

STATE OF MICHIGAN
 DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
 PROCUREMENT
 P.O. BOX 30004, LANSING, MI 48909
 OR
 611 W. OTTAWA, LANSING, MI 48933

NOTICE OF CONTRACT NO. 641B5500003
 between
 THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Merlinos & Associates, Inc. 3274 Medlock Bridge Road Peachtree Corners, GA 30092	Paul Merlino	pmerlino@merlinosinc.com
	TELEPHONE	CONTRACTOR #, MAIL CODE
	678-684-4841	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR:	LARA	Rick Smith	517-636-6630	smithr3@michigan.gov
BUYER:	LARA	Shay Gaffey	517-335-1971	gaffeys@michigan.gov

CONTRACT SUMMARY:			
DESCRIPTION: ACTUARIAL ANALYSIS – SELF-INSURERS; SECURITY FUND			
INITIAL TERM	EFFECTIVE DATE	INITIAL EXPIRATION DATE	AVAILABLE OPTIONS
3 Years	02/01/2015	01/31/2018	2 (1-Year)
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
NET 30 DAYS			
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MIDEAL PARTICIPANTS
<input type="checkbox"/> P-card	<input type="checkbox"/> Direct Voucher (DV)	<input type="checkbox"/> Other	<input type="checkbox"/> YES <input type="checkbox"/> NO
MINIMUM DELIVERY REQUIREMENTS:			
MISCELLANEOUS INFORMATION:			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION:			\$122,500.00

THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the solicitation #641R5500495. Orders for delivery will be issued directly by the Department of Technology, Management & Budget through the issuance of a Purchase Order Form.

Notice of Contract #: 641B5500003

FOR THE CONTRACTOR:	FOR THE STATE:
Merlinos & Associates, Inc. Firm Name	Signature LeAnn Droste, Procurement Services Director Name/Title
Authorized Agent Signature Paul Merlino	Department of Licensing and Regulatory Affairs Enter Name of Agency
Authorized Agent (Print or Type)	
Date	Date

STATE OF MICHIGAN

Request For Proposal No. 641R5500495
Actuarial Analysis – Self-Insurers; Security Fund

EXHIBIT A STATEMENT OF WORK CONTRACT ACTIVITIES

This contract is for an Actuarial analysis of Self-Insurers' Security Fund known and potential future workers' compensation benefit obligations.

Background

The Self-Insurers' Security Fund is responsible for the payment of workers' compensation benefits due to a disabled employee or dependent of a disabled employee that are due from a private self-insured employer who becomes insolvent after November 16, 1971 and is unable to continue honoring their workers' compensation obligations. An insolvent private self-insured employer means either an employer who files for relief under the bankruptcy act, or an employer against whom bankruptcy proceedings are filed or an employer for whom a receiver is appointed.

Amendments to Section 551 of the Michigan Workers' Disability Compensation Act require an annual actuarial analysis of Self-Insurers' Security Fund (SISF) claims to estimate SISF future workers' compensation benefit payment and loss adjustment expense liabilities based on computations that reflect the probable future cost of compensation and medical benefits plus necessary loss adjustment expenses due, or could reasonably be expected to be due, over the projected life of each open and possible future claim.

As of September 30, 2014, the SISF had 581 open workers' compensation claims and these claims are related to 44 former self-insured employers, the vast majority of these are no longer able to provide for the payment of their workers' compensation benefits as they are insolvent self-insured employers.

Requirements

Claim data is contained within the Funds Administration Information System which is supported by an Oracle database. The data on each claim includes personal identifying information and personal identifying information is included within each claim file that is housed within the offices of the Funds Administration. Vendor must agree to maintain the confidentiality of this personal identifying information and take all necessary to prevent the disclosure of this information and destroy any record of personal identifying information upon completion of each annual review.

1. Annual analysis must include an estimated future cost of compensation, medical benefits and loss adjustment expenses due for claims managed by the SISF for individual private self-insured employers where the SISF has assumed the payment of benefit obligations. The estimated future compensation benefit and loss adjustment expenses due is to be reported separately for each self-insured employer with a reporting on the number of open claims and potential future claims for each self-insured.

Segmentation of Liabilities

Contractor will segment the liabilities into divisions that we deem appropriate, most likely by class and/or state groupings and by type of benefit (medical vs. allocated loss adjustment expenses vs. fatal indemnity vs. permanent total indemnity, etc.), in order to most accurately estimate unpaid liabilities.

Summary of Methodologies

Most standard actuarial reserving methodologies are based, to some degree, on loss development triangles that reflect the changes in aggregate costs of claims as they age. This historical behavior is then used to estimate future development. To estimate unpaid liabilities, we may rely on some or all of the following methods: paid loss development, incurred loss

development, paid and incurred Bornhuetter-Ferguson, case reserve development, and frequency-severity development.

Discussion of Development Factors

The selection of loss development factors (LDFs) is a key component of a reserve analysis. We typically rely on 10-year, 5-year, and 3-year weighted averages, as well as consideration of the selected LDFs in the prior actuarial analysis. We then present the various weighted averages of historical development factors on each of the data triangle exhibits for each line of business. The tail factors are selected judgmentally by considering both the development factors near the end of the triangle and the paid-to-reported loss ratios near the tail. We also consider the use of loss development patterns derived from our experience with similar entities.

