

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

August 10, 2011

**CHANGE NOTICE NO. 2**  
**TO**  
**CONTRACT NO. 071B1300180**  
 (Replaces 071B8200127)

between  
**THE STATE OF MICHIGAN**  
 and

NAME & ADDRESS OF CONTRACTOR <b>Avocent Huntsville Corp.</b> <b>4991 Corporate Drive</b> <b>Huntsville, AL 35805-6201</b>  Email: <b>avocentsales@emerson.com</b>	TELEPHONE <b>(256) 430-4000</b>
	CONTRACTOR NUMBER/MAIL CODE
	BUYER/CA (517) 373-3993 <b>Joe Kelly</b>
Contract Compliance Inspector: Michael Breen <b>Data Center Management Software – DIT Statewide</b>	
CONTRACT PERIOD: From: <b>December 28, 2010</b> To: <b>February 28, 2012</b>	
TERMS <p style="text-align: center;"><b>N/A</b></p>	SHIPMENT <p style="text-align: center;"><b>N/A</b></p>
F.O.B. <p style="text-align: center;"><b>N/A</b></p>	SHIPPED FROM <p style="text-align: center;"><b>N/A</b></p>
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;"><b>N/A</b></p>	
MISCELLANEOUS INFORMATION:	

**NATURE OF CHANGE(S):**

Effective immediately, this contract is hereby **EXTENDED** to February 28, 2012. Please also note that the buyer has been **CHANGED** to Joe Kelly. All other terms, conditions, pricing and specifications remain the same.

**AUTHORITY/REASON(S):**

Per vendor, DTMB Purchasing Operations and agency request.

**TOTAL ESTIMATED CONTRACT VALUE REMAINS: \$610,826.00**

**STATE OF MICHIGAN**  
**DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET**  
**PURCHASING OPERATIONS**  
 P.O. BOX 30026, LANSING, MI 48909  
 OR  
 530 W. ALLEGAN, LANSING, MI 48933

March 10, 2011

**CHANGE NOTICE NO. 1**  
**TO**  
**CONTRACT NO. 071B1300180**  
 (Replaces 071B8200127)  
**between**  
**THE STATE OF MICHIGAN**  
**and**

NAME & ADDRESS OF CONTRACTOR <b>Avocent Huntsville Corp.</b> <b>4991 Corporate Drive</b> <b>Huntsville, AL 35805-6201</b>  <b>Email: avocentsales@emerson.com</b>	TELEPHONE <b>(256) 430-4000</b>
	CONTRACTOR NUMBER/MAIL CODE
	BUYER/CA (517) 373-1455 <b>Laura Gyorkos</b>
Contract Compliance Inspector: Michael Breen <b>Data Center Management Software – DIT Statewide</b>	
CONTRACT PERIOD: From: <b>December 28, 2010</b> To: <b>February 28, 2011</b>	
TERMS <p style="text-align: center;"><b>N/A</b></p>	SHIPMENT <p style="text-align: center;"><b>N/A</b></p>
F.O.B. <p style="text-align: center;"><b>N/A</b></p>	SHIPPED FROM <p style="text-align: center;"><b>N/A</b></p>
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;"><b>N/A</b></p>	
MISCELLANEOUS INFORMATION:	

**NATURE OF CHANGE(S):**

Effective immediately, this contract is hereby **INCREASED** by \$24,310.00.

**AUTHORITY/REASON(S):**

Per vendor, DTMB Purchasing Operations and agency request.

**INCREASE: \$24,310.00**

**TOTAL REVISED ESTIMATED CONTRACT VALUE: \$610,826.00**

**STATE OF MICHIGAN**  
**DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET**  
**PURCHASING OPERATIONS**  
 P.O. BOX 30026, LANSING, MI 48909  
 OR  
 530 W. ALLEGAN, LANSING, MI 48933

March 10, 2011

**NOTICE**  
**OF**  
**CONTRACT NO. 071B1300180**  
 (Replaces 071B8200127)  
**between**  
**THE STATE OF MICHIGAN**  
**and**

NAME & ADDRESS OF CONTRACTOR <b>Avocent Huntsville Corp.</b> <b>4991 Corporate Drive</b> <b>Huntsville, AL 35805-6201</b>  <b>Email: avocentsales@emerson.com</b>	TELEPHONE <b>(256) 430-4000</b>
	CONTRACTOR NUMBER/MAIL CODE
	BUYER/CA (517) 373-1455 <b>Laura Gyorkos</b>
Contract Compliance Inspector: Michael Breen <b>Data Center Management Software – DIT Statewide</b>	
CONTRACT PERIOD: From: <b>December 28, 2010</b> To: <b>February 28, 2011</b>	
TERMS <p style="text-align: center;"><b>N/A</b></p>	SHIPMENT <p style="text-align: center;"><b>N/A</b></p>
F.O.B. <p style="text-align: center;"><b>N/A</b></p>	SHIPPED FROM <p style="text-align: center;"><b>N/A</b></p>
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;"><b>N/A</b></p>	
MISCELLANEOUS INFORMATION:	

**TOTAL ESTIMATED CONTRACT VALUE: \$586,516.00**

**STATE OF MICHIGAN**  
**DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET**  
**PURCHASING OPERATIONS**  
**P.O. BOX 30026, LANSING, MI 48909**  
 OR  
**530 W. ALLEGAN, LANSING, MI 48933**

**CONTRACT NO. 071B1300180**  
 (Replaces 071B8200127)

**between**  
**THE STATE OF MICHIGAN**  
**and**

NAME & ADDRESS OF CONTRACTOR <b>Avocent Huntsville Corp.</b> <b>4991 Corporate Drive</b> <b>Huntsville, AL 35805-6201</b>  <b>Email: avocentsales@emerson.com</b>	TELEPHONE <b>(256) 430-4000</b> CONTRACTOR NUMBER/MAIL CODE  BUYER/CA (517) 373-1455 <b>Laura Gyorkos</b>
Contract Compliance Inspector: Michael Breen <b>Data Center Management Software – DIT Statewide</b>	
CONTRACT PERIOD: From: <b>December 28, 2010</b> To: <b>February 28, 2011</b>	
TERMS <p style="text-align: center;"><b>N/A</b></p>	SHIPMENT <p style="text-align: center;"><b>N/A</b></p>
F.O.B. <p style="text-align: center;"><b>N/A</b></p>	SHIPPED FROM <p style="text-align: center;"><b>N/A</b></p>
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;"><b>N/A</b></p>	
MISCELLANEOUS INFORMATION: <b>The terms and conditions of this Contract are those of 071B8200127. In the event of any conflicts between the specifications, and terms and conditions, indicated by the State and those indicated by the vendor, those of the State take precedence.</b>  <b>Estimated Contract Value: \$586,516.00</b>	

<b>FOR THE CONTRACTOR:</b>  Avocent Huntsville Corp. <hr/> Firm Name  <hr/> Authorized Agent Signature  <hr/> Authorized Agent (Print or Type)  <hr/> Date	<b>FOR THE STATE:</b>  <hr/> Signature Laura Gyorkos, Buyer <hr/> Name/Title IT Division <hr/> Division  <hr/> Date
---	---



July 27, 2010

Dear Customer,

As you may or may not know, Aperture Technologies, Inc. and Avocent Huntsville Corp. are both wholly-owned subsidiaries of Emerson Electric Co. and part of the Emerson Network Power division.

Effective August 1, 2010, Aperture Technologies, Inc. is merging into Avocent Huntsville Corp. Your orders currently fulfilled by Aperture will now be fulfilled through Avocent.

Effective August 1, 2010 all purchase orders should be remitted to Avocent Huntsville Corp.

- Please amend your internal purchasing and accounting system to reflect the name change.
- The bank details to which you will remit payment will also change and is outlined on the second page of this letter. These details will also be contained on the header of the invoice document you receive. It is imperative that payment is directed to the relevant bank account as reflected on the invoice documents.

Your Account Manager may already have been in contact with you regarding these changes, and if not, will be in the near future to answer any questions you may have.

We would appreciate it if you could forward this communication to relevant personnel within your Purchasing Organisation for initiating orders as well as your Finance Team involved in payment processing.

This, in no way, changes your day to day sales relationship with your Account Manager. We appreciate your business and look forward to growing our relationship in the future.

Regards,

---

**Thomas Waun**  
President, Global Sales and Marketing  
Avocent Products and Services



## Appendix A – Purchase Order and Payment Remittance Details:

Effective August 1<sup>st</sup>, all orders should be remitted to:

Avocent Huntsville Corp.  
4991 Corporate Drive  
Huntsville,  
AL 35805-6201

Federal ID# 63-0801728  
DUNS# 10-554-0272  
Phone: 256-430-4000  
Fax: 256-430-4030

### Please Fax or email your order details to:

Fax: (256) 430-4030

Email: [avocentsales@emerson.com](mailto:avocentsales@emerson.com)

If you have any questions regarding the placing of your order, please contact Sharon Speck, Order Entry Supervisor, at (256) 217-1225.

### Payment Remittance:

The bank details to which you will remit payment will also change and will be contained on the header of the invoice document you receive. Please ensure that you update your **Vendor and Tax Records** to reflect this new name, address, and banking information.

<p><b>Check:</b> Avocent Huntsville PO Box 533345 Charlotte North Carolina 28290-3345</p>	<p><b>Courier:</b> JPMorgan 806 Tyvola Road Suite 108 Charlotte North Carolina 28217 Attn: Avocent Huntsville LB # 533345</p>
<p><b>Wire Information:</b> JPMorgan Chase Bank N.A. 270 Park Avenue New York, NY 10017  Account Number: 844022749 Routing Number: 021000021 Swift Code: CHASUS33</p>	<p><b>ACH Information:</b> JPMorgan Chase Bank N.A.  Account Number: 844022749 Routing Number: 071000013</p>



July 27, 2010

Dear Customer,

As you may or may not know, Aperture Technologies, Inc. and Avocent Huntsville Corp. are both wholly-owned subsidiaries of Emerson Electric Co. and part of the Emerson Network Power division.

Effective August 1, 2010, Aperture Technologies, Inc. is merging into Avocent Huntsville Corp. Your orders currently fulfilled by Aperture will now be fulfilled through Avocent.

Effective August 1, 2010 all purchase orders should be remitted to Avocent Huntsville Corp.

- Please amend your internal purchasing and accounting system to reflect the name change.
- The bank details to which you will remit payment will also change and is outlined on the second page of this letter. These details will also be contained on the header of the invoice document you receive. It is imperative that payment is directed to the relevant bank account as reflected on the invoice documents.

Your Account Manager may already have been in contact with you regarding these changes, and if not, will be in the near future to answer any questions you may have.

We would appreciate it if you could forward this communication to relevant personnel within your Purchasing Organisation for initiating orders as well as your Finance Team involved in payment processing.

This, in no way, changes your day to day sales relationship with your Account Manager. We appreciate your business and look forward to growing our relationship in the future.

Regards,

---

**Thomas Waun**  
President, Global Sales and Marketing  
Avocent Products and Services



## Appendix A – Purchase Order and Payment Remittance Details:

Effective August 1<sup>st</sup>, all orders should be remitted to:

Avocent Huntsville Corp.  
4991 Corporate Drive  
Huntsville,  
AL 35805-6201

Federal ID# 63-0801728  
DUNS# 10-554-0272  
Phone: 256-430-4000  
Fax: 256-430-4030

### Please Fax or email your order details to:

Fax: (256) 430-4030

Email: [avocentsales@emerson.com](mailto:avocentsales@emerson.com)

If you have any questions regarding the placing of your order, please contact Sharon Speck, Order Entry Supervisor, at (256) 217-1225.

### Payment Remittance:

The bank details to which you will remit payment will also change and will be contained on the header of the invoice document you receive. Please ensure that you update your Vendor and Tax Records to reflect this new name, address, and banking information.

<b>Check:</b> Avocent Huntsville PO Box 533345 Charlotte North Carolina 28290-3345	<b>Courier:</b> JPMorgan 806 Tyvola Road Suite 108 Charlotte North Carolina 28217 Attn: Avocent Huntsville LB # 533345
<b>Wire Information:</b> JPMorgan Chase Bank N.A. 270 Park Avenue New York, NY 10017  Account Number: 844022749 Routing Number: 021000021 Swift Code: CHASUS33	<b>ACH Information:</b> JPMorgan Chase Bank N.A.  Account Number: 844022749 Routing Number: 071000013

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

January 3, 2011

**CHANGE NOTICE NO. 2**  
**TO**  
**CONTRACT NO. 071B8200127**  
**between**  
**THE STATE OF MICHIGAN**  
**and**

NAME & ADDRESS OF CONTRACTOR <b>Aperture Technologies Inc.</b> <b>9 Riverbend Drive South</b> <b>PO Box 4906</b> <b>Stamford, CT 06907</b>  <b>Email: Diane_Mays@aperture.com</b>		TELEPHONE <b>(203) 357-9462</b> Diane Mays, Director of Legal CONTRACTOR NUMBER/MAIL CODE
Contract Compliance Inspector: Michael Breen <b>Data Center Management Software – DIT - Statewide</b>		BUYER/CA (517) 335-4804 <b>Douglas S. Collier</b>
CONTRACT PERIOD: From: <b>March 20, 2008</b> To: <b>December 28, 2010</b>		
TERMS <b>N/A</b>	SHIPMENT <b>N/A</b>	
F.O.B.  <b>N/A</b>	SHIPPED FROM  <b>N/A</b>	
MINIMUM DELIVERY REQUIREMENTS <b>N/A</b>		
MISCELLANEOUS INFORMATION:		

**NATURE OF CHANGE(S):**

Effective December 28, 2010, this contract is hereby **CANCELED** in its entirety and is replaced by 071B1300180 due to vendor name, federal id number and mail code changes.

**AUTHORITY/REASON(S):**

Per vendor email dated July 27, 2010.

**TOTAL REVISED ESTIMATED CONTRACT VALUE: \$0.00**

STATE OF MICHIGAN  
 DEPARTMENT OF MANAGEMENT AND BUDGET  
 PURCHASING OPERATIONS  
 P.O. BOX 30026, LANSING, MI 48909  
 OR  
 530 W. ALLEGAN, LANSING, MI 48933

October 30, 2009

**CHANGE NOTICE NO. 1**  
**TO**  
**CONTRACT NO. 071B8200127**  
**between**  
**THE STATE OF MICHIGAN**  
**and**

NAME & ADDRESS OF CONTRACTOR <b>Aperture Technologies Inc.</b> <b>9 Riverbend Drive South</b> <b>PO Box 4906</b> <b>Stamford, CT 06907</b>  <b>Email: Diane_Mays@aperture.com</b>		TELEPHONE <b>(203) 357-9462</b> Diane Mays, Director of Legal CONTRACTOR NUMBER/MAIL CODE
Contract Compliance Inspector: Michael Breen <b>Data Center Management Software – DIT - Statewide</b>		BUYER/CA (517) 335-4804 <b>Douglas S. Collier</b>
CONTRACT PERIOD: From: <b>March 20, 2008</b>		To: <b>February 28, 2011</b>
TERMS <b>N/A</b>	SHIPMENT <b>N/A</b>	
F.O.B.  <b>N/A</b>	SHIPPED FROM  <b>N/A</b>	
MINIMUM DELIVERY REQUIREMENTS <b>N/A</b>		
MISCELLANEOUS INFORMATION:		

**NATURE OF CHANGE(S):**

**Per Executive Directive 2009-3, the vendor has offered the following price concessions to the State of Michigan:**

**See attached Maintenance Modification Schedule, which will remove the “workflow” portion of the software and which will remove maintenance for this “workflow” product for the remainder of this contract, equal to \$11,907.00 in savings.**

**AUTHORITY/REASON(S):**

**Per DMB, agency and vendor letter dated 10/15/2009.**

**DECREASE: \$11,907.00**

**TOTAL REVISED ESTIMATED CONTRACT VALUE: \$586,516.00**



APERTURE CORPORATE HEADQUARTERS

9 Riverbend Drive South  
P.O. Box 4906  
Stamford, CT 06907

tel 203.357.0800

800.346.6828

fax 203.357.0809

www.aperture.com

October 15, 2009

State of Michigan  
Michael Breen  
Department of Information Technology  
Data Center Operations  
Constitution Hall, 2<sup>nd</sup> floor  
515 Westshire  
Lansing, MI 48909

Re: Maintenance Modification Schedule

Dear Michael,

In March of 2008, the State of Michigan - DIT/DCO procured 29,898 square feet of Aperture VISTA<sup>®</sup>e ('Software') which is inclusive of the 'workflow' portion of the Software.

It has come to my attention that you are not using the "workflow" portion of the Software and are requesting that your Maintenance rates be adjusted to reflect such change. Please note that we cannot refund any portion of the license fee, but we are willing to modify your support and maintenance fees.

Your annual payment is \$39,690.00 and you are current through April of 2010. Discontinuing support of the "workflow" will adjust your annual rate to \$27,783.00 (a savings of \$11,907.00). We can begin the adjustment effective April 15, 2010, however if you wish to come back on maintenance for "workflow" you will be liable for the back maintenance on the 'workflow' portion as well as a 25% re-instatement fee on the \$11,907.00 (essentially \$2,976.75).

Please confirm your understanding by executing below and returning a copy to myself at the below address (or via efax #203.647.5274)

If you have any questions, please do not hesitate to contact me at 203.357.9462.

Regards,

---

Diane Mays  
VP, Contracts

Aperture Technologies, Inc.  
An Emerson Network Power Brand  
9 Riverbend Drive South  
Stamford, CT 06907

(203) 357-9407 (office)

Cc: Sara Crudele; Carla Calucci

**STATE OF MICHIGAN**  
**DEPARTMENT OF MANAGEMENT AND BUDGET**  
**PURCHASING OPERATIONS**  
 P.O. BOX 30026, LANSING, MI 48909  
 OR  
 530 W. ALLEGAN, LANSING, MI 48933

**CONTRACT NO. 071B8200127**  
**between**  
**THE STATE OF MICHIGAN**  
**and**

NAME & ADDRESS OF CONTRACTOR <b>Aperture Technologies Inc.</b> <b>9 Riverbend Drive South</b> <b>PO Box 4906</b> <b>Stamford, CT 06907</b>  Email: <a href="mailto:Diane_Mays@aperture.com">Diane_Mays@aperture.com</a>	TELEPHONE <b>(203) 357-9462</b> Diane Mays, Director of Legal CONTRACTOR NUMBER/MAIL CODE  BUYER/CA (517) 335-4804 <b>Douglas S. Collier</b>
Contract Compliance Inspector: Michael Breen <b>Data Center Management Software – DIT - Statewide</b>	
CONTRACT PERIOD: From: <b>March 20, 2008</b> To: <b>February 28, 2011</b>	
TERMS <b>N/A</b>	SHIPMENT <b>N/A</b>
F.O.B.  <b>N/A</b>	SHIPPED FROM  <b>N/A</b>
MINIMUM DELIVERY REQUIREMENTS <b>N/A</b>	
MISCELLANEOUS INFORMATION: <b>The terms and conditions of this Contract are those of REQ #084R8200118, this Contract Agreement and the vendor's quote dated March 14, 2008. In the event of any conflicts between the specifications, and terms and conditions, indicated by the State and those indicated by the vendor, those of the State take precedence.</b>  <b>Estimated Contract Value: \$610,330.00</b>	

**THIS IS NOT AN ORDER:** This Contract Agreement is awarded on the basis of our inquiry bearing the REQ No. 084R8200118. Orders for delivery will be issued directly by the Department of Information Technology through the issuance of a Purchase Order Form.

All terms and conditions of the invitation to bid are made a part hereof.

<p><b>FOR THE CONTRACTOR:</b></p> <p>_____</p> <p style="text-align: center;">Aperture Technologies Inc. Firm Name</p> <p>_____</p> <p style="text-align: center;">Authorized Agent Signature Eileen Spellman</p> <p>_____</p> <p style="text-align: center;">Authorized Agent (Print or Type)</p> <p>_____</p> <p style="text-align: center;">Date</p>	<p><b>FOR THE STATE:</b></p> <p>_____</p> <p style="text-align: center;">Signature Gregory Faremouth, Acting Director</p> <p>_____</p> <p style="text-align: center;">Name/Title <b>Purchasing Operation Division</b></p> <p>_____</p> <p style="text-align: center;">Division</p> <p>_____</p> <p style="text-align: center;">Date</p>
---	---

**Table of Contents**

Article 1 – Statement of Work (SOW)	18
1.0 Project Identification.....	18
1.001 PROJECT REQUEST .....	18
1.002 BACKGROUND .....	18
1.1 Scope of Work and Deliverables.....	18
1.101 IN SCOPE .....	18
1.102 OUT OF SCOPE .....	18
1.103 ENVIRONMENT.....	18
1.104 WORK AND DELIVERABLE .....	19
<b>Article 1, Attachment A (Project Plan).....</b>	<b>45</b>
Roles and Responsibilities .....	45
1.2 Roles and Responsibilities.....	46
1.201 CONTRACTOR STAFF, ROLES, AND RESPONSIBILITIES.....	46
1.202 STATE STAFF, ROLES, AND RESPONSIBILITIES.....	47
1.203 OTHER ROLES AND RESPONSIBILITIES .....	48
1.3 Project Plan.....	48
1.301 PROJECT PLAN MANAGEMENT .....	48
1.302 REPORTS.....	48
1.4 Project Management.....	48
1.401 ISSUE MANAGEMENT.....	48
1.402 RISK MANAGEMENT .....	49
1.403 CHANGE MANAGEMENT .....	49
1.5 Acceptance .....	49
1.501 CRITERIA .....	49
1.502 FINAL ACCEPTANCE .....	50
1.6 Compensation and Payment.....	50
1.601 COMPENSATION AND PAYMENT .....	50
Rates & Hours .....	53
1.7 Additional Terms and Conditions Specific to this SOW .....	53
2.011 Definitions .....	54
2.012 Attachments and Exhibits.....	54
2.013 Statements of Work.....	54
2.014 Issuing Office .....	55
2.015 Contract Compliance Inspector .....	55
2.020 Contract Objectives/Scope/Background .....	56
2.021 Background.....	56
2.022 Purpose.....	56
2.023 Objectives and Scope .....	56
2.024 Interpretation .....	56
2.025 Form, Function and Utility .....	56
2.030 Legal Effect and Term.....	56
2.031 Legal Effect .....	56
2.032 Contract Term .....	57
2.040 Contractor Personnel .....	57
2.041 Contractor Personnel .....	57
2.042 Contractor Identification .....	59
2.043 Cooperation with Third Parties.....	59
2.044 Subcontracting by Contractor.....	59
2.045 Contractor Responsibility for Personnel.....	60



2.050 State Standards ..... 60

    2.051 Existing Technology Standards..... 60

    2.052 PM Methodology Standards..... 60

    2.053 Adherence to Portal Technology Tools ..... 60

    2.054 Acceptable Use Policy ..... 61

2.060 Deliverables ..... 61

    2.061 Ordering ..... 61

    2.062 Software ..... 61

    2.063 Hardware (Reserved)..... 61

    2.064 Equipment to be New and Prohibited Products (Reserved)..... 61

2.070 Performance..... 61

    2.071 Performance, In General..... 61

    2.072 Time of Performance..... 62

    2.073 Liquidated Damages (Reserved) ..... 62

    2.074 Bankruptcy ..... 62

    2.075 Time is of the Essence..... 62

2.080 Delivery and Acceptance of Deliverables..... 62

    2.081 Delivery Responsibilities ..... 62

    2.082 Delivery of Deliverables ..... 63

    2.083 Testing ..... 63

    2.084 Approval of Deliverables, In General ..... 63

    2.085 Process For Approval of Written Deliverables..... 64

    2.086 Process for Approval of Services ..... 64

    2.087 Process for Approval of Physical Deliverables..... 65

    2.088 Final Acceptance..... 65

2.090 Financial..... 65

    2.091 Pricing ..... 65

    2.092 Invoicing and Payment Procedures and Terms ..... 65

    2.093 State Funding Obligation..... 66

    2.094 Holdback (Reserved) ..... 66

    2.095 Electronic Payment Availability ..... 67

2.100 Contract Management..... 67

    2.101 Contract Management Responsibility ..... 67

    2.102 Problem and Contract Management Procedures..... 67

    2.104 System Changes..... 68

    2.105 Reserved..... 68

    2.106 Change Requests ..... 68

2.110 Records and Inspections..... 69

    2.111 Records and Inspections..... 69

    2.112 Errors ..... 69

2.120 State Responsibilities..... 70

    2.121 State Performance Obligations ..... 70

2.130 Security ..... 70

    2.131 Background Checks ..... 70

2.140 Reserved..... 71

2.150 Confidentiality..... 71

    2.151 Freedom of Information ..... 71

    2.152 Confidentiality..... 71

    2.153 Protection of Confidential Information ..... 71

    2.154 Exclusions ..... 71

    2.155 No Implied Rights..... 72

    2.156 Remedies ..... 72

    2.157 Security Breach Notification ..... 72



2.158 Survival ..... 72

2.159 Destruction of Confidential Information ..... 72

2.160 Proprietary Rights ..... 72

2.163 Rights in Data ..... 73

2.164 Ownership of Materials ..... 74

2.165 Standard Software ..... 74

2.166 Pre-existing Materials for Custom Software Deliverables ..... 74

2.167 General Skills ..... 74

2.170 Warranties And Representations ..... 74

2.171 Warranties and Representations ..... 74

2.175a DISCLAIMER ..... 77

2.176 Consequences for Breach ..... 77

2.180 Insurance ..... 77

2.181 Liability Insurance ..... 77

2.190 Indemnification ..... 80

2.191 Indemnification ..... 80

2.192 Continuation of Indemnification Obligations ..... 81

2.193 Indemnification Procedures ..... 81

2.200 Limits of Liability and Excusable Failure ..... 82

2.201 Limits of Liability ..... 82

2.202 Excusable Failure ..... 82

2.203 Disaster Recovery ..... 83

2.210 Termination/Cancellation by the State ..... 83

2.211 Termination for Cause ..... 83

2.212 Termination for Convenience ..... 83

2.213 Non-Appropriation ..... 84

2.214 Criminal Conviction ..... 84

2.216 Rights and Obligations Upon Termination ..... 84

2.217 Reservation of Rights ..... 85

2.218 Contractor Transition Responsibilities ..... 85

2.219 State Transition Responsibilities ..... 86

2.220 Termination by Contractor ..... 86

2.221 Termination by Contractor ..... 86

2.230 Stop Work ..... 86

2.231 Stop Work Orders ..... 86

2.232 Cancellation or Expiration of Stop Work Order ..... 86

2.233 Allowance of Contractor Costs ..... 87

2.240 Reserved ..... 87

2.250 Dispute Resolution ..... 87

2.251 In General ..... 87

2.252 Informal Dispute Resolution ..... 87

2.253 Injunctive Relief ..... 88

2.254 Continued Performance ..... 88

2.260 Federal and State Contract Requirements ..... 88

2.261 Nondiscrimination ..... 88

2.262 Unfair Labor Practices ..... 88

2.263 Workplace Safety and Discriminatory Harassment ..... 88

2.270 Litigation ..... 88

2.271 Disclosure of Litigation ..... 88

2.272 Governing Law ..... 89

2.273 Compliance with Laws ..... 89

2.274 Jurisdiction ..... 89

2.280 Environmental Provision ..... 90



2.281	Environmental Provision .....	90
2.290	General .....	91
2.291	Amendments .....	91
2.292	Assignment .....	91
2.293	Entire Contract; Order of Precedence .....	91
2.294	Headings .....	91
2.295	Relationship of the Parties (Independent Contractor Relationship) .....	91
2.296	Notices .....	91
2.297	Media Releases and Contract Distribution .....	92
2.298	Reformation and Severability .....	93
2.299	Consents and Approvals .....	93
2.300	No Waiver of Default .....	93
2.301	Survival .....	93
2.302	Covenant of Good Faith .....	93
2.303	Permits .....	93
2.304	Website Incorporation .....	93
2.305	Taxes .....	93
2.306	Prevailing Wage .....	94
2.307	Call Center Disclosure .....	94
2.308	Future Bidding Preclusion (Reserved) .....	94
2.310	Reserved .....	94
2.320	Extended Purchasing .....	94
2.321	MiDEAL (Reserved) .....	94
2.330	Federal Grant Requirements .....	94
2.331	Federal Grant Requirements (Reserved) .....	94
	Exhibit A .....	95
	Exhibit B .....	96
	Schedule 1 .....	1

**Article 1 – Statement of Work (SOW)**

1.0 Project Identification

**1.001 PROJECT REQUEST**

Department of Information Technology (DIT) Data Center Operations (DCO) has used the Aperture product for years as a provisioning tool, to do design, plan, and manage the raised floor. This request is for license upgrade and three years of annual maintenance.

