee of any Contract Activities that it licenses, sells, or develops and Contractor has the rights necessary to convey title, ownership rights, or licensed use; (b) all Contract Activities are delivered free from any security interest, lien, or encumbrance and will continue in that respect; (c) the Contract Activities will not infringe the patent, trademark, copyright, trade secret, or other proprietary rights of any third party; (d) Contractor must assign or otherwise transfer to the State or its designee any manufacturer's warranty for the Contract Activities; (e) the Contract Activities are merchantable and fit for the specific purposes identified in the Contract; (f) the Contract signatory has the authority to enter into this Contract; (g) all information furnished by Contractor in connection with the Contract fairly and accurately represents Contractor's business, properties, finances, and operations as of the dates covered by the information, and Contractor will inform the State of any material adverse changes; and (h) all information furnished and representations made in connection with the award of this Contract is true, accurate, and complete, and contains no false statements or omits any fact that would make the information misleading. A breach of this Section is considered a material breach of this Contract, which entitles the State to terminate this Contract under Section 23, Termination for Cause.

38. Conflicts and Ethics. Contractor will uphold high ethical standards and is prohibited from: (a) holding or acquiring an interest that would conflict with this Contract; (b) doing anything that creates an appearance of impropriety with respect to the award or performance of the Contract; (c) attempting to influence or appearing to influence any State employee by the direct or indirect offer of anything of value; or (d) paying or agreeing to pay any person, other than employees and consultants working for Contractor, any consideration contingent upon the award of the Contract. Contractor must immediately notify the State of any violation or potential violation of

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

39. **Compliance with Laws.** Contractor must comply with all federal, state and local laws, rules and regulations.

40. **RESERVED**

41. **Nondiscrimination.** Under the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, *et seq*., and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, *et seq*., Contractor and its subcontractors agree not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, marital status, or mental or physical disability. Breach of this covenant is a material breach of this Contract.

42. **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 complied under MCL 423.322.

43. **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.

44. **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.

45. **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.

46. **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.

47. **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.

48. **Website Incorporation.** The State is not bound by any content on Contractor's website unless expressly incorporated directly into this Contract.

49. **Order of Precedence.** In the event of a conflict between the terms and conditions of the Contract, the exhibits, a purchase order, or an amendment, the order of precedence is: (a) the purchase order; (b) the amendment; (c) Exhibit A; (d) any other exhibits; and (e) the Contract.

50. **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.

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

52. **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.

53. **Entire Contract and Modification.** This Contract is the entire agreement and replaces all previous agreements between the parties for the Contract Activities. This Contract may not be amended except by signed agreement between the parties (a "**Contract Change Notice**").