Unpaid Liabilities at the Claimant Level

It is our understanding that the SISF is requesting IBNR estimated at a claim level. We propose to estimate the ultimate value of each reported claim using one of two methods which may vary by reserve grouping.

One proposed approach is a reserving approach at the individual claim level where we estimate and aggregate the following parameters for each claim: a) an average monthly benefit amount, b) a persistency factor to estimate the rate at which the monthly benefit amount is expected to increase or decrease, c) a duration of benefits using external data such as an appropriate mortality table for permanent/fatal claims and using industry data for medical only and temporary disabilities and associated benefits. We will then estimate the pure IBNR by looking at a history of claims reporting patterns to estimate the IBNR claims and apply a claims severity based on historical claims data. This estimate will be performed/summarized for each individual employer.

The second approach separates the pure incurred but not reported (IBNR) reserve from the incurred but not enough (IBNE) reserve derived from the above approaches. We would then allocate the bulk IBNR reserve to a claim level using allocation drivers such as incurred loss or case reserves. The IBNR reserves would be added to the case reserves to derive the total reserves for each claim. This estimate will be summarized for each individual employer. The IBNR reserve would then be allocated to each individual employer.

In either case, probable ultimate claim estimates will be limited to the appropriate per claim retentions.

Claim Count Methodologies Reasonability/Diagnostic Checks

Diagnostic checks will be reviewed to ensure our estimates are reasonable. These diagnostics will include implied average severities by year, implied loss costs by year, and indicated incurred but not reported-to-case ratios.

For each employer, we will provide very straightforward, non-technical summaries of liabilities, claim counts and diagnostic/reasonability checks by accident year or claim, whichever is preferred by the SISF. The team in this proposal have worked extensively with both of the methods described above and are qualified to perform the work. Merlinos has additional consultants and analysts available to assist the key personnel on this project if needed.

2. Actuarial analysis and review is to be conducted between January and March of 2015 and for each year thereafter. Report is to be compiled in conjunction with the SISF annual financial report and provide actuarial review and opinion on the future contingent liabilities for the SISF. Michigan provides for potential lifetime benefits on workers compensation claims. Therefore, future contingent liability evaluation should consider whether a claim is in payment or litigation status in its evaluation of future SISF exposure. Claims in payment status require an analysis of future benefit obligations and loss adjustment expenditures; subject to employer specific or aggregate

policy retention levels on the claim's date of injury and feasibility for settlement of the claim. Litigation claims require an analysis on the reasonable valuation of the claim.

The same methods described in #1 will be applied for both claims in payment and in litigation. However, for claims in litigation we will apply an additional variable for the probability the claim goes into payment status. This will be based on a combination of discussions on the particulars of the claims in litigation, particularly for the more significant claims, and also on historical and industry ratios of claims without indemnity to total claims reported ratios. Probable ultimate claim estimates will be limited to the appropriate per claim retentions.

Again, the team in this proposal are experienced with this type of analysis, and Merlino's has additional qualified staff to consult or assist if needed.

The two key personnel supporting the SISF in this project have the availability in the first quarter of the year necessary to perform this analysis. The team in this proposal are committed to meeting the timelines and needs of the SISF.

3. Actuarial analysis is to include a review of all open SISF claims with projections for aggregate future benefit losses and future loss adjustment expenses. Estimates of future liability of the SISF are to include computations that reflect the probable total future cost of compensation and medical benefits due, or can reasonably be expected to be due, over the life of the claim. Include projections of future benefit losses and loss adjustment expenses associated to future claims that will accrue to the SISF from existing insolvent self-insured employers. Also, provide projections of potential SISF benefit losses and loss adjustment expenses that may accrue from new bankrupt self-insured employers over the coming year.

Using the methods described in #1 and #2, Contractor will estimate future annual calendar year payments of loss and allocated loss adjustment expenses for each claim. Pure IBNR will also be allocated to each employer for each future calendar year. This pure IBNR will consider both the potential for IBNR claims on currently insolvent employers as well as a provision for employers who may become insolvent. The latter will be based on historical ratios of insolvent employers to total employers.

Merlino's has ample qualified staff, including the team in this proposal, to consult or assist in projecting the liabilities due from new bankrupt self-insured employers by analyzing past histories of past employers.

4. Actuarial analysis is also to provide confirmation as to whether the future value of claims that the SISF receives exceed the amount that will be raised from the current assessment and additional appropriation due over the course of the calendar year as specified within Section 418.551 (4) (a-e).
 - a. Estimate of future liability of the SISF for payments of claims against a private self-insured employer is to be based on computations that reflect probable total future cost of compensation and medical benefits due over the life of the claim
 - b. Alternatively, where this cannot be performed, provide estimates on the cost of compensation and medical benefits, that can reasonably be expected to be due, over the life of a claim,
 - c. A report of each liability assumed for payment of claims made against a private self-insured employer.

Using the payment patterns derived from our typical actuarial methods described in Items #1 and #2 above, Merlino's is able to spread the future loss and defense costs to future calendar years which includes the immediate future calendar year. This amount can be compared to the

current assessments to determine if any additional assessments are necessary. Our work will consider the collectability issues that underlie the assessment estimates and process. Merlinos has experience in developing assessment plans and managing the assessment process for WC self-insured groups. The team in this proposal have experience projecting annual loss and defense cost payments.