**1.002 BACKGROUND**

Data Center Operations (DCO) has used the Aperture product for years as a provisioning tool, to do design, plan, and manage the raised floor. The current release 9 is due to go unsupported as of the end of February of 2008. This request is to upgrade our license to the most current release (Aperture Vista-e). Vista-e is an Information Technology Infrastructure Library -aligned framework for change management and infrastructure provisioning across the hosting centers. This request is for license upgrade and three years of annual maintenance.

1.1 Scope of Work and Deliverables

**1.101 IN SCOPE**

The VISTA solution to be implemented is VISTA E.

Aperture Services will perform work associated with implementation that includes software installation, training, data collection, data population, and deployment of the standard configuration\* (which meets the configuration for this project)

Within this Project, Aperture Services will configure the VISTA solution in accordance with the Provisions outlined in the attached Schedules.

The implementation includes documentation of space, device, power, and application tracking.

Data Centers to be included as part of this project: Lake Superior, Lake Ontario, and Traverse Bay.

The VISTA solution to be implemented is VISTA E.

Within this Project, Aperture Services will configure the VISTA solution in accordance with the provision outlined in the attached Schedules.

The implementation includes documentation of space, device, power, and application tracking.

Data Centers to be included as part of this project:

Location	# of Floors	Sq. Ft.
Lake Superior	1	14,933
Lake Ontario	1	8,030
Traverse Bay	1	6,935

**1.102 OUT OF SCOPE**

Server hardware to host the application is beyond the scope of this contract. Storage Area Network is beyond the scope of this contract. SQL Server software purchase is outside the scope of this contract.

**1.103 ENVIRONMENT**

**Production Servers:**

The Aperture product will need to be configured for the following hardware and software



Machine 1 - for Aperture Server, Web Application Server, Visual Generator and Web Services Server, running Microsoft Windows 2003 Server Standard.

This is a Sun x4150 running Microsoft as follows:

- Dual processor, 2.0 GHz
- 4 GB memory
- 146 GB disk space internal plus HBA to SAN
- Network TCP/IP at 100 MBits/sec
- Video card supporting more than 256 colors

Machine 2 - for Microsoft SQL Server DBMS, running Microsoft Windows 2003 Server Standard.

This is a Sun x4150 running Microsoft as follows:

- Dual processor, 2.0 GHz
- 4 GB memory
- 146 GB disk space internal plus HBA to SAN
- Network TCP/IP at 100 MBits/sec

#### **Lab Server:**

Machine 3 - for all server components, running Microsoft Windows 2003 Server Standard.

This is a Sun x4150 running Microsoft as follows:

- Dual processor, 2 GHz
- 4 GB memory
- 146 GB disk space internal plus HBA to SAN
- Network TCP/IP at 100 MBits/sec
- Video card supporting more than 256 colors

Consultants will work at 515 Westshire in Lansing, MI. Site visits to the three hosting centers will be required. Those locations are:

Lake Superior Hosting Center, 7064 Crouner Drive, Dimondale, MI

Lake Ontario Hosting Center, 7285 Parsons Drive, Dimondale, MI

Traverse Bay Hosting Center, 430 West Allegan, Lansing, MI

#### **1.104 WORK AND DELIVERABLE**

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

This Statement of Work and Schedules shall remain in effect until completion of the Services to be rendered hereunder, unless terminated earlier by written mutual agreement of the parties or pursuant to the terms of the Agreement.

Aperture will provide project services to the STATE OF MICHIGAN to implement the Aperture VISTA Solution. Aperture Services will perform work associated with implementation that includes software installation, training, data collection, data population, and deployment of the standard configuration\* (which meets the configuration for this project) of the application including workflow. (Definition of Standard configuration) This standard configuration is the Aperture product configured for normal use by the customer including a set of product modifications that typically meet customer requirements in a manner which is upgradable in the future.

Aperture will use a phased approach to assist STATE OF MICHIGAN in the implementation of the Aperture VISTA solution.

Aperture Services will implement Aperture VISTA™ in seven phases; the phases are not serially delivered and may be delivered at different times to accommodate the overall project objectives.

All phases will be performed by Aperture Services. STATE of MICHIGAN will play a lesser role in Phase 2 and Phase 4, as they will be required to provide a minimum amount of information in support of the prototype and data collection effort.



- Schedule 1 is comprised of Phases 1 through 4 and Phase 7
- Schedule 2 reflects is comprised of Phase 5 - Data Collection
- Schedule 3 is comprised of Phase 6 - Repository Population
- Phase 1 – Project Initiation (Schedule 1)
- Phase 2 – Prototype Population (Schedule 1)
- Phase 3 – Training (Schedule 1)
- Phase 4 – VISTA Implementation (Schedule 1)
- Phase 5 – Data Inventory Services (Schedule 2)
- Phase 6 – Repository Population (Schedule 3)
- Phase 7 – Production Implementation (Schedule 1)

**Tasks:**

Technical support is required to assist with the following tasks:

**Services Descriptions & Estimated Days**

<b>IMPLEMENTATION SERVICES</b>		
<b>Task Description</b>	<b>Resource Type</b>	<b>Days</b>
<p><b>Phase 1 - Project Initiation</b></p> <p>Pre-Kick Off Planning - Aperture will work with STATE OF MICHIGAN to establish project protocols, finalize project schedule, review roles and responsibilities, and review key provisions.</p> <p>Pre-Kick Off Tech Review – Aperture will review STATE OF MICHIGAN requirements, configuration changes, and host environment specifics.</p> <p>Kick Off Meeting – Aperture will conduct a one day meeting with STATE OF MICHIGAN to launch the implementation. Both the Aperture Project Manager and the Aperture Consulting Engineer will attend the meeting.</p> <p>Install Software – Aperture Services staff will install all Aperture VISTA<sup>®</sup> required software up to two times (once each on a production and development set of servers). Installation of Aperture VISTA<sup>®</sup> includes the following:</p> <ul style="list-style-type: none"> <li>• Aperture Repository Server</li> <li>• Aperture Web Application Server</li> <li>• Aperture Web Services Server</li> <li>• Aperture VISTA<sup>®</sup> Portal Application</li> <li>• Aperture VISTA<sup>®</sup> Repository Administrator (on up to 3 workstations)</li> <li>• Aperture Visual Generator</li> </ul> <p>Data Collection Workshop - Aperture Services will provide a data collection workshop. The sessions will be conducted over the course of 1 day. These sessions will cover:</p> <ul style="list-style-type: none"> <li>• Scope of data to be collected. This will include types of devices; racks, floor mounted devices, rack mounted devices, power and applications.</li> <li>• How the information needs to be presented to Aperture in order to populate the Aperture VISTA<sup>®</sup> repository using the Data Collection Toolset.</li> <li>• Roles and responsibilities of data collection.</li> <li>• Review of data to be provided by client.</li> </ul> <p>Workflow Workshop - Aperture Services will provide a workflow workshop. The sessions will be conducted over the course of 1 day. These sessions will cover:</p> <ul style="list-style-type: none"> <li>• High level overview of each of the workflow applications.</li> <li>• Demonstration of each of the workflow applications</li> <li>• Review of information to be provided by client as part of the standard</li> </ul>	<p>PM</p> <p>ACE</p> <p>PM/ACE</p> <p>ACE</p> <p>ACE</p> <p>ACE</p>	<p>1</p> <p>1</p> <p>2</p> <p>2</p> <p>1</p> <p>1</p>



workflow configuration.

**Phase 2 - Prototype Population**

Prototype Population - Aperture will create the prototype consisting of no more than 3 cabinets, associated rack mounted devices, and a PDU with power panel.

**Phase 3 – Training**

Training Prep – Aperture will verify readiness, confirm technical requirements for delivery, and confirm scheduling and attendance.

**VISTA Portal Fundamentals** – Aperture will deliver a workshop focusing on the basic use of the VISTA portal.

**VISTA Portal Management** - Aperture will deliver a [workshop focusing on the management of the VISTA portal platform.](#)

**VISTA Work Process Fundamentals** - Aperture will deliver a [workshop focusing on the use of and initiation of VISTA application work processes.](#)

**VISTA Device Management** - Aperture will deliver a [workshop focusing on the management of data center devices using VISTA Application Work process](#)

**VISTA Power Management** - Aperture will deliver a [workshop focusing on the management of data center power using VISTA Application Work process.](#)

**VISTA Application Management** - Aperture will deliver a [workshop focusing on standard workflow configurations in the VISTA Application.](#)

**VISTA System Administration** - Aperture will deliver a [workshop focusing on standard administrative activities.](#)

**Phase 4 - VISTA Implementation**

Standard Portal Configuration - Aperture will implement the *standard configuration* of the Aperture VISTA® Portal for STATE OF MICHIGAN, along with the standard implementation of the VISTA-Remedy Change Management Interface. This includes the following:

- Equipment Installation
- Equipment Move
- Equipment Decommission
- Change Name
- Change IP Address
- Add Connections & Cards
- Remove Connections & Cards
- VISTA-Remedy Change Management Interface

With respect to the VISTA® Portal, Aperture will provide a worksheet in order for STATE OF MICHIGAN to communicate the permissions, user org role assignments and pull down values.

Remedy Implementation – Aperture will implement its standard Remedy Change Management Integration.

**Phase 5 - Data Inventory Services**

Data Inventory Services - In order to populate STATE OF MICHIGAN's Aperture VISTA® repository, Aperture or a Certified Aperture Data Collection Partner will inventory target data centers.

(4,763 Devices @ \$14.50 per Device)

**Phase 6 - Repository Population**

Repository Population - Aperture will populate Aperture VISTA® repository with data collected by Aperture and reviewed by STATE OF MICHIGAN, as well as power infrastructure data provided by STATE OF MICHIGAN in the Data Collection Toolset.

**Phase 7 - Production Implementation**

Implementation Support - Aperture will support the STATE OF MICHIGAN as they begin using VISTA®.

ACE	5
TRNG	0.5
TRNG	0.5
TRNG	2
TRNG	1
TRNG	1
TRNG	1
TRNG	2
TRNG	2

ACE	2
ACE	10

ACE	12
ACE	5



<p>Project Close-Out - Aperture will facilitate a formal project hand-off conference call with Aperture Support and STATE OF MICHIGAN staff. The purpose of this session is for the end users to understand the Aperture Technologies' processes for:</p>		
<ul style="list-style-type: none"> <li>• Customer &amp; Technical support</li> <li>• Product upgrades and service packs</li> <li>• Symbol ordering and downloading</li> </ul>	ACE	1
<p><b>Project Management</b>  Project Management- Schedule 1 - Aperture will provide services as needed pertaining to Project Planning, Reporting, Issue Management, Risk Management, Change Management, Acceptance and Payment, and Scheduling.</p>	PM	7.5
<p>Project Management- Schedule 3 - Aperture will provide services as needed pertaining to Project Planning, Reporting, Issue Management, Risk Management, Change Management, Acceptance and Payment, and Scheduling.</p>	PM	2.5
<b>Total</b>		<b>63</b>



## Schedule 1 to Statement of Work

### STATE OF MICHIGAN Aperture VISTA® Implementation

**This Schedule 1 covers the phases 1, 2, 3, 4, and 7. Phase 5 is covered in Schedule 2 and Phase 6 is described in Schedule 3.**

#### Phase 1 – Project Initiation

Project initiation consists of the project kick-off meeting, software installation, and data collection workshop. Each is explained in the following sections.

**Project Kick-off:** Aperture will work with STATE OF MICHIGAN to establish project protocols, finalize project schedule, review roles and responsibilities, and review key provisions. The Project Kick-off meeting will be scheduled at a mutually convenient time to be determined by the parties following the execution of the contract. Regular project meetings will be held to review current project progress and to discuss issues that arise from either side. Aperture will provide a standard status reporting format. Aperture will host the project meetings which may be held via conference calls and/or WebEx. Aperture will provide a conference bridge for these meetings so that team members that reside in different geographic locations may participate in these calls.

#### **Items provided by Aperture**

**Software Installation:** Aperture Services staff will install all Aperture VISTA® required software up to two times (once each on a production and development set of servers). Installation of Aperture VISTA® includes the following:

- Aperture Repository Server
- Aperture Web Application Server
- Aperture Web Services Server
- Aperture VISTA® Portal Application
- Aperture VISTA® Repository Administrator (on up to 3 workstations)
- Aperture Visual Generator

Installation of non-Aperture software is the responsibility of STATE OF MICHIGAN. These components are described in the Aperture Hardware/Software Guide.

**Data Collection Workshop:** Aperture Services will provide a data collection workshop. The sessions will be conducted over the course of 1 day. These sessions will cover:

- Scope of data to be collected. This will include types of devices; racks, floor mounted devices, rack mounted devices, power and applications.
- How the information needs to be presented to Aperture in order to populate the Aperture VISTA® repository using the Data Collection Toolset.
- Roles and responsibilities of data collection.
- Review of data to be provided by client.

**Workflow Workshop:** Aperture Services will provide a workflow workshop. The sessions will be conducted over the course of 1 day. These sessions will cover:

- High level overview of each of the workflow applications.
- Demonstration of each of the workflow applications
- Review of information to be provided by client as part of the standard workflow configuration.



**Deliverables: See Section 1.501**

**Acceptance: For acceptance and associated cost see Section(s) 1.501 and 1.601**

### Phase 2 – Prototype Population

#### **Items provided by Aperture**

Following the Data Collection Workshop, a small number of racks and floor mounted devices will be selected in order to:

- Gain experience with the data collection process prior to collecting all data.
- Demonstrate product functionality using STATE OF MICHIGAN's data.

Aperture will create the prototype consisting of no more than 3 cabinets, associated rack mounted devices, and a PDU with power panel. The final scope of the prototype will be finalized during the Data Collection Workshop.

This prototype will be installed in the STATE OF MICHIGAN test/development environment at the conclusion of the training phase.

**Deliverables: See Section 1.501**

**Acceptance: For acceptance and associated cost see Section(s) 1.501 and 1.601**

### Phase 3 – Training

Aperture will provide training to STATE OF MICHIGAN personnel to administer and maintain the Aperture VISTA<sup>®</sup> solution. Training sessions will be held either via WebEx and conference call or at a single STATE OF MICHIGAN site unless otherwise agreed to by STATE OF MICHIGAN and Aperture Project Managers.

#### **Items provided by Aperture**

The training consists of the following workshops.

1. VISTA Portal Fundamentals Workshop. This workshop focuses on the basic use of the VISTA portal.
2. VISTA Portal Management Workshop. This workshop focuses on the management of the VISTA portal platform.
3. VISTA Work Process Fundamentals Workshop. This workshop focuses on the use of and initiation of VISTA application work processes.
4. VISTA Device Management Workshop This workshop focuses on the management of data center devices using VISTA Application Work process
5. VISTA Power Management Workshop. This workshop focuses on the management of data center power using VISTA Application Work process.
6. VISTA Application Management Workshop. This workshop focuses on standard workflow configurations in the VISTA Application.
7. VISTA System Administration Workshop. This is the standard administrator level workshop.



## Training Provisions

### Items provided by Aperture

- Aperture training materials are one set of documents delivered electronically. These documents will be in a format and level of detail that meets appropriate Aperture VISTA® educational standards for the solution implemented. Printed versions of these documents are provided at STATE OF MICHIGAN's expense. Additional special materials requested by STATE OF MICHIGAN will be created at an additional cost.
- Training will be conducted on the Aperture VISTA® Sample project with sample data or State data if available and agreed upon.
- Aperture will finalize review of training requirements with STATE OF MICHIGAN prior to training sessions being held.
- Training at an Aperture facility may incur additional cost.

### Items provided by the State

- On site training will require that STATE OF MICHIGAN provide a training facility with one STATE OF MICHIGAN pre-configured PC per student and a projection display for use by the instructor.
- STATE OF MICHIGAN training facilities will be available at time indicated in the project plan. Plan will include at least one day for STATE OF MICHIGAN to set up training facility including arranging space in classroom style set up, arranging for projection equipment and white board.
- STATE OF MICHIGAN will provide an Aperture VISTA® environment, typically the development/test environment for training.

**Deliverables: See Section 1.501**

**Acceptance: For acceptance and associated cost see Section(s) 1.501 and 1.601**

### Phase 4 –VISTA® Implementation

Aperture will implement the *standard configuration* of the Aperture VISTA® Portal for STATE OF MICHIGAN, along with the standard implementation of the VISTA-Remedy Change Management Interface. This includes the following:

#### Items provided by the State

- Equipment Installation
- Equipment Move
- Equipment Decommission
- Change Name
- Change IP Address
- Add Connections & Cards
- Remove Connections & Cards

#### Items provided by Aperture

- VISTA-Remedy Change Management Interface

With respect to the VISTA® Portal, Aperture will provide a worksheet in order for STATE OF MICHIGAN to communicate the permissions, user org role assignments and pull down values.

## Provisions

- Certain application features that were purchased with Aperture VISTA® may not be configured as part of this Statement of Work. Aperture VISTA has numerous application features resulting in an infinite number of configurations that the State may wish to take advantage of in the future under a separate S.O.W. Not all will be applicable to and/or recommended for the STATE OF MICHIGAN'S requirements pursuant to this Contract.

**Deliverables:** See Section 1.501

**Acceptance:** For acceptance and associated cost see Section(s) 1.501 and 1.601

### Phase 5 – Data Collection

See Schedule #2

### Phase 6 –Repository Population

See Schedule #3

### Phase 7 – Production Implementation

**Implementation Support:** Aperture will support the STATE OF MICHIGAN as they begin using VISTA®. The Project Kick-off meeting will be scheduled at a mutually convenient time to be determined by the parties following the execution of the contract, Aperture will provide additional training, provide assistance, perform minor configurations, create reports, or perform other activities deemed necessary to ensure the successful implementation of VISTA® into the STATE OF MICHIGAN's production environment.

**Project Close-Out:** Aperture will facilitate a formal project hand-off conference call with Aperture Support and STATE OF MICHIGAN staff. The purpose of this session is for the end users to understand the Aperture Technologies' processes for:

#### Items provided by Aperture

- Customer & Technical support
- Product upgrades and service packs (State and Aperture)

#### Items provided by the State

- Symbol ordering and downloading

### General Project Provisions

1. Only the elements identified in this Schedule will be configured as part of this Statement of Work.
2. Aperture work will primarily be performed off-site, (or as noted in this project plan/ contract) at Aperture locations. Aperture may request an on-site presence to perform certain types of work such as training. Aperture and STATE OF MICHIGAN Project Managers will agree to the purpose of onsite visits, assure that appropriate security clearances are provided, and identify additional resources that will be needed to ensure that the on-site visits achieve the goal for the visit. Aperture may use Aperture sub-contractor(s).

Schedule 2 to Statement of Work

**STATE OF MICHIGAN Aperture VISTA® Data Collection**

Schedule 2 covers the work required for the physical inventory of equipment in each of the data centers. Aperture Technologies has developed a standard process based on a series of established best practices for inventorying a client’s physical data center infrastructure. Aperture’s extensive experience has proven that the accurate, efficient collection and validation of data are the key critical successes factors associated with successful implementation of the Aperture VISTA® solution.

Aperture Technologies will be responsible for the collection of data. Aperture’s experience is that the use of a certified data collection partner utilizing a tried and tested data collection and validation process, coupled to the integrated use of toolsets and training materials ensures the best chances for a successful implementation of the solution.

**Phase 5 – Data Inventory**

In order to populate STATE OF MICHIGAN’s Aperture VISTA® repository, Aperture or a Certified Aperture Data Collection Partner will inventory the following data centers:

<b>Data Center</b>	<b>Sq Ft.</b>
Lake Superior	14,933
Lake Ontario	8,030
Traverse Bay	6,935

**Data Collection Scope**

**Items provided by Aperture**

The physical data collection process will include the following:

1. Each device to be collected will be identified by **a unique name**, manufacturer, and model. The manufacturer and model must be specific enough that a web search for that combination will yield a single discernable device, not a series or category of equipment. In the absence of a specific model, the device’s dimensions will be captured.
2. The manufacturer and model captured must match or be paired up with a matching entry in Aperture’s Symbol Library as communicated in the Data Collection Workshop.
3. The device’s placement will be captured as indicated by a U position for a rack mounted device (RMD) or a grid location and offset for a rack, cabinet or floor mounted device (FMD).
4. New barcode labels will be affixed, per STATE OF MICHIGAN’s specification. Barcode labels will be provided at STATE OF MICHIGAN’s expense. Barcode range and barcode numbering convention will be specified by STATE OF MICHIGAN prior to the start of Phase 5.

The collection effort will cover the following devices and information. Detailed information about the collection requirements are communicated during the data collection workshop and are detailed in the list of fields collected on pg. 32 of this document.

1. Cabinets and racks
  - a) Each cabinet or rack must be uniquely named per data center.
  - b) May be open or closed but must have defined rack unit (RU) positions in order to indicate location of contained equipment. In the absence of RU positions, a RackRuler will be used to define the RU position of each contained device.



- c) Numbering may be top to bottom or bottom to top. First RU position may start at 1 or 0.
  - d) Each cabinet's location will be identified by its exact physical location related to a grid tile.
  - e) Aperture's best practice is to create a listing of all unique cabinet types in use in each data center. This includes the following fields of information:
    - i. Width
    - ii. Depth
    - iii. Outside height
    - iv. Usable RU
    - v. Inside rail width
    - vi. Manufacturer and Model (if available)
2. Rack Mounted Devices (RMD)
- a) Inclusive of servers, switches, routers, storage, etc.
  - b) Blade server chassis are considered RMDs and individual blades will be counted separately as cards.
  - c) Devices not to be included are: Patch panels, wire management devices, individual network cards, keyboards, monitors, and shelves. Also, not to be collected are monitors or other equipment placed on top of cabinets.
3. Floor Mounted devices (FMD)
- a) Inclusive of mainframe equipment, mid-range servers, mass storage devices, automated or robotic storage devices, and tape drives.
  - b) Devices not to be included are: Storage racks or shelves or other cabinets used to house tapes, desks, command consoles, isolated PCs placed directly on the floor, and other non-IT assets situated on the data center floor (i.e. fans).
  - c) Each FMD's location will be identified by its exact physical location related to a grid tile.
4. Cards
- a) Aperture Technologies will only collect switch card information. This will be undertaken only if the slots are clearly labelled and the card manufacturer and model is clearly identifiable.
  - b) Information may be uploaded from other sources to populate the repository database.
5. Power
- a) Power information will be collected as follows:
    - i. Power strips (with the provision that no devices or cables need to be moved in order to collect the information).
    - ii. Limited information may be collected for Power Distribution Units (PDU), Power Panels, Remote Power Panels (RPP), and Circuit Breakers. However, data for the power infrastructure must be provided in the Data Collection Toolset as specified in the Data Collection Workshop by STATE OF MICHIGAN.
  - b) Power connectivity to be collected as follows:
    - i. Power connection data for panels and RPPs associated to PDUs and breaker locations on the panels must be provided in the Data Collection Toolset as specified in the Data Collection Workshop by STATE OF MICHIGAN.
    - ii. Breaker to power strip data will be collected only if power strips are clearly labelled. Data will be collected for each uniquely named power strip and receptacle names (and receptacle configuration when collecting for 3-phase power).



- iii. Device to power strip or device to receptacle (for 3-phase power documentation) data will be collected only if receptacles are visually auditable.
  - In the case of RMDs with power cords, the connected power source will be either a power strip or ATS (Automatic Transfer Switch) or when collecting 3-phase power, a specific named receptacle.
  - In the case of FMDs, the connected power source which will be either a PDU or RPP to which it is connected, the panel name within the PDU or RPP and the breaker name in the panel, the number of poles, the names of the breaker(s) associated with each pole and the breakers trip load will be captured only if visibly discernable.
- iv. Where device to power strip connectivity is not readily visually verifiable, if there are two power strips in a cabinet, each connected to a different circuit (or in the case of 3-phase power strips, different circuits), then for each device in that rack that has two power supplies, it will be assumed that one power supply is connected to one power strip and circuit (or circuits for 3-phase), and the other power supply is connected to the other Power Strip and circuit (or circuits for 3-phase).
- v. In cases where Aperture cannot infer either the power strip and/or receptacle (for 3-phase) or power strip (for all others), Aperture will collect as much information as possible and will flag the device as "Partial Power Audit".

## **Changes**

### **Items provided by the State**

During the time between the start of collection and the completion of data population in Phase 6, devices will be installed, moved, and decommissioned in the data centers. Once data collection has begun, these changes will not be included in the data collection process. In order to represent these changes in the database, so that they will be able to be uploaded into Aperture VISTA<sup>®</sup>, the changes need to be tracked. The tracking of these changes is the responsibility of the STATE OF MICHIGAN and should be done in the same collection toolset as the original collection but as a separate document.

Every effort should be made to minimize the number of changes that take place in the data center between the time the data collection is completed and the Aperture VISTA<sup>®</sup> solution is delivered. After the populated project is turned over for use, STATE OF MICHIGAN can use the knowledge gained in training to update the repository with the changes that took place following the data collection effort.

### **Data Collection Provisions**

1. Aperture or its Partners will sign STATE OF MICHIGAN security agreements and provide the required information to allow the STATE OF MICHIGAN to conduct background checks on the individuals that will require hosting center access.
2. Aperture or its Partners will not move or remove floor tiles as part of data collection effort.
3. Aperture or its Partners will not move devices as part of the data collection effort. Any objects obstructing the view of either the serial number, asset tag, or other data will be deemed un-collectable if not reasonably discernable. Aperture will provide STATE OF MICHIGAN with the opportunity to provide this information.
4. Access to the data center will be granted at a mutually agreed upon time, normally from 8:00AM and 5:00PM or at a mutually convenient time to be determined by the parties following the execution of the contract: Any work outside of these hours may incur additional costs.



5. Aperture or the Certified Data Collection Partner will make a “reasonable” effort to capture every data field outlined in the Data Collection Toolset. However, if particular device information is not readily physically visible or verifiable or is otherwise unknown, the data will not be collected and an indication to that effect will be noted.
6. Aperture or its Partners will not touch power cords, input/output cables, or wire-management hardware, except as required to resolve connectivity exceptions. An exception list will be created for power strip-to-power supply connectivity that cannot be confirmed without touching power cords, input/output cables, and wire-management hardware.
7. Aperture or its Partners will touch power cords, input/output cables, and wire-management hardware as required to resolve the exceptions, only with express written permission from STATE OF MICHIGAN, and recognition from STATE OF MICHIGAN that such action incurs an unavoidable risk of accidental loss of power or connectivity to one or more production devices. STATE OF MICHIGAN agrees to assume full responsibility of any consequence in the event that connectivity is interrupted and acknowledges that Aperture or its Partners are not liable for any consequence of such a loss of power or connectivity.
8. Where Device to Power Strip connectivity is not readily visually verifiable and there are two Power Strips in a Cabinet, each connected to a different circuit (or in the case of 3-phase Power Strips, different circuits), then for each device in that rack that has two power supplies, it will be assumed that one power supply is connected to one Power Strip and circuit (or circuits for 3-phase), and the other power supply is connected to the other Power Strip and circuit (or circuits for 3-phase) unless an alternate assumption is agreed during the Data Collection Workshop.
9. Delays beyond the control of Aperture, such as, but not limited to, inaccessibility to Data Center floors, delayed availability of data to be collected and/or floor plan drawings, or of barcode number range, or of unresolved symbols issues, or of the need to utilize additional collection or verification scripts may require the negotiation of change orders and may delay completion timing.
10. Changes, additions, or deletions to collected equipment data, which may be made after the Aperture Data Collection team has completed on-site work are not included in the scope of this Statement of Work.

**Deliverables:** See [Section 1.501](#)

**Acceptance: For acceptance and associated cost see Section(s) 1.501 and 1.601 and the following:**

Aperture will provide the collected data information to the client for review, requesting the State’s written acceptance that the collected data is fit for population within (5) business days of said notice (unless other arrangements have been mutually agreed to). In the event that STATE OF MICHIGAN deems the collected data is not fit for population, Aperture will rectify the noted issue. The STATE OF MICHIGAN shall have two (2) business days to further review that the collected data is completed. This process shall continue until STATE OF MICHIGAN and Aperture mutually agree on the acceptance.

### Data Collection Toolset

The following is a list of fields collected in the Aperture VISTA® Data Collection Toolset

#### Building

Field	Description
Building Code	The building code associated with the building.
Building Name	Name of the building.

#### Floor

Field	Description
Building Name	The building name where the floor exists.
Floor	The floor name or number.

#### Raised Floor Area

Field	Description
Building Name	The building name where the raised floor exists.
Floor	The floor name or number where the raised floor exists.
Raised Floor Name	The name of the raised floor

#### Racks/Cabinets

Field	Description
Building Name	The building name where the racks or cabinets are located.
Floor	The floor where the raised floor is located.
Raised Floor Space Name	The name of the raised floor where racks or cabinets are located.
Row Name	This field is required, but since there is now a separate sheet for rows, we simply comply to the required entry by entering the Rack Name as the Row Name.
Rack Name	The name of a rack.
Tile Location	This is the tile that Vista uses for placement of the device. User reference point should be as if they are looking at a CAD plan on a computer screen where North always faces up. See the slides below for more details on how to interpret the Tile location for a device.
Display Tile Name	The Display Tile is the STATE OF MICHIGAN's interpretation of what tile the device is associated with, not always the same the Tile Location Vista uses above, but must be a valid grid tile as defined in Vista's grid system.
Flush Position relative to placement tile	From the perspective of viewing the CAD drawing, Flush Position is relative to the rotation of the device you are measuring. For example, if your device has a 0 degree rotation (front facing south), if the south edge of the device is flush to the south edge of the placement tile, then that would be considered flush front. If the front or rear of the device is not flush to a tile, the choose OFFSET for Flush Position. See the slides below for more details on how to interpret the Flush Position for a device.
Offset X	This indicates the X offset from the West edge of the tile to the West edge of the rack. Measurements to the right would be positive values. User reference point should be as if they are looking at a CAD plan on a computer screen where North always faces up.
Offset Y	This indicates the Y offset from the North edge of the tile to the North edge of the rack. Measurements downward would be a negative value, upward would be a positive value. User reference point should be as if they are looking at a CAD plan on a computer screen where North always faces up.
Rotation (CCW)	Counter clockwise rotation of the rack. Racks with; front edge facing south are considered to have a zero degree rotation, fronts facing East are 90 degrees, fronts facing North are 180, and fronts facing West are 270 degrees
Device Type	Must fill in as RACK.
Rack Manufacturer	The manufacturer name of the rack
Rack Model	The model name of the rack



Field	Description
Rack Model Info	The model info of the rack
Units Start at Top	Indicates if the rack units start at the top or the bottom. Top means the Rack Unit #1 is at the top of the rack. Values are; YES or NO
Starting Rack Unit	Indicates if the first rack unit is the number one or the number zero
Asset #	Asset number of the device
Serial #	Serial number of the device
Barcode #	Barcode number of the device

Floor Mounted Devices

Field	Description
Building Name	The building name where the racks or cabinets are located.
Floor	The floor where the raised floor is located.
Raised Floor Space Name	The name of the raised floor where racks or cabinets are located.
Row Name	This field is required, but since there is now a separate sheet for rows, we simply comply to the required entry by entering the Rack Name as the Row Name.
FMD Name	The name of a rack.
Tile Location	This is the tile that Vista uses for placement of the device. User reference point should be as if they are looking at a CAD plan on a computer screen where North always faces up. See the slides earlier in this presentation for more details on how to interpret the Tile location for a device.
Display Tile Name	The Display Tile is the STATE OF MICHIGANs interpretation of what tile the device is associated with, not always the same the Tile Location Vista uses above, but must be a valid grid tile as defined in Vista's grid system.
Device Location	The location within the FMD is located. Possible values are: <ul style="list-style-type: none"> <li>• FLOOR SURFACE – means the FMD is on the surface of the floor.</li> <li>• CEILING, WALL, UNDERFLOOR, OTHER – These should be used when a FMD is not installed on the floor surface. Pick the location type that best describes the device's location.</li> </ul>
Flush Position relative to placement tile	From the perspective of viewing the CAD drawing, Flush Position is relative to the rotation of the device you are measuring. For example, if your device has a 0 degree rotation (front facing south), if the south edge of the device is flush to the south edge of the placement tile, then that would be considered flush front. If the front or rear of the device is not flush to a tile, the choose OFFSET for Flush Position. See the slides below for more details on how to interpret the Flush Position for a device.
Offset X	This indicates the X offset from the West edge of the tile to the West edge of the rack. Measurements to the right would be positive values. User reference point should be as if they are looking at a CAD plan on a computer screen where North always faces up.
Offset Y	This indicates the Y offset from the North edge of the tile to the North edge of the rack. Measurements downward would be a negative value, upward would be a positive value. User reference point should be as if they are looking at a CAD plan on a computer screen where North always faces up.
Rotation (CCW)	Counter clockwise rotation of the FMD. 0 is front facing the south of the drawing
Device Type	Must fill in as FLOOR DEVICE.
Manufacturer	The manufacturer name of the FMD
Model	The model name of the FMD
Model Info	The model info of the FMD
Volts	The volts for this device
Min Power Supplies	The minimum number of active power supplies need for this device to operate
Measured Load	If the STATE OF MICHIGAN has a measure load. It can be entered here to override the manufacturer specs for the amount of power (in Watts) that this device draws.
Port Configuration	Only used if STATE OF MICHIGAN plans on loading connections. The ACE and STATE OF MICHIGAN would have had to have previously arranged a list of save port configurations that could be referenced here by their saved port configuration name.
Asset #	Asset number of the device



Field	Description
Serial #	Serial number of the device
Barcode #	Barcode number of the device

Rows of Racks & FMDs

Field	Description
Building Name	The building name where the racks or cabinets are located.
Floor	The floor where the raised floor is located.
Raised Floor Name	The name of the raised floor where racks or cabinets are located.
Row Name	The name of the row. Row Name should be repeated for each entry in the row.
Object Type	Must be either ROW_DEVICE or ROW_RACK.
Rack/Device Name	The name of the RACK or FMD in the row.
Tile Location	This is only filled in for the first device in the row. This is the tile that Vista uses for placement of the device. User reference point should be as if they are looking at a CAD plan on a computer screen where North always faces up. See the slides earlier in this presentation for more details on how to interpret the Tile location for a device.
Display Tile Name	The Display Tile is the STATE OF MICHIGANs interpretation of what tile the device is associated with, not always the same the Tile Location Vista uses above, but must be a valid grid tile as defined in Vista's grid system.
Flush Position relative to placement tile	This field only needs to be filled out for the first rack/FMD in the row. This indicates if the first rack/FMD in the row is flushed to the Front or Rear side of the tile where Front corresponds to the South side of the tile and the Rear corresponds to the North side of the tile. When a rack is flushed to the Rear, it means the North Side of the Rack is flushed to the North side of the tile. User reference point should be as if they are looking at a CAD plan on a computer screen where North always faces up.
Offset X	This field only needs to be filled out for the first rack/FMD in the row. This indicates the X offset from the left edge of the tile to the right edge of the FMD. (left edge = West edge)  User reference point should be as if they are looking at a CAD plan on a computer screen where North always faces up.
Offset Y	This field only needs to be filled out for the first rack/FMD in the row. This indicates the Y offset from the top edge of the tile to the top edge of the rack/FMD. (top edge = north edge)  User reference point should be as if they are looking at a CAD plan on a computer screen where North always faces up.
Back/Forward Offset	This is filled in for all rows except rows that represent the first device in a row. (i.e. If there are 5 devices in the row, this field would be filled in for the 2nd to 5th devices in the row.) This represents the distance (in inches) forward or inward this rack or device is relative to the first rack/device in the row. A positive value means this rack (when facing the front of the rack) is protruding out of the row closer to you. A negative value means this device is sunk into the row further away from you.
Row Direction	This is only filled in for the first device in the row. If standing facing the front of this device and looking at this device, does the row proceed to the LEFT or RIGHT.
Separation Between Rack/Device	This is filled in for all rows except rows that represent the first device in a row. (i.e. If there are 5 devices in the row, this field would be filled in for the 2nd to 5th devices in the row.) This is the number of inches of distance between this device and the device in the worksheet row above this device. Ordering is important.
Rotation (CCW)	Counter clockwise rotation of the Rack/FMD. 0 is front facing the south of the drawing
Rack/Device Manufacturer	The manufacturer name of the Rack/FMD
Rack/Device Model	The model name of the Rack/FMD
Rack/Device Model Info	The model info of the Rack/FMD



Field	Description
Asset #	Asset number of the device
Serial #	Serial number of the device
Barcode #	Barcode number of the device
Units Start at Top	Indicates if the rack units start at the top or the bottom. Top means the Rack Unit #1 is at the top of the rack. (leave blank if a FMD)
Starting Rack Unit	Indicates if the first rack unit is the number one or the number zero. (leave blank if a FMD)
Rack Unit Scale	Indicates where the Rack unit number begins TOP or BOTTOM
Volts	The volts for this device (leave blank if a Rack)
Min Power Supplies	The minimum number of active power supplies need for this device to operate (leave blank if a Rack)
Port Configuration	The pre-defined set of ports to use for this device, if implementing Connectivity Management at this time
Measured Load	For STATE OF MICHIGAN who wish to used measured load power values (watts) instead of the Manu Specs

Generators

Field	Description
Building Name	The building name for this object.
Floor	The floor where the raised floor is located.
Raised Floor Name	The name of the raised this object is located.
Generator Name	Name of the Generator.
Device Type	Enter as "Generator"
Generator Manufacturer	The manufacturer name of the Generator
Generator Model	The model name of the Generator
Generator Model Info	The model info of the Generator
Output Volts	Output Volts for the Generator
Max Output Watts	The maximum output watts for the Generator
Number of phases	The phases for the Generator. Can be 1, 2 or 3.
Overload Safety Factor	The overload safety factor for the Generator. Enter as percent.

UPS

Field	Description
Building Name	The building name for this object.
Floor	The floor where the raised floor is located.
Raised Floor Name	The name of the raised this object is located.
UPS Name	Name of the Generator.
Device Type	Enter as "UPS"
UPS Manufacturer	The manufacturer name of the UPS
UPS Model	The model name of the UPS
UPS Model Info	The model info of the UPS
Input Volts	Input Volts for the UPS
Output Volts	Output Volts for the UPS
Max Output Watts	The maximum output watts for the UPS
Number of phases	The phases for the UPS. Can be 1, 2 or 3.
Overload Safety Factor	The overload safety factor for the UPS. Enter as percent.

PDU

Field	Description
Building Name	The building name where the racks or cabinets are located.



Field	Description
Floor	The floor where the raised floor is located.
Raised Floor Name	The name of the raised floor where racks or cabinets are located.
Tile Location	This is the tile that Vista uses for placement of the device. User reference point should be as if they are looking at a CAD plan on a computer screen where North always faces up. See the slides earlier in this presentation for more details on how to interpret the Tile location for a device.
Display Tile Name	The Display Tile is the STATE OF MICHIGANs interpretation of what tile the device is associated with, not always the same the Tile Location Vista uses above, but must be a valid grid tile as defined in Vista's grid system.
PDU Location	The location within the PDU is located. Possible values are: <ul style="list-style-type: none"> <li>FLOOR SURFACE – means the PDU is on the surface of the floor.</li> <li>CEILING, WALL, UNDERFLOOR, OTHER – These should be used when a PDU is not installed on the floor surface. Pick the location type that best describes the device's location.</li> </ul>
Row Name	The name of the row of PDUs. Row Name should be repeated for each PDU entry in the row.
Flush Position relative to placement tile	From the perspective of viewing the CAD drawing, Flush Position is relative to the rotation of the PDU you are measuring. For example, if your PDU has a 0 degree rotation (front facing south), if the south edge of the PDU is flush to the south edge of the placement tile, then that would be considered flush front. If the front or rear of the PDU is not flush to a tile, the choose OFFSET for Flush Position. See the slides above for more details on how to interpret the Flush Position for a device.
Offset X	This indicates the X offset from the left edge of the tile to the right edge of the PDU. (left edge = West edge) User reference point should be as if they are looking at a CAD plan on a computer screen where North always faces up.
Offset Y	This indicates the Y offset from the top edge of the tile to the top edge of the FMD. (top edge = north edge) User reference point should be as if they are looking at a CAD plan on a computer screen where North always faces up.
Rotation (CCW)	Counter clockwise rotation of the PDU.
PDU Name	The name of the PDU.
Device Type	Must fill in as PDU.
PDU Manufacturer	The manufacturer name of the PDU
PDU Model	The model name of the PDU
PDU Model Info	The model info of the PDU
Input Volts	The input volts for the PDU. Will override the symbol definition value
Output Volts	The output volts for the PDU.
Max Output Watts	The maximum output watts for the PDU
Number of phases	The phases for the PDU. Can be 1, 2 or 3.
Number of feeds	The number feeds (to UPS units) that supply power to the PDU. Can be 1 or 2.
Overload safety factor	The overload safety factor for the PDU.
Asset #	Asset number of the device
Serial #	Serial number of the device
Barcode #	Barcode number of the device

RPP

Field	Description
Building Name	The building name where the racks or cabinets are located.
Floor	The floor where the raised floor is located.
Raised Floor Name	The name of the raised floor where racks or cabinets are located.
Tile Location	This is the tile that Vista uses for placement of the device. User reference point should be as if they are looking at a CAD plan on a computer screen where North always faces up. See the slides earlier in this presentation for more details on how to interpret the Tile location for a device.
Display Tile Name	The Display Tile is the STATE OF MICHIGANs interpretation of what tile the device is associated with, not always the same the Tile Location Vista uses above, but must be a valid grid tile as defined



Field	Description
	in Vista's grid system.
RPP Location	The location within the RPP is located. Possible values are: <ul style="list-style-type: none"> <li>FLOOR SURFACE – means the RPP is on the surface of the floor.</li> <li>CEILING, WALL, UNDERFLOOR, OTHER – These should be used when a RPP is not installed on the floor surface. Pick the location type that best describes the device's location.</li> </ul>
Row Name	The name of the row of RPPs. Row Name should be repeated for each RPP entry in the row.
Flush Position relative to placement tile	From the perspective of viewing the CAD drawing, Flush Position is relative to the rotation of the RPP you are measuring. For example, if your RPP has a 0 degree rotation (front facing south), if the south edge of the RPP is flush to the south edge of the placement tile, then that would be considered flush front. If the front or rear of the RPP is not flush to a tile, the choose OFFSET for Flush Position. See the slides above for more details on how to interpret the Flush Position for a device.
Offset X	This indicates the X offset from the left edge of the tile to the right edge of the RPP. (left edge = West edge) User reference point should be as if they are looking at a CAD plan on a computer screen where North always faces up.
Offset Y	This indicates the Y offset from the top edge of the tile to the top edge of the FMD. (top edge = north edge) User reference point should be as if they are looking at a CAD plan on a computer screen where North always faces up.
Rotation (CCW)	Counter clockwise rotation of the RPP.
RPP Name	The name of the RPP
Device Type	Must fill in as FLOOR DEVICE.
Panel Connection Type	This field has two possible values: <ul style="list-style-type: none"> <li>Direct – This means the panels can independently be connected to different PDUs</li> <li>RPP – This means the all panels on the RPP are powered by the same source PDU (or RPP)</li> </ul>
RPP Manufacturer	The manufacturer name of the RPP
RPP Model	The model name of the RPP
RPP Model Info	The model info of the RPP
Max Output Watts	The maximum output watts for the RPP
Number of phases	The phases for the RPP. Can be 1, 2 or 3.
Main Breaker Trip amps	The amps for the main breaker. Not applicable when Panel Connection Type is "Direct"
Overload safety factor	The overload safety factor for the RPP. Enter as percent.
Asset #	Asset number of the device
Serial #	Serial number of the device
Barcode #	Barcode number of the device

Power Panels

Field	Description
Building Name	The building name where the racks or cabinets are located.
Floor	The floor where the raised floor is located.
Raised Floor Name	The name of the raised floor where racks or cabinets are located.
Container Type	Either PDU or RPP. (This sheet is for PDU and RPP panels)
Container Name	Name of the PDU or RPP where this panel exists
Panel Name	Name of the Panel
Device Type	Must fill in as Panel
Number of Panel	The maximum number of panel slots or breaker positions in this panel



Slots	
Main Breaker Trip amps	The amps for the main breaker.
Panel Style	Either Left – Right, Top Down, or 1 Column (Left-Right is the standard US; odd/left even/right format. Top Down and 1 Column has sequential breaker labeling.
Phases	The number of phases for the panel. Either 1, 2, or 3.
Manufacturer Panel Rating	The max output amps for the Panel
Overload safety factor	The overload safety factor for the Panel. Enter as percent.

**Breakers**

Field	Description
Building Name	The building name for this object.
Floor	The floor where the raised floor is located.
Raised Floor Name	The name of the raised this object is located.
Container Type	Either PDU or RPP. (This sheet is for PDU and RPP breakers)
Container Name	Name of the PDU or RPP where this object exists.
Panel Name	Name of the Panel
Panel Slot Number	The slot number or breaker position where the breaker is installed.
Breaker Name	Name of the breaker.
Device Type	Must fill in as Breaker
Breaker Trip amps	The amps for this breaker.
Number of poles	The poles for this breaker. Can be 1, 2 or 3.
Overload safety factor	The overload safety factor for the Panel. Leave blank to accept data center default. Zero is invalid. Enter your threshold needs to be 80 percent, enter; "80"

**Rack Mounted Devices**

Field	Description
Building Name	The building name where the racks or cabinets are located.
Floor	The floor where the raised floor is located.
Raised Floor Space Name	The name of the raised floor where racks or cabinets are located.
Rack Name	The name of the Rack where the RMD exists.
Rack Location	The location within the rack where the RMD is located. Possible values are: <ul style="list-style-type: none"> <li>INSIDE – means the RMD is installed at a rack unit. The rack unit column must have a value.</li> <li>TOP, BOTTOM, LEFT, RIGHT, LEFT RAIL, RIGHT RAIL, OTHER – These should be used when a RMD is not installed at an RU. Pick the location type that best describes the device's location.</li> </ul>
Rack Side	Indicates if device is installed in the FRONT or the rack or the REAR of the rack.
Bottom Rack Unit	The Rack Unit of the bottom edge of the RMD, to the nearest 1/10 U.
Horizontal Alignment	Indicates the horizontal placement at the given RU. Possible values are LEFT, RIGHT, CENTER
Horizontal Offset	If the horizontal alignment is LEFT or RIGHT, the distance (in inches) of the device edge from the left or right inside rail of the rack. If CENTER, specify 0.
Rotation (CCW)	Counter clockwise rotation of the RMD. Possible values are 0 or 90 degrees (e.g. use 90 for a desktop server on its side on a shelf.)
Device Name	Name of the device instance.
Device Type	Must fill in as Rack Device.
Device Manufacturer	The manufacturer name of the RMD
Device Model	The model name of the RMD



Device Model Info	The model info of the RMD
Volts	The volts for this device
Min Power Supplies	The minimum number of active power supplies need for this device to operate
Measured Load	The measure load of the device.
Port Configuration	The pre-defined set of ports to use for this device, if implementing Connectivity Management at this time
Asset #	Asset number of the device
Serial #	Serial number of the device
Barcode #	Barcode number of the device

ATS or Power Strips

Field	Description
Building Name	The building name where Power Strips are located.
Floor	The floor where the raised floor is located.
Raised Floor Space Name	The name of the raised floor where the power strips are located.
Rack Name	The name of the Rack where the Power Strip or ATS exists.
Location	The location within the rack where the Power Strip or ATS is located. Possible values are: <ul style="list-style-type: none"> <li>INSIDE – means the RMD is installed at a rack unit. The rack unit column must have a value.</li> <li>TOP, BOTTOM, LEFT, RIGHT, LEFT RAIL, RIGHT RAIL, OTHER – These should be used when a Power Strip or ATS is not installed at an RU. Pick the location type that best describes the device's location.</li> </ul>
Rack Side	Indicates if device is installed in the FRONT or the rear of the rack.
Bottom Rack Unit	The Rack Unit of the bottom edge of the Power Strip or ATS, to the nearest 1/10 U.
Horizontal Alignment	Indicates how the horizontal placement at the given RU. Possible values are LEFT, RIGHT, CENTER
Horizontal Offset	If the horizontal alignment is LEFT or RIGHT, the distance (in inches) of the device edge from the left or right inside rail of the rack. If CENTER, specify 0.
Rotation (CCW)	Counter clockwise rotation of the Power Strip or ATS. Possible values are 0 or 90 degrees.
Power Strip/ATS Name	Name of the Power Strip or ATS.
Device Type	Must fill in as Power Strip or ATS.
Power Strip/ATS Manufacturer	The manufacturer name of the Power Strip or ATS
Power Strip/ATS Model	The model name of the Power Strip or ATS
Power Strip/ATS Model Info	The model info of the Power Strip or ATS
Overload Safety Factor	The overload safety factor for the power strip. Enter as percent.
Asset #	Asset number of the device
Serial #	Serial number of the device
Barcode #	Barcode number of the device

Cards

Field	Description
Building Name	The building name where the cards are located.
Floor	The floor where the raised floor is located.
Raised Floor Space Name	The name of the raised floor where devices are located.
Container	The type of container. Possible values are RMD and FMD.