5. Report is to be compiled by March 1st of the succeeding year to the one being reported upon.

We have a pool of more than 40 actuarial consultants and analysts at Merlinos, which makes us well prepared to be available during all of February, which is typically considered a busy time in the actuarial profession. The consultants available include the key personnel, Mr. Jokerst and Ms. Peters, with Mr. Jokerst onsite this entire duration, as required by the SISF. Mr. Jokerst and Ms. Peters, who are completing this proposal, are personally committed to meeting the March 1st timeframe and any other needs of the SISF related to this project.

We will begin our work immediately when the data becomes available which we understand to be February 1st. Mr. Jokerst will be onsite as required collecting and compiling the necessary data items. Once summarized, Mr. Jokerst will be able to rely on support provided by Ms. Peters and other Merlinos professionals needed for technical analysis and/or peer review or consultation. We have identified several additional staff members to include on the engagement team as needed. Their resumes are included in this proposal.

Merlinos has extensive experience in both WC and insolvencies. We are fully equipped to handle the requirements of this engagement. Our experience has shown that the assessment and insolvency processes are iterative and reflect significant judgment. Merlinos has assisted on assessment calculations that reflect estimated percentages recovered, then followed up with additional analyses once the client received what he could initially from the insolvent self-insurers.

While we stand ready to provide the assistance as presented in the RFP, we have the experience to provide options that may reduce the scope and costs of this engagement. The scope of some of our other engagements have more directly reflected the assessment process in that the biggest uncertainty may not be the ultimate claim value, but the percentage of entities that are willing or able to pay their assessment.

In some of these situations, we have been engaged to provide estimates that reflect less time determining the final obligations of the Fund, because the marginal benefit of the additional analysis did not provide any "better" answer for the courts to approve. We expect that the depth of our scope will become clearer after reviewing the situation and having discussions with the SISF. It may be that the appropriate amount of work will be less than is reflected in this RFP or that is reflected in our cost proposal.

2. Acceptance

2.1 Acceptance, Inspection and Testing

Contract activities are subject to inspection and verification by the State within 10 calendar days of the State's receipt of them.

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

1. Evaluation of claims to determine future obligations of the SISF has been adequately performed
2. Contingent future benefit obligations for SISF on known insolvent self-insured employers has been performed utilizing standard actuarial procedures
3. Evaluation of potential future insolvencies has been determined and future liabilities for these insolvencies have been estimated.

3. Staffing

3.1 Contractor Representative

The Contractor must appoint 1 Project Manager 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"). The Contractor must notify the Contract Administrator at least 10 calendar days before removing or assigning a new Contractor Representative.

3.2 Work Hours

The Contractor must provide Contract Activities during the State's normal working hours Monday – Friday 8:00 a.m. to 6:00 p.m. EST, and possible night and weekend hours depending on the requirements of the project.

3.3 Key Personnel

The Contractor must appoint a sufficient number of individuals, at least 2, who will be directly responsible for the day-to-day operations of the Contract and meet the project deadlines ("Key Personnel"). Key Personnel must be specifically assigned to the State account, be knowledgeable on the contractual requirements, and respond to State inquiries within 4 hours. [Contractor's Key Personnel must be on-site at General Office Building, 1st Floor, Dimondale, MI during the following times: 8:00 am to 5:00 pm EST.

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, in respect of which the State may elect to terminate this Contract for cause under Termination for Cause in the Standard Terms.

It is further acknowledged that an Unauthorized Removal will interfere with the timely and proper completion of this Contract, to the loss and damage of the State, and that it would be impracticable and extremely difficult to fix the actual damage sustained by the State as a result of any Unauthorized Removal. Therefore, Contractor and the State agree that in the case of any Unauthorized Removal in respect of which the State does not elect to exercise its rights under Termination for Cause, Contractor will issue to the State the corresponding credits set forth below (each, an "Unauthorized Removal Credit"):

- (i) For the Unauthorized Removal of any Key Personnel designated in the applicable Statement of Work, the credit amount will be \$25,000.00 per individual if Contractor identifies a replacement approved by the State and assigns the replacement to shadow the Key Personnel who is leaving for a period of at least 30 calendar days before the Key Personnel's removal.
- (ii) If Contractor fails to assign a replacement to shadow the removed Key Personnel for at least 30 calendar days, in addition to the \$25,000.00 credit specified above, Contractor will credit the State \$833.33 per calendar day for each day of the 30 calendar-day shadow period that the replacement Key Personnel does not shadow the removed Key Personnel, up to \$25,000.00 maximum per individual. The total Unauthorized Removal Credits that may be assessed per Unauthorized Removal and failure to provide 30 calendar days of shadowing will not exceed \$50,000.00 per individual.

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

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.

3.4 Organizational Chart

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

3.5 Disclosure of Subcontractors

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

- The legal business name; address; telephone number; a description of subcontractor's organization and the services it will provide; and information concerning subcontractor's ability to provide the Contract Activities.
- The relationship of the subcontractor to the Contractor.
- Whether the Contractor has a previous working experience with the subcontractor. If yes, provide the details of that previous relationship.
- A complete description of the Contract Activities that will be performed or provided by the subcontractor.
- Of the total bid, the price of the subcontractor's work.

Merlinos is organized in a manner that allows any employee to work on any client's business so that our actuaries' expertise is not wasted because another actuary is the lead consultant. We allocate our resources to our clients based on what expertise is needed. That said, once our

actuaries and support staff become familiar with a client, we typically do not move them from this client.

Given our structure and philosophy, traditional organization charts are hard to produce. The following two charts are presented:

- #1 -- A description of the anticipated personnel for this engagement.
- #2 -- An overview of our firm by ownership that shows general lines of responsibility.

Organizational Chart #1-Project Team

Key Personnel

Project Guidance

Steve Jokerst, FCAS, MAAA
LEAD ACTUARY,
PROJECT MANAGEMENT

Dave Shepherd, FCAS, MCAA
PROJECT GUIDANCE, Peer Review

Amy Peters
ACTUARIAL ANALYSIS, PEER REVIEW

Tom Vasey, FCAS, MCAA
PROJECT GUIDANCE, PEER REVIEW

For this engagement with the SISF, we have identified Steve Jokerst and Amy Peters as our Key Personnel. Both have a strong history of working for self-insured entities and funds. Our company philosophy is that servicing our clients with insightful and timely work takes precedence over any internal territorial considerations that may exist in other firms. This means that when you hire Merlino's, you are getting access to the knowledge of 41 actuarial professionals with more than 300 years of combined experience. To that end, we have identified Dave Shepherd and Tom Vasey as two of our senior actuaries with extensive workers' compensation experience that will assist the Key Personnel by bringing their in-depth knowledge of workers' compensation and self-insured funds to the engagement.

Organizational Chart #2 - Ownership and Professional Staff

Paul Merlino,
President

Matthew Merlino
Secretary-Treasurer

PRINCIPALS

David Shepherd
Mark Brannon
Peter Scourtis

Rosemary Wickham
Derek Chapman
Ryan Purdy

Michael Berman
Greg Fanoie
Rebecca Freitag
Meg Glenn
Steve Jokerst
Karen Jordan

Brett Miller
Ashley Pistole
Tom Vasey
Tony Alfieri
Kirk Braunius
Robert Daniel

Leigh Heymann
Jeremy Hoch
Soojin Jang
Scott Jensen
Anthony Kuhns
Bao Vu

**CREDENTIALLED
ACTUARIES**

Meghan Brown	J. Allen Fricks	Greg Stone	<u>CONSULTANTS</u>
Will Bryan	Valerie Harper	James Woolford	
Retledge Capers	Kathy Kettering	Jacob Zirbel	
Amy Cochran	Andrew Kiel		
Mark Davenport	Amy Peters		
Jeff Dozier	Gwen Portis		

Relevant Experience

Our staff members have worked on numerous actuarial projects that are relevant to the needs of the SISF.

SELF-INSURED ENTITY EXPERIENCE -- Our consultants provide a variety of actuarial services across almost all property and casualty exposures to numerous self-insured entities. The organizations we have served reflect reserve amounts ranging from \$0 to \$1.2 billion. The types of entities we have served include:

- Cities and counties
- Colleges and universities
- County commission associations
- Higher education associations
- Municipal insurance organizations and trusts
- Not for profit groups
- Public school systems and consortiums
- Public utility systems
- State government employee funds
- Trade associations
- Transit authorities

Our primary project team members -- Steve Jokerst and Amy Peters -- have extensive self-insured experience that began more than 15 years ago. The clients they have served include some of the largest corporations in the U.S. (Fed Ex, Peabody Energy (Patriot Coal Corporation), American Axle, JM Smucker Company, and many others). Steve and Amy also performed work many public entity entities including **Michigan Township Participating Plan, Michigan Municipal Alliance**, Kentucky Association of Counties, and the Ohio Fair Plan.

Some of the typical services we provide for self-insured entities and funds include:

- Liability Analysis -- Our consultants have performed liability analyses of self-insured entities, including public entities such as municipalities, pooled funds, and private sector clients. This assistance has included funds which cover the full range of traditional exposures, including workers compensation, general liability, and property exposures; and also funds of varying sizes, from very large funds covering a wide variety of exposures for many clients, to funds covering specific exposures to smaller clients. In addition, we have provided clients with a wide variety of services, including end-of-year required reserve analysis, quarterly projections of liabilities, and estimates for discounted reserves.
- Funding/Rating Analysis -- Our consultants have experience in rating and/or funding analyses for self-insured entities, and similar mechanisms. In the course of our analyses, we have assisted on creating rate indications, performing rating classification studies, advanced ratemaking (including experience rating and schedule rating), analysis of impact of tort reform on rates, and the creation of proformas.
- Payment Projections -- We have provided estimates of future period payments based on estimates of future exposure, the unpaid liabilities, and the payment pattern.

Of particular relevance to this project for the SSIF, Merlino has provided reserve evaluation and expert testimony related to the Florida Self-Insurance Fund (FESA) a workers compensation self-insurance fund. FESA members signed an indemnity agreement binding them jointly and severally to pay premiums and assessments into the Fund. Merlino provided assistance to FESA and to attorneys representing FESA in many areas including evaluation of reserves, legal actions against reinsurers, and professional testimony regarding the appropriateness of the amounts assessed members both in the aggregate and individually by member.