Rack Name or Display Tile	The rack name for a rack-mounted chassis. The display location for a floor-mounted chassis.
Container Name	The device name where the card is installed
Device Type	Must fill in as Card.
Slot Side	The side of the device where the card slot is located. Possible values are Front or Rear.
Device Slot Number	The slot number where the card is installed.
Card Manufacturer	The manufacturer name of the RMD
Card Model	The model name of the RMD
Card Model Info	The model info of the RMD
Port Configuration	The pre-defined set of ports to use for this device, if implementing Connectivity Management at this time
Card Type	The type of card
Asset #	Asset number of the device
Serial #	Serial number of the device
Barcode #	Barcode number of the device

Blades

Field	Description
Building Name	The building name where the cards are located.
Floor	The floor where the raised floor is located.
Raised Floor Space Name	The name of the raised floor where devices are located.
Rack Name or Display Tile	The rack name for a rack-mounted chassis. The display location for a floor-mounted chassis.
Chassis Name	The device name of the blade chassis
Device Type	Must fill in as Card.
Slot Side	The side of the chassis where the slot is located. Possible values are Front or Rear.
Slot Number	The slot number where the blade is installed.
Blade Name	The name of the blade (typically its host name)
Blade Manufacturer	The manufacturer name of the blade
Blade Model	The model name of the blade
Blade Model Info	The model info of the blade
Port Configuration	The pre-defined set of ports to use for this device, if implementing Connectivity Management at this time
Asset #	Asset number of the device
Serial #	Serial number of the device
Barcode #	Barcode number of the device

Generator to UPS Connections

Field	Description
<b>CONNECT FROM section</b>	The FROM section describes the fields needed to identify the Generator being connected and the type of connection.
Building Name	The building name for this object.
Floor	The floor where the raised floor is located.
Raised Floor Name	The name of the raised where the Generator is located.
Generator Name	Name of the Generator to be connected
<b>CONNECT TO section</b>	The TO section describes the fields needed to identify the UPS that the Generator will be connected to.
Floor	The floor where the raised floor is located.



Raised Floor Name	The name of the raised floor where the UPS is located.
UPS Name	Name of the UPS that needs to be connected.

UPS to PDU

Field	Description
<b>CONNECT FROM section</b>	The FROM section describes the fields needed to identify the UPS being connected and the type of connection.
Building Name	The building name for this object.
Floor	The floor where the raised floor is located.
Raised Floor Name	The name of the raised where the UPS is located.
UPS Name	Name of the UPS to be connected
<b>CONNECT TO section</b>	The TO section describes the fields needed to identify the PDU that the UPS will be connected to.
Floor	The floor where the raised floor is located.
Raised Floor Name	The name of the raised floor where the PDU is located.
PDU Name	Name of the PDU that needs to be connected.

PDU to RPP

Field	Description
<b>CONNECT FROM section</b>	The FROM section describes the fields needed to identify the PDU (or RPP) being connected and the type of connection.
Building Name	The building name for this object.
Floor	The floor where the raised floor is located.
Raised Floor Name	The name of the raised where the from side PDU or RPP is located.
Container Type	PDU or RPP
PDU or RPP Name	Name of the PDU or RPP to be connected
Panel Name	Name of the Panel in the from side PDU or RPP. Fill out if connecting to a RPP or RPP Panel via a Breaker
Breaker Name	Name of the Breaker in the from side PDU or RPP. Fill out if connecting to a RPP or Panel via a Breaker
<b>CONNECT TO section</b>	The TO section describes the fields needed to identify the RPP that the PDU or RPP will be connected to.
Floor	The floor where the raised floor is located.
Raised Floor Name	The name of the raised the PDU is located.
RPP Name	Name of the RPP that needs to be connected.
Panel Name	Panel Name of the RPP that needs to be connected. Fill out if the RPP's Panel Connection type field is set to "Direct"; Leave blank if the Panel Connection Type is "RPP"

Breaker to Device or Power Strip

Field	Description
<b>CONNECT FROM section</b>	The FROM section describes the fields needed to identify the breaker in the RPP or PDU being connected.
Building Name	The building name for this object.
Floor	The floor where the raised floor is located.
Raised Floor Name	The name of the raised the PDU or RPP is located.
Container Type	Either PDU or RPP
Container	The name of the PDU or RPP where the breaker is located.
Panel Name	The name of the panel in the PDU or RPP.
Breaker Name	The name of the breaker.
Audited	Y or N. Indicates whether this is an actual connection or an assumed and un-audited connection. Default is N. Must be Y if connecting to a Power Strip or ATS



Field	Description
<b>CONNECT To section</b>	The TO section describes the fields needed to identify the Device or Power strip/ATS being connected
Floor	The floor where the raised floor is located.
Raised Floor Name	The name of the raised where the Device or Power Strip/ATS is located.
Rack or Grid Name	The name of the rack if the device or power strip/ATS is in a Rack. The Display Grid name if the Device is a floor mounted device.
Connect To Device Type	Either; RACK DEVICE, FLOOR DEVICE, ATS or POWER STRIP
Device, ATS or Power Strip Name	Name of the Device or Power Strip/ATS that needs to be connected to the breaker.

ATS or Power Strip to Device

Field	Description
<b>CONNECT FROM section</b>	The FROM section describes the fields needed to identify the Power Strip or ATS being connected
Building Name	The building name for this object.
Floor	The floor where the raised floor is located.
Raised Floor Name	The name of the raised floor where the from-side ATS or Power Strip is located.
Rack Name	The name of the rack that holds the Power strip.
Container	The name of the Power Strip or ATS to be connected
Audited	Indicated whether the receptacle is known for this connection Y or N. Default is N
Receptacle Name	The receptacle name or number on the Power Strip or ATS. Can be blank if Audited is set to N
<b>CONNECT To section</b>	The TO section describes the fields needed to identify the Device or Power strip/ATS being connected
Floor	The floor where the raised floor is located.
Raised Floor Name	The name of the raised where the Device or Power Strip/ATS is located.
Rack or Grid Name	The name of the rack if the device or power strip/ATS is in a Rack. The Grid name if the Device is a floor mounted device.
Connect To Device Type	Device or Power strip/ATS
Device, ATS or Power Strip name	Name of the to-side Device or Power Strip/ATS that needs to be connected to the from-side ATS or Power Strip.

Application List

Field	Description
Application Name	The application name
Version	The version of the application
Vendor	Name of the vendor for the application
Primary Contact	The primary support contact for the application
Secondary Contact	The secondary support contact for the application
Support Group	The name of the support group
Business Area	The business unit owner of the application
Critical Status	The critical status of the application

Applications Assigned to Devices

Field	Description
Building	Name of the Building where the Device exists.
Floor	Name of the floor where the Device exists.
Raised Floor Space Name	Name of the raised floor where the Device exists.
Rack or Grid Name	For RMDs; the Rack Name, for FMDs; the Display Grid



Field	Description
Device Name	The name of the device that you want to add the application to.
Application Name	The name of the application to be associated with the device.
Version	The version of application to be associated with the device.

LAN or SAN Connectivity

Field	Description
<b>CONNECT FROM section</b>	The FROM section describes the fields needed to identify the "From Device" and Port being connected
Building Name	The building name for this object.
Floor	The floor where the raised floor is located.
Raised Floor Name	The name of the raised floor where the from-side Device is located.
Rack Name	The name of the rack that holds the from-side Device .
Device Name	The name of the From Device to be connected
Port Type	Enter "Card" if it is a card-based port or "Onboard" if the port is built into the device
Slot Side	Enter "FRONT" or "REAR" for the slot location (leave blank if an Onboard port)
Slot Number	The from-side device Slot Number (leave blank if an Onboard port)
Port Name	The from-side Device port name
<b>CONNECT To section</b>	The TO section describes the fields needed to identify the "To Device" and Port being connected
Floor	The floor where the raised floor is located.
Raised Floor Name	The name of the raised where the Device or Power Strip/ATS is located.
Rack Name	The name of the rack that holds the to-side Device .
Device Name	The name of the To-Device to be connected
Port Type	Enter "Card" if it is a card-based port or "Onboard" if the port is built into the device
Slot Side	Enter "FRONT" or "REAR" for the slot location (leave blank if an Onboard port)
Slot Number	The to-side device Slot Number (leave blank if an Onboard port)
Port Name	The to-side Device port name
<b>CONNECTION Properties</b>	Properties of the connection
Connection Type	Either; Network, Storage, Other.
Speed/Protocol	Choose from the drop down list of items.
Duplex	Either; Auto, Full, or Half
Teaming	Choose from the drop down list of Teaming choices



## Schedule 3 to Statement of Work

### **STATE OF MICHIGAN Aperture VISTA® Repository Population & Data Services**

With the completion of Phase 5 – Data Inventory, STATE OF MICHIGAN's data is ready for validation and population. Aperture Technologies has developed a standard process based on a series of established best practices for loading data into the Aperture VISTA® repository. This Schedule 3 covers the work required for Aperture Technologies to validate and populate data into the Aperture VISTA® repository with STATE OF MICHIGAN's data.

## **Phase 6 – Repository Population**

### **Symbol Reconciliation**

All device data collected in Phase 5 will be visually represented in the Aperture VISTA® repository using Aperture Symbols. An Aperture Symbol is comprised of a visual depiction of the device and accompanying environmental data (power draw, weight, heat output, etc.) Please refer to Appendix 1 for details on the symbol reconciliation and ordering process.

Once the data has been collected, Aperture will match the unique instances of each device model to an existing Aperture Symbol. The symbols will be collected into a local library that will be uploaded to STATE OF MICHIGAN's local symbol library at the conclusion of the project.

### **Repository Population**

Aperture will populate Aperture VISTA® repository with data collected by Aperture and reviewed by STATE OF MICHIGAN, as well as power infrastructure data provided by STATE OF MICHIGAN in the Data Collection Toolset.

Aperture will perform one data population of the data. Re-population of STATE OF MICHIGAN's data will be handled on a time and materials basis outside the scope of this Schedule.

Power infrastructure data that is either not provided or not validated will not be populated.

Aperture is not responsible for population errors resulting from incorrect or incomplete data provided by STATE OF MICHIGAN.

### **Managing Changes**

During the time between the start of collection and the completion of population the Aperture VISTA® data will be frozen. Therefore, there will be changes in the data center floor that are not represented in Aperture VISTA®. The tracking of these changes is the responsibility of the STATE OF MICHIGAN and should be done in the same collection toolset as the original collection but as a separate document. After project turnover of the populated repository, STATE OF MICHIGAN can use the knowledge gained during training to update the repository with the changes that took place during the population freeze.

### **Data Population Scope**

The data populated will match that which was collected in Phase 5. See Schedule 2 for details on scope of data.

### **Delivery**

The resulting populated data center repository will be delivered by Aperture to STATE OF MICHIGAN on a date mutually agreed upon by Aperture and STATE OF MICHIGAN Project Managers and set forth in the project schedule. Phases on Schedule 1 may be completed prior to the completion of Phase 6.

## Appendix 1 – Aperture Technologies Symbol Policy



SYMBOLS\_POLICY\_M  
ASTER\_V3\_.pdf



**Article 1, Attachment A (Project Plan)**

Final Plan due within three (3) weeks of signed contract provided the State can meet this time line



## 1.2 Roles and Responsibilities

### **1.201 CONTRACTOR STAFF, ROLES, AND RESPONSIBILITIES**

The Contractor will provide resumes for the project manager, training coordinator, contract administrator and staff who will be assigned to the Contract, indicating the duties/responsibilities and qualifications of such personnel, and stating the amount of time each will be assigned to the project. The Contractor will commit that staff identified in its proposal will actually perform the assigned work.

The Contractor will provide, and update when changed, an organizational chart indicating lines of authority for personnel involved in performance of this Contract and relationships of this staff to other programs or functions of the firm. This chart must also show lines of authority to the next senior level of management and indicate who within the firm will have prime responsibility and final authority for the work.

**The Contractor will identify a Contract Administrator.** The duties of the Contract Administrator shall include, but not be limited to:

- supporting the management of the Contract,
- facilitating dispute resolution, and
- advising the State of performance under the terms and conditions of the Contract.

**The Contractor will provide a project manager** to work closely with the designated personnel from the State to insure a smooth transition to the new system. The project manager will coordinate all of the activities of the Contractor personnel assigned to the project and create all reports required by State. The Contractor's project manager responsibilities include, at a minimum:

- Manage all defined Contractor responsibilities in this Scope of Services.
- Manage Contractor's subcontractors, if any
- Develop the project plan and schedule, and update as needed
- Serve as the point person for all project issues
- Coordinate and oversee the day-to-day project activities of the project team
- Assess and report project feedback and status
- Escalate project issues, project risks, and other concerns
- Review all project deliverables and provide feedback
- Proactively propose/suggest options and alternatives for consideration
- Utilize change control procedures
- Prepare project documents and materials
- Manage and report on the project's budget

The Contractor will provide sufficient qualified staffing to satisfy the deliverables of this Statement of Work.

**Project Manager(s)** (Aperture provides the following information as to the anticipated likely personnel (only one) to be the assigned as Project Manager.

#### **ELIAS PETRU**

Elias Petru has been employed with Aperture since 2001 as a Project Manager. Prior to Aperture, Elias held management positions with Entrex, Universal Access, and Booking Exchange. Additionally, Elias earned both a BA and an MBA from the University of Iowa.

#### **JEFFREY FEINSOD**

Jeff Feinsod has been with Aperture since 1989 and during his tenure has had been promoted into roles with increasing responsibility leading to his current position as Project Manager. Prior to 1989 Jeff worked for the Clinton Company. Jeff received a Bachelor's degree from Lehigh University.

### **A. On Site Work Requirements**

#### **1. Location of Work**



a. The work is to be performed, completed, and managed at the locations listed at 515 Westshire in Lansing, Michigan. Site visits to the three hosting centers will be required. Those locations are:

- Lake Superior Hosting Center, 7064 Crowner Drive, Dimondale, MI
- Lake Ontario Hosting Center, 7285 Parsons Drive, Dimondale, MI
- Traverse Bay Hosting Center, 430 West Allegan, Lansing, MI

**2. Hours of Operation:**

Work hours are not to exceed eight (8) hours a day, forty (40) hours a week. Normal working hours of 8:00 am to 5:00 pm are to be observed unless otherwise agreed to in writing  
No overtime will be permitted without prior written approval of Dick Novello or Carol Steele Sherman, Director of Data Center Operations.

**3. Travel:**

1. Travel or expenses will follow State of Michigan guidelines [http://michigan.gov/dmb/0,1607,7-150-9141\\_13132---,00.html](http://michigan.gov/dmb/0,1607,7-150-9141_13132---,00.html) and shall not exceed \$24,500.00, Travel cost is built into the rates for services and must be accounted for.
2. Travel time will not be reimbursed.

The Contractor, to the best of its ability at the present time, identifies the staff listed below in connection with this project. This list is subject to change, with the individuals named to be replaced only by individuals with similar or like qualifications and approved by the State.

- \* Eleas Petru -Project Manager Or
- \* Jeff Feinsod -Project Manager
  
- \* Ali Drake - ACE
- \* Bernie Russell- ACE
- \* Bryan Harman- ACE
- \* Darren Barrows- ACE
- \* John Gibson- ACE
- \* Kirk Roderick- ACE
- \* Ray Daugherty- ACE

**1.202 STATE STAFF, ROLES, AND RESPONSIBILITIES**

The following STATE OF MICHIGAN personnel will be assigned to this project:  
Dick Novello, Project Manager and billing approval, 515 Westshire  
Kathy Seaton, Configuration Management, data collection signoff, 515 Westshire  
Joe Carter, DCO Facilities Management, data collection coordinator and provider of current Aperture diagrams, 7064 Crowner  
Bill Bacalis, LOHC Facilities, 7285 Parsons  
Becky Withey, TBHC Facilities, 430 Allegan

**Project Preparation**

**Server Hardware:** STATE OF MICHIGAN will prepare a server environment with the necessary non-Aperture software prior to the scheduled Kick-Off meeting to ensure that Aperture Staff will be able to perform work as scheduled in the project plan. Refer to Hardware/Software Installation Guide.

**Floor Plan Drawings:** STATE OF MICHIGAN will provide accurate data center drawings in Aperture format for each floor to be included in the project. Each drawing must include a grid labeling system with each of the two axis to be labeled with either an alpha or numeric identifier such that each grid tile on a floor is uniquely identifiable.



A suitable work environment will be made available for Aperture Staff for onsite work which includes, space, phone, network connectivity and any data access necessary to complete this Statement of Work.

### 1.203 OTHER ROLES AND RESPONSIBILITIES

Other STATE OF MICHIGAN staff assigned to this project:

David Jones, Configuration Management, data collection facilitator, 515 Westshire  
Jennifer Ryan, Solutions Engineer, hardware and server software procurement,  
515 Westshire  
Thom Law, Remedy Support, 7285 Parsons

## 1.3 Project Plan

### 1.301 PROJECT PLAN MANAGEMENT

Aperture and Dick Novello, the Agency Project Manager, will hold weekly project updates during the engagement. The project will be developed using Microsoft Project and standard project management mythology. Aperture will identify their project manager, methods, tools and processes proposed to oversee the project. Any issues or changes to the plan will be coordinated between Aperture and the Agency Project Manager.

### 1.302 REPORTS

A bi-weekly progress report must be submitted to the Agency Project Manager throughout the life of this project. This report may be submitted with the billing invoice. Each bi-weekly progress report must contain the following:

1. **Hours:** Indicate the number of hours expended during the past two weeks, and the cumulative total to date for the project. Also state whether the remaining hours are sufficient to complete the project.
2. **Accomplishments:** Indicate what was worked on and what was completed during the current reporting period.
3. **Funds:** Indicate the amount of funds expended during the current reporting period, and the cumulative total to date for the project.

## 1.4 Project Management

### 1.401 ISSUE MANAGEMENT

An issue is an identified event that if not addressed may affect schedule, scope, quality, or budget.

The Contractor shall maintain an issue log for issues relating to the provision of services under this Contract. The issue management log must be communicated to the State's Project Manager on an agreed upon schedule, with email notifications and updates. The issue log must be updated and must contain the following minimum elements:

- Description of issue
- Issue identification date
- Responsibility for resolving issue.
- Priority for issue resolution (to be mutually agreed upon by the State and the Contractor)
- Resources assigned responsibility for resolution
- Resolution date
- Resolution description

Issues will be raised to the Agency Project Manager with e-mail as they occur. Issues that cannot be resolved will be escalated by the Agency Project Manager to Carol Steele Sherman, Director of Data Center Operations.



## 1.402 RISK MANAGEMENT

A risk is an unknown circumstance or event that, if it occurs, may have a positive or negative impact on the project.

The Contractor is responsible for establishing a risk management plan and process, including the identification and recording of risk items, prioritization of risks, definition of mitigation strategies, monitoring of risk items, and periodic risk assessment reviews with the State.

A risk management plan format shall be submitted to the State for approval within twenty (20) business days after the effective date of the contract. The risk management plan will be developed during the initial planning phase of the project, and be in accordance with the State's PMM methodology. Once both parties have agreed to the format of the plan, it shall become the standard to follow for the duration of the contract. The plan must be updated bi-weekly, or as agreed upon.

The Contractor shall provide the tool to track risks. The Contractor will work with the State and allow input into the prioritization of risks.

The Contractor is responsible for identification of risks for each phase of the project. Mitigating and/or eliminating assigned risks will be the responsibility of the Contractor. The State will assume the same responsibility for risks assigned to them.

The State Of Michigan is a current user of Aperture release 9. Conversion of some data from version 9 to VISTA may be required. New server hardware is being purchased for this project. Issues with DCO Release Management could be a risk. These risks are within the State Of Michigan's control.

## 1.403 CHANGE MANAGEMENT

If a proposed contract change is approved by the Contract Compliance Inspector, the Contract Compliance Inspector will submit a request for change to the Department of Management and Budget, Purchasing Operations Buyer, who will make recommendations to the Director of Purchasing Operations regarding ultimate approval/disapproval of change request. If the DMB Purchasing Operations Director agrees with the proposed modification, and all required approvals are obtained (including State Administrative Board), the Purchasing Operations Buyer will issue an addendum to the Contract, via a Contract Change Notice. **Vendors who provide products or services prior to the issuance of a Contract Change Notice by the DMB Office of Purchasing Operations, risk non-payment for the out-of-scope/pricing products and/or services.**

### 1.5 Acceptance

#### 1.501 CRITERIA

Aperture will provide the State's project manager with written notice upon completion of each deliverable(s) requesting the State's written acceptance or notice that the deliverable is not acceptable, within (5) business days of said notice (unless other arrangements have been mutually agreed to). Once Aperture rectifies the non-conformance, the STATE OF MICHIGAN shall have two (2) business days to further review the applicable completed Deliverable. This process shall continue until STATE OF MICHIGAN and Aperture mutually agree on the deliverable acceptance.

#### Phase 1 – Project Initiation.

At the completion of this phase the Aperture will have delivered: 1) all software is installed, 2) collection workshop completed, 3) workflow workshop completed, 4) a project plan had been completed and timeline agreed upon.

The State Of Michigan, Kathy Seaton, will sign-off on the process used for data collection and agree with the work flow developed during the workshop.

**Phase 2 – Prototype Population**

At the completion of this phase the Aperture will have delivered: 1) A proof-of-concept to prove the collection methodology. This will consist of three cabinets.

At the completion of this phase Kathy Seaton and Dick Novello will sign-off that the prototype is reflective of the project and complete.

**Phase 3 – Training**

At the completion of this phase the Aperture will have delivered seven on-site workshops: Portal Fundamentals, Portal Management, Work Process Fundamentals, Device Management, Power Management, Application Management, and System Administration.

At the completion of this phase Dick Novello will sign-off that training is complete.

**Phase 4 – VISTA Implementation**

At the completion of this phase the Aperture will have delivered: A functional interface between the State Of Michigan’s Remedy (version 5.5) and the VISTA portal. This portal allows Remedy Change Management interface for equipment installation, equipment move, equipment decommission, change name, change IP address, adding connections and cards, removing connections and cards.

At the completion of this phase Thom Law will sign-off that Remedy implementation is complete. Kathy Seaton and Dick Novello will sign-off on the portal configuration.

**Phase 5 – Data Inventory Services**

At the completion of this phase the Aperture will have delivered: Data collection indicated in Schedule 2, Phase 5. They data is detailed in Appendix 1, Data Collection Toolset.

At the completion of this phase Kathy Seaton will sign-off that the data inventory is complete.

**Phase 6 – Repository Population**

At the completion of this phase the Aperture will have delivered: a fully populated SQL database as defined in Schedule 3, Appendix 1, Data Collection Toolset. This database will consist of a record for each cabinet, floor mounted device, generator, UPS, PDU, Remote Power Panel, breakers, power strip, cards, LAN or SAN connectivity.

At the completion of this phase Kathy Seaton and Dick Novello will sign-off that the repository is fully populated.

**Phase 7 – Production Implementation**

At the completion of this phase the Aperture will have delivered: Customer ID, Technical Support contact information, upgrade procedures, service pack overview, symbol ordering process.

At the completion of this phase Kathy Seaton and Dick Novello will sign-off that the support turnover documents are complete and ready for project close out.

**1.502 FINAL ACCEPTANCE**

Payment is tied to the acceptance of Deliverables. See Acceptance in each Schedule to Statement of Work

[1.6 Compensation and Payment](#)

**1.601 COMPENSATION AND PAYMENT**

**Services Task Descriptions & Estimates**

IMPLEMENTATION SERVICES				
Task Description	Resource Type	Day Rates	Days	Cost
<b>Phase 1 - Project Initiation</b>				
Pre-Kick Off Planning - Aperture will work with STATE OF MICHIGAN to establish project protocols, finalize project schedule, review roles and responsibilities, and review key provisions.	PM	\$2116.80	1	\$2116.80
Pre-Kick Off Tech Review – Aperture will review STATE	ACE	\$1940.40	1	\$1940.40



OF MICHIGAN requirements, configuration changes, and host environment specifics.

Kick Off Meeting – Aperture will conduct a one day meeting with STATE OF MICHIGAN to launch the implementation. Both the Aperture Project Manager and the Aperture Consulting Engineer will attend the meeting.

Install Software – Aperture Services staff will install all Aperture VISTA® required software up to two times (once each on a production and development set of servers). Installation of Aperture VISTA® includes the following:

- Aperture Repository Server
- Aperture Web Application Server
- Aperture Web Services Server
- Aperture VISTA® Portal Application
- Aperture VISTA® Repository Administrator (on up to 3 workstations)
- Aperture Visual Generator

Data Collection Workshop - Aperture Services will provide a data collection workshop. The sessions will be conducted over the course of 1 day. These sessions will cover:

- Scope of data to be collected. This will include types of devices; racks, floor mounted devices, rack mounted devices, power and applications.
- How the information needs to be presented to Aperture in order to populate the Aperture VISTA® repository using the Data Collection Toolset.
- Roles and responsibilities of data collection.
- Review of data to be provided by client.

Workflow Workshop - Aperture Services will provide a workflow workshop. The sessions will be conducted over the course of 1 day. These sessions will cover:

- High level overview of each of the workflow applications.
- Demonstration of each of the workflow applications
- Review of information to be provided by client as part of the standard workflow configuration.

**Phase 2 - Prototype Population**

Prototype Population - Aperture will create the prototype consisting of no more than 3 cabinets, associated rack mounted devices, and a PDU with power panel.

**Phase 3 – Training**

Training Prep – Aperture will verify readiness, confirm technical requirements for delivery, and confirm scheduling and attendance.

**VISTA Portal Fundamentals** – Aperture will deliver a workshop focusing on the basic use of the VISTA portal.

**VISTA Portal Management** - Aperture will deliver a workshop focusing on the management of the VISTA portal platform.

**VISTA Work Process Fundamentals** - Aperture will deliver a workshop focusing on the use of and initiation of VISTA application work processes.

**VISTA Device Management** - Aperture will deliver a workshop focusing on the management of data center devices using VISTA Application Work process

PM/ACE	\$2028.60	2	\$4457.20
ACE	\$1940.40	2	\$3,880.80
ACE	\$1940.40	1	\$1940.40
ACE	\$1940.40	1	\$1940.40
ACE	\$1940.40	5	\$9,702.00
TRNG	\$2116.80	0.5	\$1,058.40
TRNG	\$2116.80	0.5	\$1,058.40
TRNG	\$2116.80	2	\$4,233.60
TRNG	\$2116.80	1	\$2116.80
TRNG	\$2116.80	1	\$2116.80



**VISTA Power Management** - Aperture will deliver a workshop focusing on the management of data center power using VISTA Application Work process.

**VISTA Application Management** - Aperture will deliver a workshop focusing on standard workflow configurations in the VISTA Application.