WORKERS' COMPENSATION EXPERIENCE -- We have extensive reserving, pricing, and other consulting experience dealing with workers' compensation (WC) exposures. This includes estimating WC liabilities, developing rates/rate structures, and providing other actuarial services for more than 50 self-insured entities, self-insurance funds, captive insurers, and traditional insurance companies. Additionally, we have provided extensive consulting services to more than a dozen regulatory entities, including assistance with financial and target examinations and loss cost & rate filing reviews of both independent carriers and bureau filings. We have also reviewed experience rating filings on behalf of states as well as assisted in the development of experience rating programs. This broad range of experience gives our consultants a comprehensive understanding of the issues relevant to WC. Our WC work on behalf of regulators includes the following:

- Reviewing the NCCI filings for Alabama, Illinois, Kentucky, Maryland, Mississippi, South Carolina, South Dakota, and Virginia. These reviews typically address, among other things, statewide loss cost changes, changes by industry group, and the general WC insurance environment in that state. Our recent reviews of NCCI filings have addressed the NCCI's revised class rate making methodology.
- Reviewing rate filings submitted by the Injured Workers Insurance Fund (IWIF) of Maryland for the Maryland Insurance Administration, and these reviews have included consideration of rates by class and experience rating plan.
- Reviewing North Carolina Rate Bureau filings for the North Carolina Department of Insurance.
- Reviewing the Alabama WC residual market fund, the South Carolina second injury fund, and the experience rating system for the Wyoming WC fund.
- Participating in a multistate examination of AIG related to reporting WC premiums, which are the basis of assessments funding the National Workers' Compensation Reinsurance Pool.
- Performing a study of the legislative changes related to the changes in eligibility and the closure of new claims for the South Carolina Second Injury Fund and its impact on loss costs and rates.

In addition to reviewing WC voluntary loss costs and assigned risk rates, we have also reviewed insurer filings proposing loss cost multipliers (LCM) for use with advisory loss costs. Our experience includes:

- Reviewing all LCM filings submitted to the South Carolina Department of Insurance.
- Reviewing LCM filings for Mississippi Department of Insurance.

INSOLVENCY EXPERIENCE -- We have experience with insolvency, liquidation, and receivership work in multiple states. Our engagements include working with regulatory agencies as well as appointed receivers. Each engagement is different and requires unique actuarial input, and our involvement has varied by engagement. Examples of our experience include:

- Assistance to receiver to estimate the ceded reserve amounts by both policy and reinsurance contract, both by treaty and facultative certificates.
- Assistance on the assessment valuation of an estate for which we produced assessment invoices for members of a WC fund in liquidation. These estimates reflected the present value of the liabilities, with adjustments for the costs of collection and bad debts.
- Assistance to rehabilitation team in reviewing blocks of business to sell to prospective buyers/investors.
- Assistance to receiver with numerous ceded reinsurance commutations related to an insurance company on behalf of a state insurance department.
- Assistance to in reviewing the quality of prior actuarial work and provide observations on whether the work was reasonable and appropriate given the claim and exposure information available at the time the original actuarial was performed.
- Reviewed detailed claim and premium information to detect potential areas of fraud, and conducted research to identify any unknown reinsurance agreements that may represent assets to the ceding company.
- Assisting a receiver with determining estimates of large deductible recoverable by policyholders for two related insolvent insurers that specialized in selling workers' compensation insurance to PEOs.

We have provided actuarial services related to insolvencies to the following state regulatory agencies:

- Florida Div. of Rehab. & Liquidation
- New York Liquidation Bureau
- Oklahoma Insurance Dept.
- Rhode Island Department of Business Regulation, Insurance Division
- Louisiana Office of Receivership
- South Carolina Dept. of Insurance
- Alabama Dept. of Insurance
- Pennsylvania Insurance Dept.

Merlino has the internal staff resources to provide these actuarial services without using subcontractors.

3.6 Security

The Contractor will be subject the following security procedures:

Signing security forms, signing in at front desk each day, signature of forms protecting the confidentiality of personal identifying information, maintaining confidentiality of personal claims records.

Merlino & Associates, Inc., understands and accepts all expected security procedures.

4. Project Management

Vendor will be required to provide weekly overviews on the progress of their work to Richard W. Smith, Program Manager and Mark C. Long, Funds Administrator.

4.1 Project Plan

Project is projected to start on Monday, February 1, 2015.

Contact person for the State of Michigan is Richard Smith, 517-636-6630 or smithr3@michigan.gov. Contractor is to identify their sole contact resource.

Progress updates and scheduled meetings to review the progress are to be completed on a weekly basis. Requests for specific information are to be provided to Richard Smith.

Richard Smith and the contractor sole contact will be the individuals responsible for providing requested information between the State and the Contractor.

The Contractor will carry out this project under the direction and control of the Program Manager. Within 7 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.

4.2 Meetings

The Contractor must attend the following meetings:

There shall be weekly meetings to monitor the progress of this project from the beginning of the project to its completion,

There shall also be a final meeting to allow for a direct review of the product provided by the Contractor and enable the State to ask questions regarding the Contractor's findings.

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

4.3 Reporting

The Contractor must submit, to the Program Manager the written reports as identified in the Requirements Section above.