**VISTA System Administration** - Aperture will deliver a workshop focusing on standard administrative activities.

**Phase 4 - VISTA Implementation**  
 Standard Portal Configuration - Aperture will implement the standard configuration of the Aperture VISTA® Portal for STATE OF MICHIGAN, along with the standard implementation of the VISTA-Remedy Change Management Interface. This includes the following:

- Equipment Installation
- Equipment Move
- Equipment Decommission
- Change Name
- Change IP Address
- Add Connections & Cards
- Remove Connections & Cards
- VISTA-Remedy Change Management Interface

With respect to the VISTA® Portal, Aperture will provide a worksheet in order for STATE OF MICHIGAN to communicate the permissions, user org role assignments and pull down values.

Remedy Implementation – Aperture will implement its standard Remedy Change Management Integration.

**Phase 5 - Data Inventory Services**  
 Data Inventory Services - In order to populate STATE OF MICHIGAN's Aperture VISTA® repository, Aperture or a Certified Aperture Data Collection Partner will inventory target data centers.

(4,763 Devices @ \$14.50 per Device)

**Phase 6 - Repository Population**  
 Repository Population - Aperture will populate Aperture VISTA® repository with data collected by Aperture and reviewed by STATE OF MICHIGAN, as well as power infrastructure data provided by STATE OF MICHIGAN in the Data Collection Toolset.

**Phase 7 - Production Implementation**  
 Implementation Support - Aperture will support the STATE OF MICHIGAN as they begin using VISTA® .

Project Close-Out - Aperture will facilitate a formal project hand-off conference call with Aperture Support and STATE OF MICHIGAN staff. The purpose of this session is for the end users to understand the Aperture Technologies' processes for:

- Customer & Technical support
- Product upgrades and service packs
- Symbol ordering and downloading

**Project Management**  
 Project Management- Schedule 1 - Aperture will provide

TRNG	\$2116.80	1	\$2116.80
TRNG	\$2116.80	2	\$4,233.60
TRNG	\$2116.80	2	\$4,233.60
ACE	\$1940.40	2	\$3,880.80
ACE	\$1940.40	10	\$19,404.00
			\$69,063.00
ACE	\$2116.80	12	\$25,401.60
ACE	\$1940.40	5	\$9,702.00
ACE	\$1940.40	1	\$1940.40
PM	\$2116.80	7.5	\$15,876.00



services as needed pertaining to Project Planning, Reporting, Issue Management, Risk Management, Change Management, Acceptance and Payment, and Scheduling. Project Management- Schedule 3 - Aperture will provide services as needed pertaining to Project Planning, Reporting, Issue Management, Risk Management, Change Management, Acceptance and Payment, and Scheduling.	PM	\$2116.80	2.5	\$5,292.00
<b>Total</b>			<b>63</b>	<b>\$197,705.80</b>

**Service Schedules**

	<b>Description</b>	<b>Sub Total</b>
Schedule 1	Implementation Services – includes Installation, Workshops, Prototype, Training, Implementation, Remedy Interface implementation, and Production implementation.	\$ 97,949.20
Schedule 2	Data Services – data inventory	\$ 69,063
Schedule 3	Data services – data population	\$ 30,693.60
<b>Estimated Total</b>	Includes mandatory Project Management	<b>\$197,705.80</b>

Rates & Hours

STATE OF MICHIGAN will be billed as follows:

- Schedule 1- Time and Materials (T&M), based on actual hours worked
- Schedule 2- Per Device Basis at \$14.50 per device, based on actual number of inventoried devices
- Schedule 3- Time and Materials (T&M), based on actual hours worked

Services rates are as follows:

- Aperture Consulting Engineer (ACE)- \$242.55/hr
- Trainer- \$264.60/hr
- Project Management- \$264.60/hr

The State will not pay for any travel expenses, including hotel, mileage, meals, parking, etc.

Aperture must provide a list of detailed compensation proposed against Deliverables. State shall pay Contractor an amount not to exceed 610,330.00 dollars.

1.7 Additional Terms and Conditions Specific to this SOW

**1.701 ADDITIONAL TERMS AND CONDITIONS SPECIFIC TO THIS SOW (RESERVED)**



## Article 2 – General Terms and Conditions

### 2.010 Contract Structure and Administration

#### 2.011 Definitions

Capitalized terms used in this Contract (including its Exhibits) shall have the meanings given below, unless the context requires otherwise:

- (a) “Days” means calendar days unless otherwise specified.
- (b) “24x7x365” means 24 hours a day, seven days a week, and 365 days a year (including the 366th day in a leap year).
- (c) “Additional Service” means any Services/Deliverables within the scope of the Contract, but not specifically provided under any Statement of Work, that once added will result in the need to provide the Contractor with additional consideration. “Additional Service” does not include New Work.
- (d) “Amendment Labor Rates” means the schedule of fully-loaded hourly labor rates attached as **Article 1, Attachment C**.
- (e) “Audit Period” has the meaning given in **Section 2.111**.
- (f) “Business Day,” whether capitalized or not, shall mean any day other than a Saturday, Sunday or State-recognized legal holiday (as identified in the Collective Bargaining Agreement for State employees) from 8:00am EST through 5:00pm EST unless otherwise stated.
- (g) “Incident” means any interruption in Services.
- (h) “Business Critical” means any function identified in any Statement of Work as Business Critical.
- (i) “Deliverable” means physical goods and/or commodities as required or identified by a Statement of Work
- (j) “Key Personnel” means any Personnel designated in **Article 1, Section 1.201 and/or Attachment B**, as Key Personnel.
- (k) “New Work” means any Services/Deliverables outside the scope of the Contract and not specifically provided under any Statement of Work, that once added will result in the need to provide the Contractor with additional consideration. “New Work” does not include Additional Service.
- (l) “Services” means any function performed for the benefit of the State.
- (m) “State Location” means any physical location where the State performs work. State Location may include state-owned, leased, or rented space.
- (n) “Subcontractor” means a company Contractor delegates performance of a portion of the Services to, but does not include independent contractors engaged by Contractor solely in a staff augmentation role.
- (o) “Work in Process” means a Deliverable that has been partially prepared, but has not been presented to the State for Approval.

#### 2.012 Attachments and Exhibits

All Attachments and/or Exhibits attached to any, and all Statement(s) of Work, attached to, or referencing this Contract, are incorporated in their entirety into, and form part of, this Contract.

#### 2.013 Statements of Work

- (a) The parties agree that the Services/Deliverables to be rendered by Contractor pursuant to this Contract (and any future amendments of it) will be defined and described in detail in Statements of Work or Purchase Orders (PO) executed under this Contract. Contractor shall not be obliged or authorized to commence any work to implement a Statement of Work until authorized via a PO issued against this Contract, or an amendment to this Contract (see 2.106). Contractor shall perform in accordance with this Contract, including the Statements of Work/Purchase Orders executed under it.
- (b) Unless otherwise agreed by the parties, each Statement of Work (as defined in Article 1) will include, or incorporate by reference to the appropriate Contract Article 1 Attachment containing, the following information:
  - a description of the Services to be performed by Contractor under the Statement of Work;



- a project schedule (including the commencement and completion dates for all tasks, subtasks (for all projects of sufficient duration and complexity to warrant sub task breakdown), and Deliverables;
- a list of the Deliverables to be provided, if any, including any particular specifications and acceptance criteria for such Deliverables, and the dates on which the Deliverables are scheduled to be completed and delivered to the State;
- all Deliverable price schedules and other charges associated with the Statement of Work, the overall fixed price for such Statement of Work and any other appropriate pricing and payment terms;
- a specification of Contractor's and the State's respective performance responsibilities with respect to the performance or completion of all tasks, subtasks and Deliverables;
- a listing of any Key Personnel of Contractor and/or its Subcontractors for that Statement of Work and any future Statements of Work;
- any other information or provisions the parties agree to include.

(c) Reserved.

(d) The initial Statements of Work, as of the Effective Date, are attached to this Contract.

**2.014 Issuing Office**

This Contract is issued by the Department of Management and Budget, Purchasing Operations and Department of Information Technology (collectively, including all other relevant State of Michigan departments and agencies, the "State"). Department of Management and Budget, Purchasing Operations is the sole point of contact in the State with regard to all procurement and contractual matters relating to the Contract.

**Purchasing Operation is the only State office authorized to change, modify, amend, alter or clarify the prices, specifications, terms and conditions of this Contract.** The Contractor Administrator within the office of Purchasing Operations for this Contract is:

Douglas Collier  
Purchasing Operations  
Department of Management and Budget  
Mason Bldg, 2nd Floor  
PO Box 30026  
Lansing, MI 48909  
Email Collierd1@michigan.gov  
Phone 517/335-4804

**2.015 Contract Compliance Inspector**

Upon receipt at OAS of the properly executed Contract, it is anticipated that the Director of DMB Purchasing Operations, in consultation with (insert the end using agency), will direct that the person named below, or any other person so designated, be authorized to monitor and coordinate the activities for the Contract on a day-to-day basis during its term. However, monitoring of this Contract implies **no authority to change, modify, clarify, amend, or otherwise alter the prices, terms, conditions and specifications of such Contract as that authority is retained by Purchasing Operations.** The Contract Compliance Inspector for this Contract is:

Name Michael Breen  
Department Michigan Department of Information Technology  
Building/Floor Constitution Hall, 2<sup>nd</sup> floor  
Address 525 West Allegan  
City/State/Zip Lansing, MI 48909  
Phone Number (517) 241-7720  
Fax Number  
Email Address breenm@michigan.gov



## 2.016 Project Manager

The following individual will oversee the project:

Name Dick Novello  
Department Michigan Department of Information Technology  
Area Data Center Operations  
City/State/Zip 515 Westshire, Lansing, MI 48917  
Phone Number (517) 241-8874  
Fax Number (517) 241-1769  
Email Address novellod@michigan.gov

### 2.020 Contract Objectives/Scope/Background

#### 2.021 Background

Data Center Operations (DCO) has used the Aperture product for years as a provisioning tool, to do design, plan, and manage the raised floor. The current release 9 is due to go unsupported as of the end of February of 2008. This request is to upgrade our license to the most current release (Aperture Vista-e). Vista-e is an Information Technology Infrastructure Library -aligned framework for change management and infrastructure provisioning across the hosting centers. This request is for license upgrade and three years of annual maintenance.

#### 2.022 Purpose

Department of Information Technology (DIT) Data Center Operations (DCO) has used the Aperture product for years as a provisioning tool, to do design, plan, and manage the raised floor. This request is for license upgrade and three years of annual maintenance

#### 2.023 Objectives and Scope

The objective is for license upgrade and three years of annual maintenance

#### 2.024 Interpretation

Sections 2.021 through 2.023 are intended to provide background and context for this Contract and are not intended to expand the scope of the obligations under this Contract or to alter the plain meaning of the terms and conditions of this Contract. However, to the extent the terms and conditions of this Contract are unclear or otherwise ambiguous, such terms and conditions are to be interpreted and construed in light of the provisions of this Section.

#### 2.025 Form, Function and Utility

If the Contract is for use of more than one State agency and if the Deliverable/Service does not the meet the form, function, and utility required by that State agency, that agency may, subject to State purchasing policies, procure the Deliverable/Service from another source.

### 2.030 Legal Effect and Term

#### 2.031 Legal Effect

Except as otherwise agreed in writing by the parties, the State assumes no liability for costs incurred by Contractor or payment under this Contract, until Contractor is notified in writing that this Contract (or Change Order) has been approved by the State Administrative Board (if required), approved and signed by all the parties, and a Purchase Order against the Contract has been issued.



### **2.032 Contract Term**

This Contract is for a period of 3/20/2008 - 2/28/2011 (three-year) commencing on the date that the last signature required to make the Contract enforceable is obtained. All outstanding Purchase Orders shall also expire upon the termination (cancellation for any of the reasons listed in 2.210) of the Contract, unless otherwise extended pursuant to the Contract. Absent an early termination for any reason, Purchase Orders issued but not expired, by the end of the Contract's stated term, will remain in effect for the balance of the fiscal year for which they were issued.

### **2.033 Renewal(s)**

This Contract may be renewed in writing by mutual agreement of the parties not less than thirty (30) days before its expiration. The Contract may be renewed for up to two (2) additional one (1) year periods. Successful completion of negotiations surrounding the terms of the extension, will be a pre-requisite for the exercise of any option year.

### 2.040 Contractor Personnel

#### **2.041 Contractor Personnel**

(a) Personnel Qualifications. All persons assigned by Contractor to the performance of Services under this Contract shall be employees of Contractor or its majority-owned (directly or indirectly, at any tier) subsidiaries (or a State-approved Subcontractor) and shall be fully qualified to perform the work assigned to them. Contractor shall include a similar provision in any subcontract entered into with a Subcontractor. For the purposes of this Contract, independent contractors engaged by Contractor solely in a staff augmentation role shall be treated by the State as if they were employees of Contractor for this Contract only; however, the State understands that the relationship between Contractor and Subcontractor is an independent contractor relationship.

#### **(b) Key Personnel**

- (i) In discharging its obligations under this Contract, Contractor shall provide the named key personnel on the terms indicated, to the best of its ability.
- (ii) To the best of its ability, Contractor will provide Key Personnel dedicated as provided to the project for its duration in the applicable Statement of Work.
- (iii) The State will have 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, will introduce the individual to the appropriate State representatives, and will 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. Additionally, the State's request shall be based on legitimate, good-faith reasons. Proposed alternative for the individual denied, shall be fully qualified for the position.
- (iv) Contractor shall not remove any Key Personnel from their assigned roles or the Contract without the prior written consent of the State. If the Contractor does remove Key Personnel without the prior written consent of the State, it shall be considered an unauthorized removal ("Unauthorized Removal"). It shall not be considered an Unauthorized Removal if Key Personnel must be replaced 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. It shall not be considered an Unauthorized Removal if Key Personnel must be replaced because of promotions or other job movements allowed by Contractor personnel policies or Collective Bargaining Agreement(s) as long as the State receives prior written notice before shadowing occurs and Contractor provides thirty (30) days of shadowing unless parties agree to a different time period. The Contractor with the State shall review any Key Personnel replacements, and appropriate transition planning will be established. Any Unauthorized Removal may be considered by the State to be a



material breach of the Contract, in respect of which the State may elect to exercise its rights under **Section 2.210**.

(v) It is acknowledged that an Unauthorized Removal will interfere with the timely and proper completion of the 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 **Section 2.210**, the State may assess liquidated damages against Contractor as specified below.

For the Unauthorized Removal of any Key Personnel designated in the applicable Statement of Work, the liquidated damages amount shall be \$25,000.00 per individual provided Contractor identifies a replacement approved by the State pursuant to **Section 2.041** and assigns the replacement to the Project to shadow the Key Personnel s/he is replacing for a period of at least thirty (30) days prior to such Key Personnel's removal.

If Contractor fails to assign a replacement to shadow the removed Key Personnel for at least thirty (30) days, in addition to the \$25,000.00 liquidated damages for an Unauthorized Removal, Contractor shall pay the amount of \$833.33 per day for each day of the thirty (30) 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 liquidated damages that may be assessed per Unauthorized Removal and failure to provide thirty (30) days of shadowing shall not exceed \$50,000.00 per individual.

(c) Re-assignment of non-Key Personnel. Prior to re-deploying to toehr projects, at the completion of their assigned tasks on the project, teams of its non-Key personnel who are performing Services on-site at State facilities or who are otherwise dedicated primarily to the Project, Contractor will give the State at least five (5) Business Days notice of the proposed re-deployment to give the State an opportunity to object to the re-deployment if the State reasonably believes such team's Contract responsibilities are not likely to be completed and approved by the State prior to the proposed date of re-deployment. If the State does not object within five days of receiving such notice, then the re-deployment is deemed accepted by the State. If an objection to re-deployment is raised, the Contractor may, after consultation and approval by the State, assign personnel with similar or like qualifications to complete the responsibilities.

(d) Re-assignment of Personnel at the State's Request. The State reserves the right to require the removal from the Project of Contractor personnel found, in the judgment of the State, to be unacceptable. The State's request shall be written with reasonable detail outlining the reasons for the removal request. Additionally, the State's request shall be based on legitimate, good-faith reasons. Replacement personnel for the removed person shall be fully qualified for the position. If the State exercises this right, and the Contractor cannot immediately replace the removed personnel, the State agrees to an equitable adjustment in schedule or other terms that may be affected by the State's required removal. If any such incident with removed personnel results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Service will not be counted in **Section 2.076** for a time as agreed to by the parties.

(e) Staffing Levels.

(i) All staff requirements not specified in the applicable Statement of Work or State-approved project plan as State personnel will be supplied by Contractor. This includes secretarial, clerical and Contract administration support staff necessary for Contractor to perform its obligations hereunder.

(ii) Contractor shall provide sufficient personnel resources for the completion of Contract tasks indicated in Contractor's project plan approved by the State. If the level of personnel resources is insufficient to complete any Contractor Contract tasks in accordance with the Contract time schedule as demonstrated by Contractor's failure to meet mutually agreed to time schedules, Contractor shall promptly add additional qualified personnel resources to the performance of the affected tasks, at no



additional charge to the State, in an amount sufficient to complete performance of Contractor's tasks in accordance with the Contract time schedule.

(f) **Personnel Turnover.** The Parties agree that it is in their best interests to keep the turnover rate of employees of Contractor and its Subcontractors who are performing the Services to a reasonable minimum. Accordingly, if the State determines that the turnover rate of such employees is excessive and so notifies Contractor, Contractor will meet with the State to discuss the reasons for the turnover rate and otherwise use commercially reasonable efforts to minimize such turnover rate. If requested to do so by the State, Contractor will submit to the State its proposals for reducing the turnover rate to an acceptable level. In any event, notwithstanding the turnover of personnel, Contractor remains obligated to perform the Services without degradation and in accordance with the State-approved Contract schedule.

(g) **Location.** All staff assigned by Contractor to work on the Contract will perform their duties either primarily at Contractor's offices and facilities or at State facilities. Without limiting the generality of the foregoing, Key Personnel will, at a minimum, spend at least the amount of time on-site at State facilities as indicated in the applicable Statement of Work. Subject to availability, selected Contractor personnel may be assigned office space to be shared with State personnel.

#### **2.042 Contractor Identification**

Contractor employees shall be clearly identifiable while on State property by wearing a State-issued badge, as required. Contractor employees are required to clearly identify themselves and the company they work for whenever making contact with State personnel by telephone or other means.

#### **2.043 Cooperation with Third Parties**

Contractor agrees to cause its personnel and the personnel of any Subcontractors to cooperate with the State and its agents and other contractors including the State's Quality Assurance personnel, and, as reasonably requested by the State, to provide to the State's agents and other contractors with reasonable access to Contractor's Project personnel, systems and facilities to the extent they relate to activities specifically associated with this Contract and will not interfere or jeopardize the safety or operation of the systems or facilities and provided Contractor receives reasonable prior written notice of such request. The State acknowledges that Contractor's time schedule for the Contract is very specific and agrees not to unnecessarily or unreasonably interfere with, delay or otherwise impeded Contractor's performance under this Contract with such requests for access.

#### **2.044 Subcontracting by Contractor**

(a) Contractor shall have full responsibility for the successful performance and completion of all of the Services and Deliverables. The State will consider Contractor to be the sole point of contact with regard to all contractual matters under this Contract, including payment of any and all charges for Services and Deliverables.

(b) Contractor shall not delegate any duties under this Contract to a Subcontractor unless the Department of Management and Budget, office of Purchasing Operations has given written consent to such delegation. The State shall have the right of prior written approval of all Subcontractors and to require Contractor to replace any Subcontractors found, in the reasonable judgment of the State, to be unacceptable. The State's request shall be written with reasonable detail outlining the reasons for the removal request. Additionally, the State's request shall be based on legitimate, good-faith reasons. Replacement Subcontractor(s) for the removed Subcontractor shall be fully qualified for the position. If the State exercises this right, and the Contractor cannot immediately replace the removed Subcontractor, the State will agree to an equitable adjustment in schedule or other terms that may be affected by the State's required removal. If any such incident with a removed Subcontractor results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Work will not be counted in **Section 2.076** for a time agreed upon by the parties.



(c) In any subcontracts entered into by Contractor for the performance of the Services, Contractor shall require the Subcontractor, to the extent of the Services to be performed by the Subcontractor, to be bound to Contractor by the terms of this Contract and to assume toward Contractor all of the obligations and responsibilities that Contractor, by this Contract, assumes toward the State. The State reserves the right to receive copies of and review all subcontracts, although Contractor may delete or mask any proprietary information, including pricing, contained in such contracts before providing them to the State. The management of any Subcontractor will be the responsibility of Contractor, and Contractor shall remain responsible for the performance of its Subcontractors to the same extent as if Contractor had not subcontracted such performance. Contractor shall make all payments to Subcontractors or suppliers of Contractor. Except as otherwise agreed in writing by the State and Contractor, the State will not be obligated to direct payments for the Services other than to Contractor. The State's written approval of any Subcontractor engaged by Contractor to perform any obligation under this Contract shall not relieve Contractor of any obligations or performance required under this Contract. Attached as **Exhibit A** is a list of the Subcontractors, if any, approved by the State as of the execution of this Contract, together with a copy of the applicable subcontract.

(d) Except where specifically approved in writing by the State on a case-by-case basis, Contractor shall flow down the obligations in **Sections 2.040, 2.110, 2.150, 2.160, 2.171(c), 2.172(b), 2.180, 2.260, 2.276, 2.297** in all of its agreements with any Subcontractors.

(e) The Contractor shall select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the Contract.

## **2.045 Contractor Responsibility for Personnel**

Contractor shall be responsible for all acts and omissions of its employees, as well as the acts and omissions of any other personnel furnished by Contractor to perform the Services.

### *2.050 State Standards*

## **2.051 Existing Technology Standards**

The Contractor will adhere to all existing standards as described within the comprehensive listing of the State's existing technology standards at [http://www.michigan.gov/dit/0,1607,7-139-30639\\_30655---,00.html](http://www.michigan.gov/dit/0,1607,7-139-30639_30655---,00.html).

## **2.052 PM Methodology Standards**

The State has adopted a standard documented Project Management Methodology (PMM) for use on all Information Technology (IT) based projects. See the State's PMM website at <http://www.michigan.gov/projectmanagement>.

The Contractor shall use the State's PPM to manage this Contract. If the Contractor requires training on the PMM, those costs shall be the responsibility of the Contractor, unless otherwise stated.

## **2.053 Adherence to Portal Technology Tools**

The State has adopted the following tools for its Portal Technology development efforts:

- Vignette Content Management and personalization Tool
- Inktomi Search Engine
- E-Pay Payment Processing Module
- Websphere Commerce Suite for e-Store applications

Unless otherwise stated, Contractor must use the Portal Technology Tools to implement web content management and deployment efforts. Tools used for web-based application development must work in



conjunction with Vignette and Inktomi. The interaction with Vignette and Inktomi must be coordinated with DIT, Enterprise Application Services Office, e-Michigan Web Development team.

Contractors that are compelled to use alternate tools must have received an exception from DIT, Enterprise Application Services Office, e-Michigan Web Development team, before this Contract is effective.

#### **2.054 Acceptable Use Policy**

To the extent that Contractor has access to the State computer system, Contractor must comply with the State's Acceptable Use Policy, see <http://www.michigan.gov/ditservice/0,1607,7-179-25781-73760--,00.html>. All Contractor employees must be required, in writing, to agree to the State's Acceptable Use Policy before accessing the State system. The State reserves the right to terminate Contractor's access to the State system if a violation occurs.

#### 2.060 Deliverables

##### **2.061 Ordering**

(a) Any Services/Deliverables to be furnished under this Contract shall be ordered by issuance of written Purchase Orders/Blanket Purchase Order by the State after approval by the Contract Administrator or his/her designee. All orders are subject to the terms and conditions of this Contract. In the event of conflict between an order and this Contract, the Contract shall take precedence as stated in **Section 2.293**. In no event shall any additional terms and conditions contained on a Purchase Order/Blanket Purchase Order be applicable, unless specifically contained in that Purchase Order/Blanket Purchase Order's accompanying Statement of Work.

(b) DIT will continue to oversee the use of this Contract by End Users. DIT may, in writing, delegate to agencies the authority to submit requests for certain services directly to the Contractor. DIT may also designate, in writing, some services as non-delegated and require DIT review and approval before agency acquisition. DIT will use Contractor provided management reports and periodic random agency audits to monitor and administer contract usage for delegated services.

##### **2.062 Software**

**Exhibit A** lists the items of software the State is required to purchase for execution the Contract. The list in **Exhibit A** includes all software required to complete the Contract and make the Deliverables operable; if any additional software is required in order for the Deliverables to meet the requirements of this Contract, such software shall be provided to the State by Contractor at no additional charge (except where agreed upon and specified in a Statement of Work or Contract Change Notice). **Exhibit A** also identifies certain items of software to be provided by the State.

##### **2.063 Hardware (Reserved)**

##### **2.064 Equipment to be New and Prohibited Products (Reserved)**

#### 2.070 Performance

##### **2.071 Performance, In General**

The State engages Contractor to execute the Contract and perform the Services/provide the Deliverables, and Contractor undertakes to execute and complete the Contract in its entirety in accordance with the terms and conditions of this Contract and with the participation of State representatives as specified in this Contract.



## 2.072 Time of Performance

(a) Contractor shall use commercially reasonable efforts to provide the resources necessary to complete all Services and Deliverables in accordance with the time schedules contained in the Statements of Work and other Exhibits governing the work, and with professional quality.

(b) Without limiting the generality of **Section 2.072(a)**, Contractor shall notify the State in a timely manner upon becoming aware of any circumstances that may reasonably be expected to jeopardize the timely and successful completion of any Deliverables/Services on the scheduled due dates in the latest State-approved delivery schedule and, in such event, shall inform the State of the projected actual delivery date.

(c) If Contractor believes that a delay in performance by the State has caused or will cause Contractor to be unable to perform its obligations in accordance with specified Contract time periods, Contractor shall notify the State in a timely manner and shall use commercially reasonable efforts to perform its obligations in accordance with such Contract time periods notwithstanding the State's failure. Contractor will not be in default for a delay in performance to the extent such delay is caused by the State.

## 2.073 Liquidated Damages (Reserved)

## 2.074 Bankruptcy

If Contractor shall file for protection under the bankruptcy laws, or if an involuntary petition shall be filed against Contractor and not removed within thirty (30) days, or if the Contractor becomes insolvent, be adjudicated bankrupt, or if it should make a general assignment for the benefit of creditors, or if a receiver shall be appointed due to its insolvency, and Contractor and/or its affiliates are unable to provide reasonable assurances that Contractor and/or its affiliates can deliver the services provided herein, the State may, without prejudice to any other right or remedy, terminate this Contract, in whole or in part, and, at its option, may take possession of the "Work in Process" and finish such Works in Process by whatever appropriate method the State may deem expedient. Contractor will fix appropriate notices or labels on the Work in Process to indicate ownership by the State. To the extent reasonably possible, materials and Work in Process shall be stored separately from other stock and marked conspicuously with labels indicating ownership by the State.