All of Merlinos' actuarial consultants have ample experience in writing detailed reports including but not limited to the background of the project, approach and description of methodologies, and a summary of the findings. Our consultants are very adept at summarizing the conclusions in layman's terms that assists the readers in understanding thoroughly the work product. Often our associates are requested by other clients to provide additional documentation outside the formal report in the form of a letter or emails. We have several administrative staff members in addition to our consultants available to physically prepare copies of the reports and other perform administrative support services. Our consultants are available to make a presentation on-site of the findings of our analyses.

5. Invoice and Payment

5.1 Invoice Requirements

All undisputed invoice amounts are payable within 45 days of the State's receipt. All invoices submitted to the State must include: (a) date; (b) purchase order; (c) description of the Contract Activities; (d) unit price; and (e) total price. Overtime, holiday pay, and travel expenses will not be paid.

5.2 Payment Methods

The State will make payment for Contract Activities by Purchase Order to the Contractor

6. Liquidated Damages

Late or improper completion of the Contract Activities will cause loss and damage to the State and it would be impracticable and extremely difficult to fix the actual damage sustained by the State. Therefore, if there is late or improper completion of the Contract Activities the State is entitled to collect liquidated damages in the amount of \$5,000 and an additional \$100 per day for each day Contractor fails to remedy the late or improper completion of the Work.

STATE OF MICHIGAN

Request for Proposal No. 641R5500495
Actuarial Analysis – Self Insurers; Security Fund
Worker's Compensation Agency, Funds Administration

EXHIBIT B GENERAL PROPOSAL REQUIREMENTS

Contractors must provide a detailed response to each question. Attach any supplemental information and appropriately reference within your response.

	Bidder Response
1. Company Contact Information.	
Sole contact during the RFP process. Include the name, title, and contact information (address, e-mail and phone number).	Steve Jokerst, FCAS, MAAA Consulting Actuary Merlinos & Associates, Inc. 8365 Keystone Crossing, Suite 200 Indianapolis, IN 46240 sjokerst@merlinosinc.com 678-684-4708
Sole contact authorized to receive and sign any resulting Contract.	Paul Merlino, ACAS, MAAA, CFA President Merlinos & Associates, Inc. 3274 Medlock Bridge Road Peachtree Corners, GA 30092 pmerlino@merlinosinc.com 678-684-4841
2. Company Background Information.	
Legal business name and address.	Merlinos & Associates, Inc. 3274 Medlock Bridge Road Peachtree Corners, GA 30092
What State is your business incorporated in?	Georgia
Phone number.	770-453-9771.
Website address.	www.merlinosinc.com
Number of years in business and number of employees.	25 years 47 employees
Legal business name of any applicable parent company and address.	N/A
Has there been a recent change in the organizational structure (e.g., management team) or a change of control (merger or acquisition)? If so, why and how has it affected the company?	Our firm expanded from six (6) principal owners to eight (8) principal owners in January of 2013. All eight owners are employees of the firm.
History of company and if growth has been organic, through mergers and acquisitions, or both?	Our original firm was formed in 1988. The firm has grown from the original sole owner, Matthew Merlino, to its current configuration of eight (8) principal owners. We have acquired one relatively small actuarial consulting firm, which took place in 2010. The vast majority of our growth has been organic through word of mouth referrals.
Has your company had any contract terminated for contractor default in the last 3 years? If yes, explain when and the reasons for the termination.	No.
3. Business Owned by Qualified Disabled Veteran	
"Qualified Disabled Veteran," as defined by Public Act 431 of 1984, means a business entity that is at least 51% owned by	No.

one or more veterans with a service-connected disability. The Act defines "Service-Connected Disability" as a disability incurred or aggravated in the line of active military, naval, or air service as defined in 38 USC 101 (16).	
Is the bidder a disabled Veteran-owned business?	No.
To qualify for a Business owned by a qualified disabled Veteran, please provide the following:	
(a) Proof of service and conditions of discharge: DD214 or equivalent,	N/A
(b) Proof of service-connected disability: DD214 if the disability was documented at discharge or Veterans Administration (VA) Rating Decision Letter or equivalent if the disability was documented after discharge, and	N/A
(c) Proof of Ownership: Appropriate legal documents setting forth the ownership of the business entity.	N/A
4. Experience with the State of Michigan.	
Does your company have experience working with the State of Michigan? If so, please provide a list (including the contract number) of the contracts you hold or have held with the State for the last 10 years.	Steve Jokerst has provided an independent actuarial analysis and opinion in coordination with the examinations of over 30 insurance companies for the Michigan Department of Insurance. He was typically the sole contact for the Michigan DOI, coordinating with the Examiner in Charge and, at times, the Chief Financial Examiner. Reserve analyses provided varied from a simple Schedule P analysis to one that was in the same level of detail as the Opining Actuary's report. In the cases where a simple Schedule P analysis was performed, both the Opining Actuary's reconciliation to Schedule P and underlying actuarial assumptions would be reviewed. Regardless of the depth of reserve analysis provided, a comparison of our independent projections to the Company's held reserves was provided, in addition to an opinion whether or not the carried reserves were within a reasonable range.
5. Gross Annual Sales	
Contractor must identify the gross annual sales for the last 5 years.	Approx. \$48.7 million
If the award of any resulting contract will increase your gross revenue by more than 25% from the last year's sales, explain how you will scale up to manage this increase.	Our gross annual sales for the last five years were approximately \$48.7 million. We do not anticipate our work for the Security Fund increasing our gross revenue by more than 3% from last year. We continuously recruit for new actuarial talent and plan to hire a net of four (4) consultants over the next year.
6. Experience	
Please describe at least 3 relevant experiences (contact name, address and phone number) supporting your ability to successfully manage a contract of similar size and scope for the Contract Activities defined by this RFP. Include a description of the scope of Contract Activities (services) provided; the total project cost; the start and end dates of the project; and the results obtained.	Commonwealth of Virginia State Corporation Commission Ms. Janis Richardson Bunce, CFE, CPCU Supervisor – Financial Regulation Division P.O. Box 1157 Richmond, VA 23218 804-371-9063 START/END: 2011 – Present DESCRIPTION: Our consultants have assisted this

	<p>Division of the Bureau with assistance in the oversight of a variety of Group Self Insurance Associations, which provide Workers' Compensation coverage to their members. The scope of our involvement is to provide assistance in the determination of whether to approve requested dividends and to provide assistance with the oversight of GSIs that are insolvent, including analysis to determine whether assessments of members should be pursued.</p> <p>RESULTS: Our firm has consistently provided these services to this Division since the inception of our contract with the Bureau. We have not received negative feedback regarding this work.</p> <p>Michigan Office of Financial and Insurance Regulation Mr. Bob Lamberjack Chief Financial Examiner 611 West Ottawa Street #3 Lansing, MI 48933 (517) 335-3167 START/END: 1993 – 2000 DESCRIPTION: Mr. Jokerst assisted the Michigan Office of Financial and Insurance Regulation with their financial examinations from 1993 to 2002. He assisted on over 30 financial examinations. RESULTS: Mr. Jokerst enjoyed a long relationship with the Michigan Office of Financial and Insurance Regulation.</p> <p>Kentucky Association of Counties Mr. Mark Miller Director of Insurance 400 Englewood Drive Frankfort, KY 40601 502-223-7667 START/END: 2003 – 2012 DESCRIPTION: Mr. Jokerst and Ms. Peters assisted the Kentucky Association of Counties with reserve and rate analyses of the Members' loss and ALAE reserves which include workers' compensation and other liabilities. RESULTS: Mr. Jokerst and Ms. Peters were able to meet KACo's timeframes, provide a clear report including management summary, and made an on-site presentation of findings.</p> <p>Tharp & Associates Mr. Mark Tharp 300 West Osborn Road, Suite 500 Phoenix, AZ 85013 602-277-4943 START/END: 2010 – Present DESCRIPTION: Our consultants have provided numerous reserve and expert testimony work to the Receiver and counsel to the Receiver for two insurance companies in liquidation via Tharp & Associates. These two companies provided workers' compensation coverage to Professional</p>
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	<p>Employer Organizations. Merlinos assistance includes. Our work for these engagements included:</p> <ul style="list-style-type: none"> • Periodic Reserve evaluations considering both pre- and post-receivership data (post-receivership data is compiled from Guaranty Associations from many states). These evaluations have been done in the aggregate and by PEO. • Expert testimony on Reinsurance Issues. • Expert testimony related to the appropriateness of the actuarial work performed pre-receivership. <p>RESULTS: Our firm has enjoyed a very long relationship with Tharp & Associates.</p>
<p>7. Strategic Relationships.</p>	
<p>Explain any partnerships and strategic relationships you currently have or have used that would bring significant value to the State, and how that relationship will bring value to the State.</p>	<p>We do not perform our work in conjunction with any other firm but we believe the relationships developed during the engagements described above, as well as all of our clients, have made us more knowledgeable and better consultants, and that brings value to the State.</p>
<p>8. Principal Place of Business.</p>	
<p>The Contractor must identify the location (city, state and zip code) that would have primary responsibility for this account if awarded a contract.</p>	<p>Merlinos' Indianapolis office will have primary responsibility for this project and will work closely with the staff in our Atlanta office.</p> <p>8365 Keystone Crossing, Suite 200 Indianapolis, IN 46240</p>
<p>9. Standard Contract</p>	
<p>The Contractor must affirm that it agrees with the Standard Contract Terms, or if it does not agree, identify the specific exceptions to the Standard Contract Terms. Exceptions must be listed here and Contractor must provide a redline version as an attachment.</p>	<p>We affirm that we agree with the Standard Contract Terms.</p>

STATE OF MICHIGAN

Request For Proposal No. 641R5500495
Actuarial Analysis – Self-Insurers' Security Fund

EXHIBIT C PRICING

1. The Contractor must provide a pricing schedule for the proposed Contract Activities using hourly rate to be charged for services. The pricing schedule should be submitted in a modifiable format (e.g., Microsoft Word or Excel); however, you may also submit an additional pricing schedule in a non-modifiable format (e.g., PDF). Failure to complete the pricing schedule as requested may result in disqualification of your proposal.
2. Price proposals must include all costs, including but not limited to, any one-time or set-up charges, fees, and potential costs that Contractor may charge the State (e.g., shipping and handling, per piece pricing, and palletizing).
3. 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.
4. By submitting its proposal, the Contractor certifies that the prices were arrived at independently, and without consultation, communication, or agreement with any other Contractor.

Services Costs

All services shall be billed per hourly rate of each individual performing any of the activities designated in the statement of work.