To secure the State's progress payments before the delivery of any services or materials required for the execution of Contractor's obligations hereunder, and any work which Contractor may subcontract in the support of the performance of its obligations hereunder, title shall vest in the State to the extent the State has made progress payments hereunder.

## 2.075 Time is of the Essence

The Contractor agrees that time is of the essence in the performance of the Contractor's obligations under this Contract.

## 2.076 Service Level Agreements (SLAs) (Reserved)

### 2.080 Delivery and Acceptance of Deliverables

## 2.081 Delivery Responsibilities

Unless otherwise specified by the State within an individual order, the following shall be applicable to all orders issued under this Contract.

(a) Shipment responsibilities - Services performed/Deliverables provided under this Contract shall be delivered "F.O.B. Destination, within Government Premises." The Contractor shall have complete responsibility for providing all Services/Deliverables to all site(s) unless otherwise stated. Actual delivery dates will be specified on the individual purchase order.

(b) Delivery locations - Services will be performed/Deliverables will be provided at every State of Michigan location within Michigan unless otherwise stated in the SOW. Specific locations will be provided by the State or upon issuance of individual purchase orders.



(c) Damage Disputes - At the time of delivery to State Locations, the State shall examine all packages. The quantity of packages delivered shall be recorded and any obvious visible or suspected damage shall be noted at time of delivery using the shipper's delivery document(s) and appropriate procedures to record such.

Where there is no obvious or suspected damage, all deliveries to a State Location must be opened by the State and the contents inspected for possible internal damage not visible externally within fourteen (14) days of receipt. Any damage must be reported to the Contractor within five (5) days of inspection. If this inspection does not occur and damages not reported within thirty (30) days of receipt, the cure for such damaged deliveries shall transfer to the delivery signing party.

### **2.082 Delivery of Deliverables**

(a) Where applicable, the Statements of Work/POs contain lists of the Deliverables to be prepared and delivered by Contractor including, for each Deliverable, the scheduled delivery date and a designation of whether the Deliverable is a document ("Written Deliverable"), a good ("Physical Deliverable") or a Service. All Deliverables shall be completed and delivered for State review and written approval and, where applicable, installed in accordance with the State-approved delivery schedule and any other applicable terms and conditions of the Contract.

### **2.083 Testing**

(a) Prior to delivering any of the above-mentioned Statement of Work Physical Deliverables or Services to the State, Contractor will first perform all required quality assurance activities to verify that the Physical Deliverable or Service is complete and in conformance with its specifications listed in the applicable Statement of Work or Purchase Order. Before delivering a Physical Deliverable or Service to the State, Contractor shall certify to the State that (1) it has performed such quality assurance activities, (2) it has performed any applicable testing, (3) it has corrected all material deficiencies discovered during such quality assurance activities and testing, (4) the Deliverable or Service is in a suitable state of readiness for the State's review and approval, and (5) the Deliverable/Service has all Critical Security patches/updates applied.

(b) If a Deliverable includes installation at a State Location, then Contractor shall (1) perform any applicable testing, (2) correct all material deficiencies discovered during such quality assurance activities and testing, and (3) inform the State that the Deliverable is in a suitable state of readiness for the State's review and approval. To the extent that testing occurs at State Locations, the State shall be entitled to observe or otherwise participate in testing.

### **2.084 Approval of Deliverables, In General**

(a) All Deliverables (Physical Deliverables and Written Deliverables) and Services require formal written approval by the State, in accordance with the following procedures. Formal approval by the State requires that the Deliverable be confirmed in writing by the State to meet its specifications, which will include the successful completion of Testing as applicable in **Section 2.083**, to be led by the State with the support and assistance of Contractor. The parties acknowledge that the approval process set forth herein will be facilitated by ongoing consultation between the parties, visibility of interim and intermediate Deliverables and collaboration on key decisions.

(b) The State's obligation to comply with any State Review Period is conditioned on the timely delivery of Deliverables/Services being reviewed.

(c) Prior to commencement of its review or testing of a Deliverable/Service, the State may inspect the Deliverable/Service to confirm that all components of the Deliverable/Service have been delivered without material deficiencies. If the State determines that the Deliverable/Service has material deficiencies, the State may refuse delivery of the Deliverable/Service without performing any further inspection or testing of the Deliverable/Service. Otherwise, the review period will be deemed to have started on the day the State receives the Deliverable or the Service begins, and the State and Contractor agree that the Deliverable/Service is ready for use and, where applicable, certification by Contractor in accordance with **Section 2.083(a)**.



(d) The State will approve in writing a Deliverable/Service upon confirming that it conforms to and, performs in accordance with, its specifications without material deficiency. The State may, but shall not be required to, conditionally approve in writing a Deliverable/Service that contains material deficiencies if the State elects to permit Contractor to rectify them post-approval. In any case, Contractor will be responsible for working diligently to correct within a reasonable time at Contractor's expense all deficiencies in the Deliverable/Service that remain outstanding at the time of State approval.

(e) If, after three (3) opportunities (the original and two repeat efforts), Contractor is unable to correct all deficiencies preventing Final Acceptance of a Deliverable/Service, the State may: (i) demand that Contractor cure the failure and give Contractor additional time to cure the failure at the sole expense of Contractor; or (ii) keep the Contract in force and do, either itself or through other parties, whatever Contractor has failed to do, in which event Contractor shall bear any excess expenditure incurred by the State in so doing beyond the Contract price for such Deliverable/Service not to exceed 2x the value of the deliverable and will pay the State an additional sum equal to ten percent (10% of such excess expenditure to cover the State's general expenses provided the State can furnish proof of such general expenses; or (iii) terminate the particular Statement of Work for default, either in whole or in part by notice to Contractor provided Contractor is unable to cure such breach. Notwithstanding the foregoing, the State shall not use, as a basis for exercising its termination rights under this Section, deficiencies discovered in a repeat State Review Period that could reasonably have been discovered during a prior State Review Period.

(f) The State, at any time and in its reasonable discretion, may halt the testing or approval process if such process reveals deficiencies in or problems with a Deliverable/Service in a sufficient quantity or of a sufficient severity as to make the continuation of such process unproductive or unworkable. In such case, the State may stop using the Service or return the applicable Deliverable to Contractor for correction and re-delivery prior to resuming the testing or approval process.

### **2.085 Process For Approval of Written Deliverables**

The State Review Period for Written Deliverables will be the number of days set forth in the applicable Statement of Work following delivery of the final version of the Deliverable (failing which the State Review Period, by default, shall be five (5) Business Days for Written Deliverables of one hundred (100) pages or less and ten (10) Business Days for Written Deliverables of more than one hundred (100) pages). The duration of the State Review Periods will be doubled if the State has not had an opportunity to review an interim draft of the Written Deliverable prior to its submission to the State. The State agrees to notify Contractor in writing by the end of the State Review Period either stating that the Deliverable is approved in the form delivered by Contractor or describing any deficiencies that must be corrected prior to approval of the Deliverable (or at the State's election, subsequent to approval of the Deliverable). If the State delivers to Contractor a notice of deficiencies, Contractor will correct the described deficiencies and within thirty (30) Business Days resubmit the Deliverable in a form that shows all revisions made to the original version delivered to the State. Contractor's correction efforts will be made at no additional charge. Upon receipt of a corrected Deliverable from Contractor, the State will have a reasonable additional period of time, not to exceed the length of the original State Review Period, to review the corrected Deliverable to confirm that the identified deficiencies have been corrected.

### **2.086 Process for Approval of Services**

The State Review Period for approval of Services is governed by the applicable Statement of Work (failing which the State Review Period, by default, shall be twenty (20) Business Days for Services). The State agrees to notify Contractor in writing by the end of the State Review Period either stating that the Service is approved in the form delivered by Contractor or describing any deficiencies that must be corrected prior to approval of the Services (or at the State's election, subsequent to approval of the Service). If the State delivers to Contractor a notice of deficiencies, Contractor will correct the described deficiencies and within thirty (30) Business Days resubmit the Service in a form that shows all revisions made to the original version delivered to the State. Contractor's correction efforts will be made at no additional charge. Upon implementation of a corrected Service from Contractor, the State will have a reasonable additional period of time, not to exceed the



length of the original State Review Period, to review the corrected Service for conformity and that the identified deficiencies have been corrected.

### **2.087 Process for Approval of Physical Deliverables**

The State Review Period for approval of Physical Deliverables is governed by the applicable Statement of Work (failing which the State Review Period, by default, shall be twenty (20) continuous Business Days for a Physical Deliverable). The State agrees to notify Contractor in writing by the end of the State Review Period either stating that the Deliverable is approved in the form delivered by Contractor or describing any deficiencies that must be corrected prior to approval of the Deliverable (or at the State's election, subsequent to approval of the Deliverable). If the State delivers to Contractor a notice of deficiencies, Contractor will correct the described deficiencies and within thirty (30) Business Days resubmit the Deliverable in a form that shows all revisions made to the original version delivered to the State. Contractor's correction efforts will be made at no additional charge. Upon receipt of a corrected Deliverable from Contractor, the State will have a reasonable additional period of time, not to exceed the length of the original State Review Period, to review the corrected Deliverable to confirm that the identified deficiencies have been corrected.

### **2.088 Final Acceptance**

Unless otherwise stated in the Statement of Work or Purchase Order, "Final Acceptance" of each Deliverable shall occur when each Deliverable/Service has been approved by the State following the State Review Periods identified in **Sections 2.080-2.087**. Payment will be made for Deliverables installed and accepted. Upon acceptance of a Service, the State will pay for all Services provided during the State Review Period that conformed to the acceptance criteria.

### 2.090 Financial

#### **2.091 Pricing**

##### (a) Fixed Prices for Services/Deliverables

Each Statement of Work/PO issued under this Contract shall specify (or indicate by reference to the appropriate Contract Exhibit) the firm, fixed prices for all Services/Deliverables, and the associated payment milestones and payment amounts. To the extent the parties agree that certain specific Services will be provided on a time and materials basis, such Services shall be provided at the Amendment Labor Rates. The State may make progress payments to the Contractor when requested as work progresses, but not more frequently than monthly, in amounts approved by the Contract Administrator, after negotiation. Contractor must show verification of measurable progress at the time of requesting progress payments.

##### (b) Adjustments for Reductions in Scope of Services/Deliverables

If the scope of the Services/Deliverables under any Statement of Work issued under this Contract is subsequently reduced by the State, the parties shall negotiate an equitable reduction in Contractor's charges under such Statement of Work commensurate with the reduction in scope, using the rates provided unless specifically identified in an applicable Statement of Work.

##### (c) Services/Deliverables Covered

For all Services/Deliverables to be provided by Contractor (and its Subcontractors, if any) under this Contract, the State shall not be obligated to pay any amounts in addition to the charges specified in this Contract.

##### (d) Labor Rates

All time and material charges will be at the rates specified.

#### **2.092 Invoicing and Payment Procedures and Terms**

##### (a) Invoicing and Payment – In General

(i) Each Statement of Work issued under this Contract shall list (or indicate by reference to the appropriate Contract Exhibit) the prices for all Services/Deliverables, equipment and commodities to be provided, and the associated payment milestones and payment amounts.



(ii) Each Contractor invoice will show details as to charges by Service/Deliverable component and location at a level of detail reasonably necessary to satisfy the State's accounting and charge-back requirements. The charges for Services billed on a time and materials basis shall be determined based on the actual number of hours of Services performed, at the applicable Labor Rates specified. Invoices for Services performed on a time and materials basis will show, for each individual, the number of hours of Services performed during the billing period, the billable skill/labor category for such person and the applicable hourly billing rate. Prompt payment by the State is contingent on the Contractor's invoices showing the amount owed by the State minus any holdback amount to be retained by the State in accordance with **Section 2.094**.

(iii) Correct invoices will be due and payable by the State, in accordance with the State's standard payment procedure as specified in 1984 Public Act No. 279, MCL 17.51 et seq., within forty-five (45) days after receipt, provided the State determines that the invoice was properly rendered.

(b) Taxes (See Section 2.305 and Article 3, Section 3.022-3.024 for additional )  
The State is exempt from Federal Excise Tax, State and Local Sales Taxes, and Use Tax with respect to the sale to and use by it of tangible personal property. Such taxes shall not be included in Contract prices as long as the State maintains such exemptions. Copies of all tax exemption certificates shall be supplied to Contractor, if requested.

(c) Out-of-Pocket Expenses  
Contractor acknowledges that the out-of-pocket expenses that Contractor expects to incur in performing the Services/ providing the Deliverables (such as, but not limited to, travel and lodging, document reproduction and shipping, and long distance telephone) are included in Contractor's fixed price for each Statement of Work. Accordingly, Contractor's out-of-pocket expenses are not separately reimbursable by the State unless, on a case-by-case basis for unusual expenses, the State has agreed in advance and in writing to reimburse Contractor for such an expense at the State's current travel reimbursement rates. See [http://www.mi.gov/dmb/0,1607,7-150-9141\\_13132---,00.html](http://www.mi.gov/dmb/0,1607,7-150-9141_13132---,00.html) for current rates.

(d) Pro-ration  
To the extent there are any Services that are to be paid for on a monthly basis, the cost of such Services shall be pro-rated for any partial month.

(e) Antitrust Assignment  
The Contractor assigns to the State any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to the Contractor, toward fulfillment of this Contract.

(f) Final Payment  
The making of final payment by the State to Contractor does not constitute a waiver by either party of any rights or other claims as to the other party's continuing obligations under the Contract, nor will it constitute a waiver of any claims by one party against the other arising from unsettled claims or failure by a party to comply with this Contract, including claims for Services and Deliverables not reasonably known until after acceptance to be defective or substandard. Contractor's acceptance of final payment by the State under this Contract shall constitute 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 unsettled.

### **2.093 State Funding Obligation**

The State's obligation under this Contract is payable only and solely from funds appropriated for the purpose of this Contract. Contractor acknowledges and agrees that all funds for payments after the end of the current fiscal year are subject to the availability of a legislative appropriation for the purpose of this Contract. Events of non-appropriation are addressed further in **Section 2.210** of this Contract.

### **2.094 Holdback (Reserved)**



## 2.095 Electronic Payment Availability

Public Act 533 of 2004 requires that payments under this contract be processed by electronic funds transfer (EFT). Contractor is required to register to receive payments by EFT at the Contract & Payment Express website ([www.cpexpress.state.mi.us](http://www.cpexpress.state.mi.us)).

### 2.100 Contract Management

#### 2.101 Contract Management Responsibility

(a) Contractor shall have overall responsibility for managing and successfully performing and completing the Services/Deliverables, subject to the overall direction and supervision of the State and with the participation and support of the State as specified in this Contract. Contractor's duties will include monitoring and reporting the State's performance of its participation and support responsibilities (as well as Contractor's own responsibilities) and providing timely notice to the State in Contractor's reasonable opinion if the State's failure to perform its responsibilities in accordance with **Article 1, Attachment A** (Project Plan) is likely to delay the timely achievement of any Contract tasks.

(b) The Services/Deliverables will be provided by the Contractor either directly or through its affiliates, subsidiaries, subcontractors or resellers. Regardless of the entity providing the Service/Deliverable, the Contractor will act as a single point of contact coordinating these entities to meet the State's need for Services/Deliverables. Nothing in this Contract, however, shall be construed to authorize or require any party to violate any applicable law or regulation in its performance of this Contract.

#### 2.102 Problem and Contract Management Procedures

Problem Management and Contract Management procedures will be governed by the Contract and the applicable Statements of Work.

#### 2.103 Reports and Meetings

(a) Reports.

Within thirty (30) days after the Effective Date, the parties shall determine an appropriate set of periodic reports to be issued by Contractor to the State. Such reports may include:

- (i) separately address Contractor's performance in each area of the Services;
- (ii) for each area of the Services, assess the degree to which Contractor has attained or failed to attain the pertinent objectives in that area, including on-time completion and delivery of Deliverables;
- (iii) explain the reasons for any failure to achieve on-time completion and delivery of Deliverables and include a plan for corrective action where appropriate;
- (iv) describe any circumstances that Contractor anticipates will impair or prevent on-time completion and delivery of Deliverables in upcoming reporting periods;
- (v) include plans for corrective action or risk mitigation where appropriate and describe the status of ongoing problem resolution efforts;
- (vi) provide reports setting forth a comparison of actual hours spent by Contractor (including its augmented personnel and Subcontractors) in performing the Project versus hours budgeted by Contractor.
- (vii) set forth a record of the material personnel changes that pertain to the Services and describe planned changes during the upcoming month that may affect the Services.
- (viii) include such documentation and other information may be mutually agreed to verify compliance with, and meeting the objectives of, this Contract.
- (ix) set forth an updated schedule that provides information on the status of upcoming Deliverables, expected dates of delivery (or redelivery) of such Deliverables and estimates on timing for completion of the Project.



(b) Meetings.

Within thirty (30) days after the Effective Date, the parties shall determine an appropriate set of meetings to be held between representatives of the State and Contractor. Contractor shall prepare and circulate an agenda sufficiently in advance of each such meeting to give participants an opportunity to prepare for the meeting. Contractor shall incorporate into such agenda items that the State desires to discuss. At the State's request, Contractor shall prepare and circulate minutes promptly after a meeting.

#### 2.104 System Changes

Contractor is not responsible for and not authorized to make changes to any State systems without written authorization from the State. Any changes Contractor makes to State systems with the State's approval shall be done in accordance with applicable State procedures, including security, access and configuration management procedures.

#### 2.105 Reserved

#### 2.106 Change Requests

The State reserves the right to request from time to time, any changes to the requirements and specifications of the Contract and the work to be performed by the Contractor under the Contract. During the course of ordinary business, it may become necessary for the State to discontinue certain business practices or create Additional Services/Deliverables. At a minimum, to the extent applicable, the State would like the Contractor to provide a detailed outline of all work to be done, including tasks necessary to accomplish the services/deliverables, timeframes, listing of key personnel assigned, estimated hours for each individual per task, and a complete and detailed cost justification.

If the State requests or directs the Contractor to perform any Services/Deliverables that are outside the scope of the Contractor's responsibilities under the Contract ("New Work"), the Contractor must notify the State promptly, and before commencing performance of the requested activities, that it believes the requested activities are New Work. If the Contractor fails to notify the State before commencing performance of the requested activities, any such activities performed before notice is given by the Contractor shall be conclusively considered to be in-scope Services/Deliverables, not New Work.

If the State requests or directs the Contractor to perform any services or provide deliverables that are consistent with and similar to the Services/Deliverables being provided by the Contractor under the Contract, but which the Contractor reasonably and in good faith believes are not included within the Statements of Work, then before performing such services or providing such deliverables, the Contractor shall notify the State in writing that it considers the services or deliverables to be an Additional Service/Deliverable for which the Contractor should receive additional compensation. If the Contractor does not so notify the State, the Contractor shall have no right to claim thereafter that it is entitled to additional compensation for performing that service or providing that deliverable. If the Contractor does so notify the State, then such a service or deliverable shall be governed by the Change Request procedure in this Section.

In the event prices or service levels are not acceptable to the State, the Additional Services or New Work shall be subject to competitive bidding based upon the specifications.

(a) Change Requests

(i) State Requests

If the State should require Contractor to perform New Work, Additional Services or make changes to the Services that would affect the Contract completion schedule or the amount of compensation due Contractor (a "Change"), the State shall submit a written request for Contractor to furnish a proposal for carrying out the requested Change (a "Change Request").

(ii) Contractor Recommendations



Contractor shall be entitled to propose a Change to the State, on its own initiative, should it be of the opinion that this would benefit the Contract.

(iii) Upon receipt of a Change Request or on its own initiative, Contractor shall examine the implications of the requested Change on the technical specifications, Contract schedule and price of the Deliverables and Services and shall submit to the State without undue delay a written proposal for carrying out the Change. Contractor's proposal will include any associated changes in the technical specifications, Contract schedule and price and method of pricing of the Services. If the Change is to be performed on a time and materials basis, the Amendment Labor Rates shall apply to the provision of such Services. If Contractor provides a written proposal and should Contractor be of the opinion that a requested Change is not to be recommended, it shall communicate its opinion to the State but shall nevertheless carry out the Change as specified in the written proposal if the State directs it to do so.

(iv) By giving Contractor written notice within a reasonable time, the State shall be entitled to accept a Contractor proposal for Change, to reject it or to reach another agreement with Contractor. Should the parties agree on carrying out a Change, a written Contract Change Notice shall be prepared and issued under this Contract, describing the Change and its effects on the Services and any affected components of this Contract (a "Contract Change Notice").

(v) No proposed Change shall be performed until the proposed Change has been specified in a duly executed Contract Change Notice issued by the Department of Management and Budget, office of Purchasing Operations.

(vi) If the State requests or directs Contractor to perform any activities that Contractor believes constitute a Change, Contractor must notify the State that it believes the requested activities are a Change prior to commencing the performance of the requested activities. If Contractor fails to so notify the State prior to commencing performance of the requested activities, such activities shall be considered to be performed gratuitously by Contractor, and Contractor shall not have any right thereafter to assert any claim for additional compensation or time for the performance of such activities. If Contractor commences performance of gratuitous services outside the scope of this Contract and subsequently elects to stop performing such out-of-scope services, Contractor must, at the request of the State, back out or reverse any changes resulting from such performance that would adversely affect the Contract.

## **2.107 Management Tools**

Contractor will use an automated tool for planning, monitoring and tracking the Contract's progress. In addition, Contractor shall use automated project management tools as reasonably necessary to perform the Services, which tools shall include the capability to produce through the end of the Contract: (i) staffing tables with names of personnel assigned to Contract tasks, (ii) project plans showing tasks, subtasks, Deliverables and the resources required and allocated to each (including detailed plans for all Services to be performed within the next sixty (60) days, updated semi-monthly) and (iii) graphs showing critical events, dependencies and decision points during the course of the Contract. Any tool(s) used by Contractor for such purposes must produce information of a type and in a manner and format that will support reporting in compliance with the State's standard to the extent such information is described with reasonable detail in the Statements of Work and to the extent the related work is of sufficient project complexity and duration to warrant such reporting.

### **2.110 Records and Inspections**

#### **2.111 Records and Inspections**

The Contractor agrees that the State may, upon 48-hour notice, perform an audit at Contractor's location(s) to determine if the Contractor is complying with the requirements of the Contract. The Contractor agrees to cooperate with the State during the audit and produce all records and documentation that verifies compliance with the Contract requirements.

#### **2.112 Errors**

(a) If the audit demonstrates any errors in the statements provided to the State, then the amount in error shall be reflected as a credit or debit on the next invoice and in subsequent invoices until the amount is



paid or refunded in full. However, a credit or debit may not be carried for more than four (4) quarterly statements. If a balance remains after four (4) quarterly statements, then the remaining amount will be due as a payment or refund within forty-five (45) days of the last quarterly statement that the balance appeared on or termination of the contract, whichever is earlier.

(b) In addition to other available remedies, the difference between the payment received and the correct payment amount is greater than ten percent (10%), then the Contractor shall pay all of the reasonable costs of the audit.

### 2.120 State Responsibilities

#### **2.121 State Performance Obligations**

(a) Equipment and Other Resources. To facilitate Contractor's performance of the Services/Deliverables, the State shall provide to Contractor such equipment and resources as identified in the Statements of Work or other Contract Exhibits as items to be provided by the State.

(b) Facilities. The State shall designate space as long as it is available and as provided in the Statement of Work, to house Contractor's personnel whom the parties agree will perform the Services/Deliverables at State facilities (collectively, the "State Facilities"). Contractor shall have reasonable access to, and unless agreed otherwise by the parties in writing shall observe and comply with all rules and regulations relating to, each of the State Facilities (including hours of operation) used by Contractor in the course of providing the Services. Contractor agrees that it will not, without the prior written consent of the State, use any State Facilities or access any State information systems provided for Contractor's use, or to which Contractor otherwise gains access in the course of performing the Services, for any purpose other than providing the Services to the State.

(c) Return. Contractor shall be responsible for returning to the State any State-furnished equipment, facilities and other resources when no longer required for the Contract in the same condition as when provided by the State, reasonable wear and tear excepted.

(d) Except as otherwise provided in **Section 2.220**, the State's failure to perform its responsibilities as set forth in this Contract shall not be deemed to be grounds for termination by Contractor. However, Contractor will not be liable for any default or delay in the performance of its obligations under this Contract to the extent such default or delay is caused by nonperformance of the State's obligations under this Contract, provided Contractor provides the State with reasonable written notice of such nonperformance and Contractor uses commercially reasonable efforts to perform notwithstanding the State's failure to perform. In addition, if the State's nonperformance of its responsibilities under this Contract materially increases the time required for Contractor's performance or Contractor's cost of performance, Contractor shall be entitled to seek an equitable extension via the Change Request process described in **Section 2.106**.

### 2.130 Security

#### **2.131 Background Checks**

The Contractor shall authorize the investigation of its personnel proposed to have access to State facilities and systems on a case by case basis. The scope of the background check is at the discretion of the State and the results will be used to determine Contractor personnel eligibility for working within State facilities and systems. Such investigations will include Michigan State Police Background checks (ICHAT) and may include the National Crime Information Center (NCIC) Finger Prints. Proposed Contractor personnel may be required to complete and submit an RI-8 Fingerprint Card for the NCIC Finger Print Check. Any request for background checks will be initiated by the State and will be reasonably related to the type of work requested.

All Contractor personnel will also be expected to comply with the State's security and acceptable use policies for State IT equipment and resources. See <http://www.michigan.gov/ditservice/0,1607,7-179-25781-73760--00.html>. Furthermore, Contractor personnel will be expected to agree to the State's security and acceptable use policies before the Contractor personnel will be accepted as a resource to perform work for the State. It is expected the Contractor will present these documents to the prospective employee before the Contractor



presents the individual to the State as a proposed resource. Contractor staff will be expected to comply with all Physical Security procedures in place within the facilities where they are working.

2.140 Reserved

2.150 Confidentiality

**2.151 Freedom of Information**

All information in any proposal submitted to the State by Contractor and this Contract is subject to the provisions of the Michigan Freedom of Information Act, 1976 Public Act No. 442, as amended, MCL 15.231, et seq (the "FOIA").

**2.152 Confidentiality**

Contractor and the State each acknowledge that the other possesses and will continue to possess confidential information that has been developed or received by it. As used in this Section, "Confidential Information" of Contractor shall mean all non-public proprietary information of Contractor (other than Confidential Information of the State as defined below) which is marked confidential, restricted, proprietary or with a similar designation. "Confidential Information" of the State shall mean any information which is retained in confidence by the State (or otherwise required to be held in confidence by the State pursuant to applicable federal, state and local laws and regulations) or which, in the case of tangible materials provided to Contractor by the State pursuant to its performance under this Contract, is marked as confidential, proprietary or with a similar designation by the State. In the case of information of either Contractor or the State "Confidential Information" shall exclude any information (including this Contract) that is publicly available pursuant to the Michigan FOIA.

**2.153 Protection of Confidential Information**

The State and Contractor will each use at least the same degree of care to prevent disclosing to third parties the Confidential Information of the other as it employs to avoid unauthorized disclosure, publication or dissemination of its own confidential information of like character, but in no event less than reasonable care. Neither Contractor nor the State will (i) make any use of the Confidential Information of the other except as contemplated by this Contract, (ii) acquire any right in or assert any lien against the Confidential Information of the other, or (iii) if requested to do so, refuse for any reason to promptly return the other party's Confidential Information to the other party. Each party will limit disclosure of the other party's Confidential Information to employees and Subcontractors who must have access in order to fulfill the purposes of this Contract. Disclosure to, and use by, a Subcontractor is permissible where (A) use of a Subcontractor is authorized under this Contract, (B) such disclosure is necessary or otherwise naturally occurs in connection with work that is within such Subcontractor's scope of responsibility, 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 and of any Subcontractor having access or continued access to the State's Confidential Information may be required to execute an acknowledgment that the employee has been advised of Contractor's and the Subcontractor's obligations under this Section and of the employee's obligation to Contractor or Subcontractor, as the case may be, to protect such Confidential Information from unauthorized use or disclosure.

**2.154 Exclusions**

Notwithstanding the foregoing, the provisions of this Section will not apply to any particular information which the State or Contractor can demonstrate (i) was, at the time of disclosure to it, in the public domain; (ii) after disclosure to it, is published or otherwise becomes part of the public domain through no fault of the receiving party; (iii) was in the possession of the receiving party at the time of disclosure to it without an obligation of confidentiality; (iv) was received after disclosure to it from a third party who had a lawful right to disclose such information to it without any obligation to restrict its further disclosure; or (v) was independently developed by the receiving party without reference to Confidential Information of the furnishing party. Further, the provisions of this Section will not apply to any particular Confidential Information to the extent the receiving party is



required by law to disclose such Confidential Information, provided that the receiving party (i) promptly provides the furnishing party with notice of the legal request, and (ii) assists the furnishing party in resisting or limiting the scope of such disclosure as reasonably requested by the furnishing party.

### **2.155 No Implied Rights**

Nothing contained in this Section shall be construed as obligating a party to disclose any particular Confidential Information to the other party, or as granting to or conferring on a party, expressly or impliedly, any right or license to the Confidential Information of the other party.

### **2.156 Remedies**

Each party acknowledges that, if it breaches (or attempts or threatens to breach) its obligations under this Section, the other party may be irreparably harmed. Accordingly, if a court of competent jurisdiction should find that a party has breached (or attempted or threatened to breach) any such obligations, the non-breaching party shall be entitled to seek an injunction preventing such breach (or attempted or threatened breach).

### **2.157 Security Breach Notification**

In the event of a breach of this Section, Contractor shall to the best of its ability, take (i) prompt corrective action to cure any such deficiencies and (ii) any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations. Contractor and the State will cooperate to mitigate, to the extent practicable, the effects of any breach, intrusion, or unauthorized use or disclosure. Contractor shall report to the State in writing any use or disclosure of Confidential Information, whether suspected or actual, other than as provided for by the Contract within ten (10) days of becoming aware of such use or disclosure or such shorter time period as is reasonable under the circumstances.

### **2.158 Survival**

The parties' respective obligations under this Section shall survive the termination or expiration of this Contract for any reason.

### **2.159 Destruction of Confidential Information**

Promptly upon termination or cancellation of the Contract for any reason, Contractor shall certify to the State that Contractor has destroyed all State Confidential Information.

### **2.160 Proprietary Rights**

#### **2.161a Ownership**

#### **2.161b Cross-License (Reserved)**

#### **2.161c License**

In the event that the Contractor shall, for any reason, cease to conduct business, or cease to support the Software, the State shall have the right to convert these licenses into perpetual licenses, with rights of quiet enjoyment, but subject to payment obligations not to exceed the then current rates.

### **2.162 Source Code Escrow**

(a) Definition. "Source Code Escrow Package" shall mean:

- (i) A complete copy in machine-readable form of the source code and executable code of the Licensed Software, including any updates or new releases of the product;
- (ii) A complete copy of any existing design documentation and user documentation, including any updates or revisions; and/or
- (iii) Complete instructions for compiling and linking every part of the source code into executable code for purposes of enabling verification of the completeness of the source code as provided



below. Such instructions shall include precise identification of all compilers, library packages, and linkers used to generate executable code.

- (b) Delivery of Source Code into Escrow. Contractor shall deliver a Source Code Escrow Package to the Escrow Agent, pursuant to the Escrow Contract, which shall be entered into on commercially reasonable terms subject to the provisions of this Contract within thirty (30) days of the execution of this Contract.
- (c) Delivery of New Source Code into Escrow. If at anytime during the term of this Contract, the Contractor provides a maintenance release or upgrade version of the Licensed Software, Contractor shall within ten (10) days deposit with the Escrow Agent, in accordance with the Escrow Contract, a Source Code Escrow Package for the maintenance release or upgrade version, and provide the State with notice of the delivery.
- (d) Verification. The State reserves the right at any time, but not more than once a year, either itself or through a third party contractor, upon thirty (30) days written notice, to seek verification of the Source Code Escrow Package.
- (e) Escrow Fees. All fees and expenses charged by the Escrow Agent will be paid by the Contractor.
- (f) Release Events. The Source Code Escrow Package may be released from escrow to the State, temporarily or permanently, upon the occurrence of one or more of the following:
- (i) The Contractor becomes insolvent, makes a general assignment for the benefit of creditors, files a voluntary petition of bankruptcy, suffers or permits the appointment of a receiver for its business or assets, becomes subject to any proceeding under bankruptcy or insolvency law, whether domestic or foreign;
  - (ii) The Contractor has wound up or liquidated its business voluntarily or otherwise and the State has reason to believe that such events will cause the Contractor to fail to meet its warranties and maintenance obligations in the foreseeable future;
  - (iii) The Contractor voluntarily or otherwise discontinues support of the provided products or fails to support the products in accordance with its maintenance obligations and warranties.
- (g) Release Event Procedures. If the State desires to obtain the Source Code Escrow Package from the Escrow Agent upon the occurrence of an Event in **Section 2.162(f)**, then:
- (i) The State shall comply with all procedures in the Escrow Contract;
  - (ii) The State shall maintain all materials and information comprising the Source Code Escrow Package in confidence in accordance with this Contract;
  - (iii) If the release is a temporary one, then the State shall promptly return all released materials to Contractor when the circumstances leading to the release are no longer in effect.
- (h) License. Upon release from the Escrow Agent pursuant to an event described in **Section 2.162(f)**, the Contractor automatically grants the State a non-exclusive, irrevocable license to use, reproduce, modify, maintain, support, update, have made, and create Derivative Works. Further, the State shall have the right to use the Source Code Escrow Package in order to maintain and support the Licensed Software so that it can be used by the State as set forth in this Contract.
- (i) Derivative Works. Any Derivative Works to the source code released from escrow which are made by or on behalf of the State shall be the sole property of the State. The State acknowledges that its ownership rights are limited solely to the Derivative Works and do not include any ownership rights in the underlying source code.

### 2.163 Rights in Data

- (a) The State will be and remain the owner of all data made available by the State to Contractor or its agents, Subcontractors or representatives pursuant to the Contract. Contractor will not use the State's data



for any purpose other than providing the Services, nor will any part of the State's data be disclosed, sold, assigned, leased or otherwise disposed of to the general public or to specific third parties or commercially exploited by or on behalf of Contractor, nor will any employee of Contractor other than those on a strictly need to know basis have access to the State's data. Contractor will not possess or assert any lien or other right against the State's data. Without limiting the generality of this Section, Contractor shall only use personally identifiable information as strictly necessary to provide the Services and shall disclose such information only to its employees who have a strict need to know such information. Contractor shall comply at all times with all laws and regulations applicable to such personally identifiable information.

(b) The State is and shall remain the owner of all State-specific data pursuant to the Contract. The State may use the data provided by the Contractor for any purpose. The State will not possess or assert any lien or other right against the Contractor's data. Without limiting the generality of this Section, the State shall only use personally identifiable information as strictly necessary to utilize the Services and shall disclose such information only to its employees who have a strict need to know such information, except as provided by law. The State shall comply at all times with all laws and regulations applicable to such personally identifiable information. Other material developed and provided to the State shall remain the State's sole and exclusive property.

#### **2.164 Ownership of Materials**

State and Contractor will continue to own their respective proprietary technologies developed before entering into the Contract. Any hardware bought through the Contractor by the State, and paid for by the State, will be owned by the State. Any software licensed through the Contractor and sold to the State, will be licensed directly to the State.

#### **2.165 Standard Software**

If applicable and necessary, all Standard Software used in performing the Services shall be provided to the State under a separate license agreement between the State and the owner (or authorized licensor) of such software. Standard Software to be licensed to the State is listed in **Exhibit A**.

#### **2.166 Pre-existing Materials for Custom Software Deliverables**

Neither Contractor nor any of its Subcontractors shall incorporate any preexisting materials (including Standard Software) into Custom Software Deliverables or use any pre-existing materials to produce Custom Software Deliverables if such pre-existing materials will be needed by the State in order to use the Custom Software Deliverables unless (i) such pre-existing materials and their owners are identified to the State in writing and (ii) such pre-existing materials are either readily commercially available products for which Contractor or its Subcontractor, as the case may be, has obtained a license (in form and substance approved by the State) in the name of the State, or are materials that Contractor or its Subcontractor, as the case may be, has the right to license to the State and has licensed to the State on terms and conditions approved by the State prior to using such pre-existing materials to perform the Services.

#### **2.167 General Skills**

Notwithstanding anything to the contrary in this Section, each party, its Subcontractors and their personnel shall be free to use and employ its and their general skills, know-how and expertise, and to use, disclose and employ any generalized ideas, concepts, know-how, methods, techniques or skills gained or learned during the course of performing the Services, so long as it or they acquire and apply the foregoing without disclosure of any confidential or proprietary information of the other party.

#### **2.170 Warranties And Representations**

#### **2.171 Warranties and Representations**

The Contractor represents and warrants:



- (a) It is capable in all respects of fulfilling and shall fulfill all of its obligations under this Contract. The performance of all obligations under this Contract shall be provided in a timely, professional, and workman-like manner and shall meet the performance and operational standards required under this Contract.
- (b) The Contract Appendices, Attachments and Exhibits identify the equipment and software and services necessary for the Deliverable(s) to perform and Services to operate in compliance with the Contract's requirements and other standards of performance.
- (c) It is the lawful owner or licensee of any Deliverable licensed or sold to the State by Contractor or developed by Contractor under this Contract, and Contractor has all of the rights necessary to convey to the State the ownership rights or licensed use, as applicable, of any and all Deliverables. None of the Deliverables provided by Contractor to the State under this Contract, nor their use by the State, will infringe the patent, copyright, trade secret, or other proprietary rights of any third party.
- (d) If, under this Contract, Contractor procures any equipment, software or other Deliverable for the State (including equipment, software and other Deliverables manufactured, re-marketed or otherwise sold by Contractor under Contractor's name), then in addition to Contractor's other responsibilities with respect to such items in this Contract, Contractor shall assign or otherwise transfer to the State or its designees, or afford the State the benefits of, any manufacturer's warranty for the Deliverable.
- (e) The contract signatory has the power and authority, including any necessary corporate authorizations, necessary to enter into this Contract, on behalf of Contractor.
- (f) It is qualified and registered to transact business in all locations where required.
- (g) Neither the Contractor nor any Affiliates, nor any employee of either, has, shall have, or shall acquire, any contractual, financial, business, or other interest, direct or indirect, that would conflict in any manner or degree with Contractor's performance of its duties and responsibilities to the State under this Contract or otherwise create an appearance of impropriety with respect to the award or performance of this Agreement. Contractor shall notify the State within two (2) days of any such interest that may be incompatible with the interests of the State.
- (h) Neither Contractor nor any Affiliates, nor any employee of either has accepted or shall accept anything of value based on an understanding that the actions of the Contractor or Affiliates or employee on behalf of the State would be influenced. Contractor shall not attempt to influence any State employee by the direct or indirect offer of anything of value.
- (i) Neither Contractor nor any Affiliates, nor any employee of either has paid or agreed to pay any person, other than bona fide employees and consultants working solely for Contractor or such Affiliate, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract.
- (j) The prices proposed by Contractor were arrived at independently, without consultation, communication, or agreement with any other bidder for the purpose of restricting competition; the prices quoted were not knowingly disclosed by Contractor to any other bidder; and no attempt was made by Contractor to induce any other person to submit or not submit a proposal for the purpose of restricting competition.
- (k) All financial statements, reports, and other information furnished by Contractor to the State as part of its response to the RFP or otherwise in connection with the award of this Contract fairly and accurately represent the business, properties, financial condition, and results of operations of Contractor as of the respective dates, or for the respective periods, covered by such financial statements, reports, other information. Since the respective dates or periods covered by such financial statements, reports, or other information, there have been no material adverse change in the business, properties, financial condition, or results of operations of Contractor.



(m) All written information furnished to the State by or behalf of Contractor in connection with this Contract, including its bid, it true, accurate, and complete, and contains no untrue statement of material fact or omits any material fact necessary to make such information not misleading.

(n) It is not in material default or breach of any other contract or agreement that it may have with the State or any of its departments, commissions, boards, or agencies. Contractor further represents and warrants that it has not been a party to any contract with the State or any of its departments that was terminated by the State or such department within the previous five (5) years for the reason that Contractor failed to perform or otherwise breached an obligation of such contract.

## **2.172 Software Warranties**

### **(a) Performance Warranty**

The Contractor represents and warrants that Deliverables, after Final Acceptance, will perform and operate in compliance with the requirements and other standards of performance contained in this Contract (including all descriptions, specifications and drawings made a part of the Contract) for a period of ninety (90) days. In the event of a breach of this warranty, Contractor will promptly correct the affected Deliverable(s) at no charge to the State.

### **(b) No Surreptitious Code Warranty**

The Contractor represents and warrants that no copy of licensed Software provided to the State contains or will contain any Self-Help Code or any Unauthorized Code as defined below. This warranty is referred to in this Contract as the "No Surreptitious Code Warranty."

As used in this Contract, "Self-Help Code" means any back door, time bomb, drop dead device, or other software routine designed to disable a computer program automatically with the passage of time or under the positive control of a person other than the licensee of the software. Self-Help Code does not include Software routines in a computer program, if any, designed to permit an owner of the computer program (or other person acting by authority of the owner) to obtain access to a licensee's computer system(s) (e.g. remote access via modem) for purposes of maintenance or technical support.

As used in this Contract, "Unauthorized Code" means any virus, Trojan horse, spyware, worm or other Software routines or components designed to permit unauthorized access to disable, erase, or otherwise harm software, equipment, or data; or to perform any other such actions. The term Unauthorized Code does not include Self-Help Code. Unauthorized Code does not include Software routines in a computer program, if any, designed to permit an owner of the computer program (or other person acting by authority of the owner) to obtain access to a licensee's computer system(s) (e.g. remote access via modem) for purposes of maintenance or technical support.

In addition, Contractor will use up-to-date commercial virus detection software to detect and remove any viruses from any software prior to delivering it to the State.

### **(c) Calendar Warranty**

The Contractor represents and warrants that all software for which the Contractor either sells or licenses to the State of Michigan and used by the State prior to, during or after the calendar year 2000, includes or shall include, at no added cost to the State, design and performance so the State shall not experience software abnormality and/or the generation of incorrect results from the software, due to date oriented processing, in the operation of the business of the State of Michigan.

The software design, to insure calendar year rollover compatibility, shall include, but is not limited to: data structures (databases, data files, etc.) that provide 4-digit date century; stored data that contain date century recognition, including, but not limited to, data stored in databases and hardware device internal system dates;



calculations and program logic (e.g., sort algorithms, calendar generation, event recognition, and all processing actions that use or produce date values) that accommodates same century and multi-century formulas and date values; interfaces that supply data to and receive data from other systems or organizations that prevent non-compliant dates and data from entering any State system; user interfaces (i.e., screens, reports, etc.) that accurately show 4 digit years; and assurance that the year 2000 shall be correctly treated as a leap year within all calculation and calendar logic.

(d) Third-party Software Warranty

The Contractor represents and warrants that it will disclose the use or incorporation of any third-party software into the Deliverables. At the time of Delivery, the Contractor shall provide in writing the name and use of any Third-party Software, including information regarding the Contractor's authorization to include and utilize such software. The notice shall include a copy of any ownership agreement or license that authorizes the Contractor to use the Third-party Software.

**2.173 Equipment Warranty (Reserved)**

**2.174 Physical Media Warranty**

(a) Contractor represents and warrants that each licensed copy of the Software provided by the Contractor is free from physical defects in the media that tangibly embodies the copy. This warranty does not apply to defects discovered more than thirty (30) days after that date of Final Acceptance of the Software by the State. This warranty does not apply to defects arising from acts of Excusable Failure. If the Contractor breaches this warranty, then the State shall be entitled to replacement of the non-compliant copy by Contractor, at Contractor's expense (including shipping and handling).

**2.175a DISCLAIMER**

THE FOREGOING EXPRESS WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES AND EACH PARTY EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

**2.176 Consequences for Breach**

In addition to any remedies available in law, if the Contractor breaches any of the warranties contained in this section, such breach may be considered as a default in the performance of a material obligation of this Contract.

2.180 Insurance

**2.181 Liability Insurance**

(a) Liability Insurance

The Contractor is required to provide proof of the minimum levels of insurance coverage as indicated below. The purpose of this coverage shall be to protect the State from claims which may arise out of or result from the Contractor's performance of services under the terms of this Contract, whether such services are performed by the Contractor, or by any subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable.

The Contractor waives all rights against the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents for recovery of damages to the extent these damages are covered by the insurance policies the Contractor is required to maintain pursuant to this Contract.

All insurance coverages provided relative to this Contract/Purchase Order are PRIMARY and NON-CONTRIBUTING to any comparable liability insurance (including self-insurances) carried by the State.



The insurance shall be written for not less than any minimum coverage specified in this Contract or required by law, whichever is greater.

The insurers selected by Contractor shall have an A.M. Best rating of A or better, or as otherwise approved in writing by the State, or if such ratings are no longer available, with a comparable rating from a recognized insurance rating agency. All policies of insurance required in this Contract shall be issued by companies that have been approved to do business in the State.

See [http://www.mi.gov/cis/0,1607,7-154-10555\\_22535---,00.html](http://www.mi.gov/cis/0,1607,7-154-10555_22535---,00.html).

Where specific limits are shown, they are the minimum acceptable limits. If Contractor's policy contains higher limits, the State shall be entitled to coverage to the extent of such higher limits.

Before the Contract is signed by both parties or before the purchase order is issued by the State, the Contractor must furnish to the Director of Purchasing Operations, certificate(s) of insurance verifying insurance coverage ("Certificates"). The Certificate must be on the standard "accord" form or equivalent. **THE CONTRACT OR PURCHASE ORDER NO. MUST BE SHOWN ON THE CERTIFICATE OF INSURANCE TO ASSURE CORRECT FILING.** All Certificate(s) are to be prepared and submitted by the Insurance Provider. All Certificate(s) shall contain a provision indicating that coverages afforded under the policies WILL NOT BE CANCELLED, MATERIALLY CHANGED, OR NOT RENEWED without THIRTY (30) days prior written notice, except for ten (10) days for non-payment of premium, having been given to the Director of Purchasing Operations, Department of Management and Budget. The notice must include the Contract or Purchase Order number affected and be mailed to: Director, Purchasing Operations, Department of Management and Budget, P.O. Box 30026, Lansing, Michigan 48909. Failure to provide evidence of coverage, may, at the State's sole option, result in this Contract's termination.

The Contractor is required to pay for and provide the type and amount of insurance checked  below:

- 1. Commercial General Liability with the following minimum coverage:  
 \$2,000,000 General Aggregate Limit other than Products/Completed Operations  
 \$2,000,000 Products/Completed Operations Aggregate Limit  
 \$1,000,000 Personal & Advertising Injury Limit  
 \$1,000,000 Each Occurrence Limit  
 \$500,000 Fire Damage Limit (any one fire)

The Contractor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents as ADDITIONAL INSUREDS on the Commercial General Liability certificate. The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company.

- 2. If a motor vehicle is used to provide services or products under this Contract, the Contractor must have vehicle liability insurance on any auto including owned, hired and non-owned vehicles used in Contractor's business for bodily injury and property damage as required by law.

The Contractor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents as ADDITIONAL INSUREDS on the vehicle liability certificate. The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company.

- 3. Workers' compensation coverage must be provided in accordance with applicable laws governing the employees and employers work activities in the state of the Contractor's domicile. If the applicable coverage is provided by a self-insurer, proof must be provided of approved self-insured authority by the jurisdiction of domicile. For employees working outside of the state of qualification, Contractor must provide appropriate certificates of insurance proving mandated coverage levels for the jurisdictions where the employees' activities occur.



Any certificates of insurance received must also provide a list of states where the coverage is applicable.

The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company. This provision shall not be applicable where prohibited or limited by the laws of the jurisdiction in which the work is to be performed.

4. Employers liability insurance with the following minimum limits:  
 \$100,000 each accident  
 \$100,000 each employee by disease  
 \$500,000 aggregate disease

5. Employee Fidelity, including Computer Crimes, insurance naming the State as a loss payee, providing coverage for direct loss to the State and any legal liability of the State arising out of or related to fraudulent or dishonest acts committed by the employees of Contractor or its Subcontractors, acting alone or in collusion with others, in a minimum amount of one million dollars (\$1,000,000.00) with a maximum deductible of fifty thousand dollars (\$50,000.00).

6. Umbrella or Excess Liability Insurance in a minimum amount of ten million dollars (\$10,000,000.00), which shall apply, at a minimum, to the insurance required in Subsection 1 (Commercial General Liability) above.

7. Professional Liability (Errors and Omissions) Insurance with the following minimum coverage: three million dollars (\$3,000,000.00) each occurrence and three million dollars (\$3,000,000.00) annual aggregate.

8. Fire and Personal Property Insurance covering against any loss or damage to the office space used by Contractor for any reason under this Contract, and the equipment, software and other contents of such office space, including without limitation, those contents used by Contractor to provide the Services to the State, up to the replacement value thereof, where such office space and its contents are under the care, custody and control of Contractor. Such policy shall cover all risks of direct physical loss or damage, including without limitation, flood and earthquake coverage and coverage for computer hardware and software. The State shall be endorsed on the policy as a loss payee as its interests appear.

(b) Subcontractors

Except where the State has approved in writing a Contractor subcontract with other insurance provisions, Contractor shall require all of its Subcontractors under this Contract to purchase and maintain the insurance coverage as described in this Section for the Contractor in connection with the performance of work by those Subcontractors. Alternatively, Contractor may include any Subcontractors under Contractor's insurance on the coverage required in this Section. Subcontractor(s) shall fully comply with the insurance coverage required in this Section. Failure of Subcontractor(s) to comply with insurance requirements does not limit Contractor's liability or responsibility.

(c) Certificates of Insurance and Other Requirements

Contractor shall furnish to the office of Purchasing Operations certificate(s) of insurance verifying insurance coverage or providing satisfactory evidence of self-insurance as required in this Section (the "Certificates"). Before the Contract is signed, and not less than 20 days before the insurance expiration date every year thereafter, the Contractor shall provide evidence that the State and its agents, officers and employees are listed as additional insureds under each commercial general liability and commercial automobile liability policy. In the event the State approves the representation of the State by the insurer's attorney, the attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.



Contractor shall maintain all required insurance coverage throughout the term of the Contract and any extensions thereto and, in the case of claims-made Commercial General Liability policies, shall secure tail coverage for at least three (3) years following the expiration or termination for any reason of this Contract. The minimum limits of coverage specified above are not intended, and shall not be construed, to limit any liability or indemnity of Contractor under this Contract to any indemnified party or other persons. Contractor shall be responsible for all deductibles with regard to such insurance. If Contractor fails to pay any premium for required insurance as specified in this Contract, or if any insurer cancels or significantly reduces any required insurance as specified in this Contract without the State’s written consent, at the State’s election (but without any obligation to do so) after the State has given Contractor at least thirty (30) days written notice, the State may pay such premium or procure similar insurance coverage from another company or companies; and at the State’s election, the State may deduct the entire cost (or part thereof) from any payment due Contractor, or Contractor shall pay the entire cost (or any part thereof) upon demand by the State.

2.190 Indemnification

**2.191 Indemnification**

(a) General Indemnification

To the extent permitted by law, the Contractor shall indemnify, defend and hold harmless the State from liability, including all claims and losses, and all related costs and expenses (including reasonable attorneys’ fees and costs of investigation, litigation, settlement, judgments, interest and penalties), accruing or resulting to any person, firm or corporation that may be injured or damaged by the Contractor in the performance of this Contract and that are attributable to the negligence or tortious acts of the Contractor or any of its subcontractors, or by anyone else for whose acts any of them may be liable.

(b) Code Indemnification

To the extent permitted by law, the Contractor shall indemnify, defend and hold harmless the State from any claim, loss, or expense arising from Contractor’s breach of the No Surreptitious Code Warranty.

(c) Employee Indemnification?