<u>CLASSIFICATION AND DESCRIPTION OF RESPONSIBILITIES</u>	<u>HOURLY RATE</u>
1. Actuary – Level I	\$265
2. Actuary – Level II	\$245
3. Actuary – Level III	\$220
4. Actuarial Analyst – Level I	\$200
5. Actuarial Analyst – Level II	\$180
6. Actuarial Analyst – Level III	\$155
7. Administrative Support	\$75



STATE OF MICHIGAN

STANDARD CONTRACT TERMS

Actuarial Analysis – Self Insurers; Security Fund
 Worker’s Compensation Agency, Funds Administration

This Contract may be renewed for up to 2 additional Renewal Option 1 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; 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.

<p>If to State: <i>Shay Gaffey</i> <i>Department of Licensing & Regulatory Affairs</i> <i>P. O. Box 30004</i> <i>Lansing, MI 48909</i> gaffey@michigan.gov <i>(517) 335-1971</i></p>	<p>If to Contractor: <i>Paul Merlino</i> <i>Merlinos & Associates, Inc.</i> <i>3274 Medlock Bridge Road</i> <i>Peachtree Corners, GA 30092</i> pmerlino@merlinosinc.com <i>(678) 686-4841</i></p>
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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: Shay Gaffey Department of Licensing & Regulatory Affairs P.O. Box 30004 Lansing, MI 48909 gaffeys@michigan.gov (517) 335-1971	If to Contractor: Paul Merlino Merlinos & Associates, Inc. 3274 Medlock Bridge Road Peachtree Corners, GA 30092 pmerlino@merlinosinc.com (678) 686-4841
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4. **Program Manager.** The Program Manager for each party will monitor and coordinate the day-to-day activities of the Contract (each a "Program Manager"):

If to State: Richard W. Smith Department of Licensing & Regulatory Affairs Worker's Compensation, Funds Administration 7150 Harris Drive, 1 st Floor, Suite B Dimondale, MI 48821 Smithr3@michigan.gov (517) 636-6630	If to Contractor: Steve M. Jokerst Merlinos & Associates, Inc. 8365 Keystone Crossing, Suite 200 Indianapolis, IN 46240 sjokerst@merlinosinc.com (678) 684-4708
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5. **Performance Guarantee.** Contractor must at all times have financial resources sufficient, in the opinion of the State, to ensure performance of the Contract and must provide proof upon request. The State may require a performance bond (as specified in Exhibit A) if, in the opinion of the State, it will ensure performance of the Contract.
6. **Insurance Requirements.** Contractor must maintain the insurances identified below and is responsible for all deductibles. All required insurance must: (a) protect the State from claims that may arise out of, are alleged to arise out of, or result from Contractor's or a subcontractor's performance; (b) be primary and non-contributing to any comparable liability insurance (including self-insurance) carried by the State; and (c) be provided by an company with an A.M. Best rating of "A" or better and a financial size of VII or better.

Insurance Type	Additional Requirements
Commercial General Liability Insurance	
<u>Minimal Limits:</u> \$1,000,000 Each Occurrence Limit \$1,000,000 Personal & Advertising Injury Limit \$2,000,000 General Aggregate Limit \$2,000,000 Products/Completed Operations <u>Deductible Maximum:</u> \$50,000 Each Occurrence	Contractor must have their policy: (1) 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; (2) include a waiver of subrogation; and (3) for a claims-made policy, provide 3 years of tail coverage.
Umbrella or Excess Liability Insurance	
<u>Minimal Limits:</u> \$5,000,000 General 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) include a waiver of subrogation.
Motor Vehicle Insurance	
<u>Minimal Limits:</u> \$1,000,000 Per Occurrence	

Workers' Compensation Insurance	
<u>Minimal Limits:</u> Coverage according to applicable laws governing work activities.	Waiver of subrogation, except where waiver is prohibited by law.
Employers Liability Insurance	
<u>Minimal Limits:</u> \$100,000 Each Accident \$100,000 Each Employee by Disease \$500,000 Aggregate Disease.	

If Contractor's policy contains limits higher than the minimum limits, the State is entitled to coverage to the extent of the higher limits. The minimum limits are not intended, and may not be construed to limit any liability or indemnity of Contractor to any indemnified party or other persons.

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

7. **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.
8. **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.
9. **Staffing.** The State's Contract Administrator may require Contractor to remove or reassign personnel by providing a notice to Contractor.
10. **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.
11. **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.
12. **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.

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

14. **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 21, 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.

15. **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.

16. **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.

17. **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.

18. **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.

19. **Liquidated Damages.** Liquidated damages, if applicable, will be assessed as described in Exhibit A.
20. **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.
21. **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.

22. **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 23, 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.
23. **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.

24. **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.

25. **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.
26. **Limitation of Liability.** The State is not liable for consequential, incidental, indirect, or special damages, regardless of the nature of the action.
27. **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.

28. 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 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.

29. **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.

30. 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.

- 31. 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.

- 32. 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 21, Termination for Cause.

- 33. 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.

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

- 35. 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.

- 36. 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.

37. **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.
38. **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.
39. **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.
40. **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.
41. **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.
42. **Website Incorporation.** The State is not bound by any content on Contractor's website unless expressly incorporated directly into this Contract.
43. **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.
44. **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.
45. **Waiver.** Failure to enforce any provision of this Contract will not constitute a waiver.
46. **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.
47. **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").