In any and all claims against the State of Michigan, its departments, divisions, agencies, sections, commissions, officers, employees and agents, by any employee of the Contractor or any of its subcontractors, the indemnification obligation under the Contract shall not be limited in any way by the amount or type of damages, compensation or benefits payable by or for the Contractor or any of its subcontractors under worker’s disability compensation acts, disability benefit acts or other employee benefit acts. This indemnification clause is intended to be comprehensive. Any overlap in provisions, or the fact that greater specificity is provided as to some categories of risk, is not intended to limit the scope of indemnification under any other provisions.

(d) Patent/Copyright Infringement Indemnification

To the extent permitted by law, the Contractor shall indemnify, defend and hold harmless the State from and against all losses, liabilities, damages (including taxes), and all related costs and expenses (including reasonable attorneys’ fees and costs of investigation, litigation, settlement, judgments, interest and penalties) incurred in connection with any action or proceeding threatened or brought against the State to the extent that such action or proceeding is based on a claim that any piece of equipment, software, commodity or service supplied by the Contractor or its subcontractors, or the operation of such equipment, software, commodity or service, or the use or reproduction of any documentation provided with such equipment, software, commodity or service infringes any United States patent, copyright, trademark or trade secret of any person or entity, which is enforceable under the laws of the United States.

In addition, should the equipment, software, commodity, or service, or its operation, become or in the State’s or Contractor’s opinion be likely to become the subject of a claim of infringement, the Contractor shall at the Contractor’s sole expense (i) procure for the State the right to continue using the equipment, software, commodity or service or, if such option is not reasonably available to the Contractor, (ii) replace or modify to the State’s satisfaction the same with equipment, software, commodity or service of equivalent function and performance so that it becomes non-infringing, or, if such option is not reasonably available to Contractor, (iii) accept its return by the State with appropriate credits to the State against the 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 limited to 2 times the Value of the contract.

Notwithstanding the foregoing, the Contractor shall have no obligation to indemnify or defend the State for, or to pay any costs, damages or attorneys' fees related to, any claim based upon (i) equipment developed based on written specifications of the State; or (ii) use of the equipment in a configuration other than implemented or approved in writing by the Contractor, including, but not limited to, any modification of the equipment by the State; or (iii) the combination, operation, or use of the equipment with equipment or software not supplied by the Contractor under this Contract.

### **2.192 Continuation of Indemnification Obligations**

The Contractor's duty to indemnify pursuant to this Section continues in full force and effect, notwithstanding the expiration or early cancellation of the Contract, with respect to any claims based on facts or conditions that occurred prior to expiration or cancellation.

### **2.193 Indemnification Procedures**

The procedures set forth below shall apply to all indemnity obligations under this Contract.

(a) After receipt by the State of notice of the action or proceeding involving a claim in respect of which it will seek indemnification, the State shall promptly notify Contractor of such claim in writing and take or assist Contractor in taking, as the case may be, any reasonable action to avoid the imposition of a default judgment against Contractor. No failure to notify Contractor shall relieve Contractor of its indemnification obligations except to the extent that Contractor can demonstrate damages attributable to such failure. Within ten (10) days following receipt of written notice from the State relating to any claim, Contractor shall notify the State in writing whether Contractor agrees to assume control of the defense and settlement of that claim (a "Notice of Election"). After notifying Contractor of a claim and prior to the State receiving Contractor's Notice of Election, the State shall be entitled to defend against the claim, at Contractor's expense, and Contractor will be responsible for any reasonable costs incurred by the State in defending against the claim during such period.

(b) If Contractor delivers a Notice of Election relating to any claim: (i) the State shall be entitled to participate in the defense of such claim and to employ counsel at its own expense to assist in the handling of such claim and to monitor and advise the State about the status and progress of the defense; (ii) Contractor shall, at the request of the State, demonstrate to the reasonable satisfaction of the State, Contractor's financial ability to carry out its defense and indemnity obligations under this Contract; (iii) Contractor shall periodically advise the State about the status and progress of the defense and shall obtain the prior written approval of the State before entering into any settlement of such claim or ceasing to defend against such claim and (iv) to the extent that any principles of Michigan governmental or public law may be involved or challenged, the State shall have the right, at its own expense, to control the defense of that portion of such claim involving the principles of Michigan governmental or public law. Notwithstanding the foregoing, the State may retain control of the defense and settlement of a claim by written notice to Contractor given within ten (10) days after the State's receipt of Contractor's information requested by the State pursuant to clause (ii) of this paragraph if the State determines that Contractor has failed to demonstrate to the reasonable satisfaction of the State Contractor's financial ability to carry out its defense and indemnity obligations under this Section. Any litigation activity on behalf of the State of Michigan, or any of its subdivisions pursuant to this Section, must be coordinated with the Department of Attorney General. In the event the insurer's attorney represents the State pursuant to this Section, the insurer's attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.

(c) If Contractor does not deliver a Notice of Election relating to any claim of which it is notified by the State as provided above, the State shall have the right to defend the claim in such manner as it may deem appropriate, at the cost and expense of Contractor. If it is determined that the claim was one against which Contractor was required to indemnify the State, upon request of the State, Contractor shall promptly reimburse the State for all such reasonable costs and expenses.



## 2.200 Limits of Liability and Excusable Failure

### **2.201 Limits of Liability**

The Contractor's liability for damages to the State shall be limited to two times the value of the Contract. The foregoing limitation of liability shall not apply to claims for infringement of United States patent, copyright, trademarks or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on this Contract.

The State's liability for damages to the Contractor shall be limited to the value of the Contract.

Neither the Contractor nor the State shall be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages. This limitation of liability shall not apply to claims for infringement of United States patent, copyright, trademark or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of this Contract calling for liquidated damages; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on this Contract.

### **2.202 Excusable Failure**

Neither party will be liable for any default, damage or delay in the performance of its obligations under the Contract to the extent such default, damage or delay is caused by government regulations or requirements (executive, legislative, judicial, military or otherwise), power failure, electrical surges or current fluctuations, lightning, earthquake, war, water or other forces of nature or acts of God, delays or failures of transportation, equipment shortages, suppliers' failures, or acts or omissions of common carriers, fire; riots, civil disorders; strikes or other labor disputes, embargoes; injunctions (provided the injunction was not issued as a result of any fault or negligence of the party seeking to have its default or delay excused); or any other cause beyond the reasonable control of such party; provided the non-performing party and its Subcontractors are without fault in causing such default or delay, and such default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans or other means, including disaster recovery plans.

In such event, the non-performing party will be excused from any further performance or observance of the obligation(s) so affected for as long as such circumstances prevail and such party continues to use its commercially reasonable efforts to recommence performance or observance whenever and to whatever extent possible without delay and provided further that such party promptly notifies the other party in writing of the inception of the excusable failure occurrence, and also of its abatement or cessation.

If any of the above-enumerated circumstances substantially prevent, hinder, or delay Contractor's performance of the Services/provision of Deliverables for more than ten (10) Business Days, and the State determines that performance is not likely to be resumed within a period of time that is satisfactory to the State in its reasonable discretion, then at the State's option: (a) the State may procure the affected Services/Deliverables from an alternate source, and the State shall not be liable for payment for the unperformed Services/ Deliverables not provided under the Contract for so long as the delay in performance shall continue; (b) the State may terminate any portion of the Contract so affected and the charges payable there under shall be equitably adjusted to reflect those Services/Deliverables terminated; or (c) the State may terminate the affected Statement of Work without liability to Contractor as of a date specified by the State in a written notice of termination to Contractor, except to the extent that the State shall pay for Services/Deliverables provided through the date of termination.



Contractor will not have the right to any additional payments from the State as a result of any Excusable Failure occurrence or to payments for Services not rendered/Deliverables not provided as a result of the Excusable Failure condition. Defaults or delays in performance by Contractor which are caused by acts or omissions of its Subcontractors will not relieve Contractor of its obligations under the Contract except to the extent that a Subcontractor is itself subject to an Excusable Failure condition described above and Contractor cannot reasonably circumvent the effect of the Subcontractor's default or delay in performance through the use of alternate sources, workaround plans or other means.

### **2.203 Disaster Recovery**

Contractor and the State recognize that the State provides essential services in times of natural or man-made disasters. Therefore, except as so mandated by Federal disaster response requirements, Contractor personnel dedicated to providing Services/Deliverables under this Contract will provide the State with priority service for repair and work around in the event of a natural or manmade disaster.

#### **2.210 Termination/Cancellation by the State**

The State may terminate this Contract without further liability or penalty to the State, its departments, divisions, agencies, offices, commissions, officers, agents and employees for any of the following reasons:

### **2.211 Termination for Cause**

(a) In the event that Contractor breaches any of its material duties or obligations under this Contract (including a Chronic Failure to meet any particular SLA as defined in **Section 2.076**), which are either not capable of or subject to being cured, or are not cured within the time period specified in the written notice of breach provided by the State (such time period not to be less than thirty (30) days), or pose a serious and imminent threat to the health and safety of any person, or the imminent loss, damage or destruction of any real or tangible personal property, the State may, having provided written notice of termination to Contractor, terminate this Contract in whole or in part, for cause, as of the date specified in the notice of termination.

(b) In the event that this Contract is terminated for cause, in addition to any legal remedies otherwise available to the State by law or equity, Contractor shall be responsible for all costs incurred by the State in terminating this Contract, including but not limited to, State administrative costs, reasonable attorneys' fees and court costs, and any reasonable additional costs the State may incur to procure the Services/Deliverables required by this Contract from other sources, indirect or incidental damages, and shall not be excluded by any other terms otherwise included in this Contract, provided such costs are not in excess of fifty percent (50%) more than the prices for such Service/Deliverables provided under this Contract.

(c) In the event the State chooses to partially terminate this Contract for cause, charges payable under this Contract will be equitably adjusted to reflect those Services/Deliverables that are terminated and the State shall pay for all Services/Deliverables for which Final Acceptance has been granted provided up to the termination date. Services and related provisions of this Contract that are terminated for cause shall cease on the effective date of the termination.

(d) In the event this Contract is terminated for cause pursuant to this Section, and it is determined, for any reason, that Contractor was not in breach of contract pursuant to the provisions of this section, that termination for cause shall be deemed to have been a termination for convenience, effective as of the same date, and the rights and obligations of the parties shall be limited to that otherwise provided in this Contract for a termination for convenience.

### **2.212 Termination for Convenience**

The State may terminate this Contract for its convenience, in whole or part, if the State determines that such a termination is in the State's best interest. Reasons for such termination shall be left to the sole discretion of the State and may include, but not necessarily be limited to (a) the State no longer needs the Services or products specified in the Contract, (b) relocation of office, program changes, changes in laws, rules, or regulations make implementation of the Services no longer practical or feasible, (c) unacceptable prices for Additional Services or New Work requested by the State, or (d) falsification or misrepresentation, by inclusion



or non-inclusion, of information material to a response to any RFP issued by the State. The State may terminate this Contract for its convenience, in whole or in part, by giving Contractor written notice at least thirty (30) days prior to the date of termination. If the State chooses to terminate this Contract in part, the charges payable under this Contract shall be equitably adjusted to reflect those Services/Deliverables that are terminated. Services and related provisions of this Contract that are terminated for cause shall cease on the effective date of the termination.

### **2.213 Non-Appropriation**

(a) Contractor acknowledges that, if this Contract extends for several fiscal years, continuation of this Contract is subject to appropriation or availability of funds for this Contract. If funds to enable the State to effect continued payment under this Contract are not appropriated or otherwise made available, the State shall have the right to terminate this Contract and all affected Statements of Work, in whole or in part, at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of termination to Contractor. The State shall give Contractor at least thirty (30) days advance written notice of termination for non-appropriation or unavailability (or such time as is available if the State receives notice of the final decision less than thirty (30) days before the funding cutoff).

(b) If funding for the Contract is reduced by law, or funds to pay Contractor for the agreed-to level of the Services or production of Deliverables to be provided by Contractor are not appropriated or otherwise made available, the State may, upon thirty (30) days written notice to Contractor, reduce the level of the Services or the change the production of Deliverables in such manner and for such periods of time as the State may elect. The charges payable under this Contract will be equitably adjusted to reflect any equipment, services or commodities not provided by reason of such reduction.

(c) In the event the State terminates this Contract, eliminates certain Deliverables, or reduces the level of Services to be provided by Contractor pursuant to this Section, the State shall pay Contractor for all Work-in-Process performed through the effective date of the termination or reduction in level, as the case may be and as determined by the State, to the extent funds are available. For the avoidance of doubt, this Section will not preclude Contractor from reducing or stopping Services/Deliverables and/or raising against the State in a court of competent jurisdiction, any claim for a shortfall in payment for Services performed or Deliverables finally accepted before the effective date of termination.

### **2.214 Criminal Conviction**

The State may terminate this Contract immediately and without further liability or penalty in the event Contractor, an officer of Contractor, or an owner of a 25% or greater share of Contractor is convicted of a criminal offense incident to the application for, or performance of, a State, public or private Contract or subcontract; convicted of a criminal offense, including any of the following: embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, attempting to influence a public employee to breach the ethical conduct standards for State of Michigan employees; convicted under State or federal antitrust statutes; or convicted of any other criminal offense which in the sole discretion of the State reflects upon Contractor's business integrity.

### **2.215 Approvals Rescinded**

The State may terminate this Contract without further liability or penalty in the event any final administrative or judicial decision or adjudication disapproves a previously approved request for purchase of personal services pursuant to Constitution 1963, Article 11, § 5, and Civil Service Rule 7-1. Termination may be in whole or in part and may be immediate as of the date of the written notice to Contractor or may be effective as of the date stated in such written notice.

### **2.216 Rights and Obligations Upon Termination**

(a) If this Contract is terminated by the State for any reason, Contractor shall (a) stop all work as specified in the notice of termination, (b) take any action that may be necessary, or that the State may direct, for preservation and protection of Deliverables or other property derived or resulting from this Contract that may be in Contractor's possession, (c) return all materials and property provided directly or indirectly to



Contractor by any entity, agent or employee of the State, (d) in the event that the Contractor maintains title in Deliverables that is intended to be transferred to the State at the termination of the Contract, Contractor will transfer title in, and deliver to, the State, unless otherwise directed, all Deliverables intended to be transferred to the State at the termination of the Contract and which are resulting from the Contract (which shall be provided to the State on an "As-Is" basis except to the extent the amounts paid by the State in respect of such items included compensation to Contractor for the provision of warranty services in respect of such materials), and (e) take any action to mitigate and limit any potential damages, or requests for Contractor adjustment or termination settlement costs, to the maximum practical extent, including terminating or limiting as otherwise applicable those subcontracts and outstanding orders for material and supplies resulting from the terminated Contract.

(b) In the event the State terminates this Contract prior to its expiration for its own convenience, the State shall pay Contractor for all charges due for Services provided prior to the date of termination and, if applicable, as a separate item of payment pursuant to this Contract, for Work In Process, on a percentage of completion basis at the level of completion determined by the State. All completed or partially completed Deliverables prepared by Contractor pursuant to this Contract shall, at the option of the State, become the State's property, and Contractor shall be entitled to receive equitable fair compensation for such Deliverables. Regardless of the basis for the termination, the State shall not be obligated to pay, or otherwise compensate, Contractor for any lost expected future profits, costs or expenses incurred with respect to Services not actually performed for the State.

(c) Upon a good faith termination, the State shall have the right to assume, at its option, any and all subcontracts and agreements for services and deliverables provided under this Contract, and may further pursue completion of the Services/Deliverables under this Contract by replacement contract or otherwise as the State may in its sole judgment deem expedient.

### **2.217 Reservation of Rights**

Any termination of this Contract or any Statement of Work issued under it by a party shall be with full reservation of, and without prejudice to, any rights or remedies otherwise available to such party with respect to any claims arising prior to or as a result of such termination.

### **2.218 Contractor Transition Responsibilities**

In the event this contract is terminated, for convenience or cause, dissolved, voided, rescinded, nullified, expires or is otherwise rendered unenforceable, the Contractor agrees to comply with direction provided by the State to assist in the orderly transition of equipment, services, software, leases, etc. to the State or a third party designated by the State. In the event of termination or the expiration of this Contract, the Contractor agrees to make all reasonable efforts to effect an orderly transition of services within a reasonable period of time that in no event will exceed ninety (90) days. These efforts shall include, but are not limited to, the following:

(a) Personnel - The Contractor shall work with the State, or a specified third party, to develop a transition plan setting forth the specific tasks and schedule to be accomplished by the parties, to effect an orderly transition. The Contractor shall allow as many personnel as practicable to remain on the job to help the State, or a specified third party, maintain the continuity and consistency of the services required by this Contract. In addition, during or following the transition period, in the event the State requires the Services of the Contractor's subcontractors or vendors, as necessary to meet its needs, Contractor agrees to reasonably, and with good-faith, work with the State to use the Services of Contractor's subcontractors or vendors. Contractor will notify all of Contractor's subcontractors of procedures to be followed during transition.

(b) Information - The Contractor agrees to provide reasonable detailed specifications for all Services/Deliverables needed by the State, or specified third party, to properly provide the Services/Deliverables required under this Contract. The Contractor will provide the State with asset management data generated from the inception of this Contract through the date on which this Contractor is terminated in a comma-delineated format unless otherwise requested by the State. The Contractor will deliver to the State any remaining owed reports and documentation still in Contractor's possession subject to appropriate payment by the State.



(d) Software. - The Contractor shall reasonably assist the State in the acquisition of any Contractor software required to perform the Services/use the Deliverables under this Contract. This shall include any documentation being used by the Contractor to perform the Services under this Contract. If the State transfers any software licenses to the Contractor, those licenses shall, upon expiration of the Contract, transfer back to the State at their current revision level. Upon notification by the State, Contractor may be required to freeze all non-critical changes to Deliverables/Services.

(e) Payment - If the transition results from a termination for any reason, reimbursement shall be governed by the termination provisions of this Contract. If the transition results from expiration, the Contractor will be reimbursed for all reasonable transition costs (i.e. costs incurred within the agreed period after contract expiration that result from transition operations) at the rates specified by **Article 1, Attachment C**. The Contractor will prepare an accurate accounting from which the State and Contractor may reconcile all outstanding accounts.

### **2.219 State Transition Responsibilities**

In the event that this Contract is terminated, dissolved, voided, rescinded, nullified, or otherwise rendered unenforceable, the State agrees to perform the following obligations, and any others upon which the State and the Contractor agree:

- (a) Reconciling all accounts between the State and the Contractor;
- (b) Completing any pending post-project reviews.

### **2.220 Termination by Contractor**

#### **2.221 Termination by Contractor**

If the State materially breaches its obligation to pay Contractor undisputed amounts due and owing under this Contract in accordance with **Section 2.090**, or if the State breaches its other obligations under this Contract to an extent that makes it impossible or commercially impractical for Contractor to perform the Services, and if the State does not cure the breach within the time period specified in a written notice of breach provided to the State by Contractor (such time period not to be less than thirty (30) days), then Contractor may terminate this Contract, in whole or in part based on Statement of Work for cause, as of the date specified in the notice of termination; provided, however, that Contractor must discharge its obligations under **Section 2.250** before any such termination.

### **2.230 Stop Work**

#### **2.231 Stop Work Orders**

The State may, at any time, by written stop work order to Contractor, require that Contractor stop all, or any part, of the work called for by the Contract for a period of up to ninety (90) calendar days after the stop work order is delivered to Contractor, and for any further period to which the parties may agree. The stop work order shall be specifically identified as such and shall indicate that it is issued under this **Section 2.230**. Upon receipt of the stop work order, Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the stop work order during the period of work stoppage. Within the period of the stop work order, the State shall either: (a) cancel the stop work order; or (b) terminate the work covered by the stop work order as provided in **Section 2.210**.

#### **2.232 Cancellation or Expiration of Stop Work Order**

If a stop work order issued under this **Section 2.230** is canceled or the period of the stop work order or any extension thereof expires, Contractor shall resume work. The parties shall agree upon an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract shall be modified, in writing, accordingly, if: (a) the stop work order results in an increase in the time required for, or in Contractor's costs properly allocable to, the performance of any part of the Contract; and (b) Contractor asserts its right to an equitable adjustment within thirty (30) calendar days after the end of the period of work stoppage; provided that, if the State decides the facts justify the action, the State may receive and act upon a Contractor proposal



submitted at any time before final payment under the Contract. Any adjustment will conform to the requirements of **Section 2.106**.

### **2.233 Allowance of Contractor Costs**

If the stop work order is not canceled and the work covered by the stop work order is terminated for reasons other than material breach, such termination shall be deemed to be a termination for convenience under **Section 2.212**, and the State shall allow reasonable costs resulting from the stop work order in arriving at the termination settlement. For the avoidance of doubt, the State shall not be liable to Contractor for loss of profits because of a stop work order issued under this **Section 2.230**.

#### 2.240 Reserved

#### 2.250 Dispute Resolution

### **2.251 In General**

Any claim, counterclaim, or dispute between the State and Contractor arising out of or relating to the Contract or any Statement of Work shall be resolved as follows. For all Contractor claims seeking an increase in the amounts payable to Contractor under the Contract, or the time for Contractor's performance, Contractor shall submit a letter executed by Contractor's Contract Administrator or his designee certifying that (a) the claim is made in good faith, (b) the amount claimed accurately reflects the adjustments in the amounts payable to Contractor or the time for Contractor's performance for which Contractor believes the State is liable and covers all costs of every type to which Contractor is entitled from the occurrence of the claimed event, and (c) the supporting data provided with such an affidavit are current and complete to Contractor's best knowledge and belief.

### **2.252 Informal Dispute Resolution**

(a) All operational disputes between the parties shall be resolved under the Contract Management procedures developed pursuant to **Section 2.100**. If the parties are unable to resolve any disputes after compliance with such processes, the parties shall meet with the Director of Purchasing Operations, DMB, or designee, for the purpose of attempting to resolve such dispute without the need for formal legal proceedings, as follows:

(i) The representatives of Contractor and the State shall meet as often as the parties reasonably deem necessary in order to gather and furnish to each other all information with respect to the matter in issue which the parties believe to be appropriate and germane in connection with its resolution. The representatives shall discuss the problem and negotiate in good faith in an effort to resolve the dispute without the necessity of any formal proceeding.

(ii) During the course of negotiations, all reasonable requests made by one party to another for non-privileged information reasonably related to the Contract will be honored in order that each of the parties may be fully advised of the other's position.

(iii) The specific format for the discussions will be left to the discretion of the designated State and Contractor representatives, but may include the preparation of agreed upon statements of fact or written statements of position.

(iv) Following the completion of this process within sixty (60) calendar days, the Director of Purchasing Operations, DMB, or designee, shall issue a written opinion regarding the issue(s) in dispute within thirty (30) calendar days. The opinion regarding the dispute shall be considered the State's final action and the exhaustion of administrative remedies.

(b) This **Section 2.250** will not be construed to prevent either party from instituting, and a party is authorized to institute, formal proceedings earlier to avoid the expiration of any applicable limitations period, to preserve a superior position with respect to other creditors, or pursuant to **Section 2.253**.

(c) The State will not mediate disputes between the Contractor and any other entity, except state agencies, concerning responsibility for performance of work pursuant to the Contract.



### **2.253 Injunctive Relief**

The only circumstance in which disputes between the State and Contractor will not be subject to the provisions of **Section 2.252** is where a party makes a good faith determination that a breach of the terms of the Contract by the other party is such that the damages to such party resulting from the breach will be so immediate, so large or severe and so incapable of adequate redress after the fact that a temporary restraining order or other immediate injunctive relief is the only adequate remedy.

### **2.254 Continued Performance**

Each party agrees to continue performing its obligations under the Contract while a dispute is being resolved except to the extent the issue in dispute precludes performance (dispute over payment shall not be deemed to preclude performance) and without limiting either party's right to terminate the Contract as provided in **Section 2.210** and **2.220**, as the case may be.

#### 2.260 Federal and State Contract Requirements

### **2.261 Nondiscrimination**

In the performance of the Contract, Contractor agrees not to discriminate against any employee or applicant for employment, with respect to his or her hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, ancestry, age, sex, height, weight, marital status, physical or mental disability. Contractor further agrees that every subcontract entered into for the performance of this Contract or any purchase order resulting from this Contract will contain a provision requiring non-discrimination in employment, as specified here, binding upon each Subcontractor. This covenant is required pursuant to the Elliot 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.*, and any breach of this provision may be regarded as a material breach of the Contract.

### **2.262 Unfair Labor Practices**

Pursuant to 1980 PA 278, MCL 423.231, *et seq.*, the State shall not award a Contract or subcontract to an employer whose name appears in the current register of employers failing to correct an unfair labor practice compiled pursuant to section 2 of the Act. This information is compiled by the United States National Labor Relations Board. A Contractor of the State, in relation to the Contract, shall not enter into a contract with a Subcontractor, manufacturer, or supplier whose name appears in this register. Pursuant to section 4 of 1980 PA 278, MCL 423.324, the State may void any Contract if, subsequent to award of the Contract, the name of Contractor as an employer or the name of the Subcontractor, manufacturer or supplier of Contractor appears in the register.

### **2.263 Workplace Safety and Discriminatory Harassment**

In performing Services for the State, the Contractor shall comply with the Department of Civil Services Rule 2-20 regarding Workplace Safety and Rule 1-8.3 regarding Discriminatory Harassment. In addition, the Contractor shall comply with Civil Service regulations and any applicable agency rules provided to the Contractor. For Civil Service Rules, see <http://www.mi.gov/mdcs/0,1607,7-147-6877---,00.html>.

#### 2.270 Litigation

### **2.271 Disclosure of Litigation**

(a) Disclosure. Contractor must disclose any material criminal litigation, investigations or proceedings involving the Contractor (and each Subcontractor) or any of its officers or directors or any litigation, investigations or proceedings under the Sarbanes-Oxley Act. In addition, each Contractor (and each Subcontractor) must notify the State of any material civil litigation, arbitration or proceeding which arises during the term of the Contract and extensions thereto, to which Contractor (or, to the extent Contractor is aware, any Subcontractor hereunder) is a party, and which involves: (i) disputes that might reasonably be expected to adversely affect the viability or financial stability of Contractor or any Subcontractor hereunder; or (ii) a claim or



written allegation of fraud against Contractor or, to the extent Contractor is aware, any Subcontractor hereunder by a governmental or public entity arising out of their business dealings with governmental or public entities. Any such litigation, investigation, arbitration or other proceeding (collectively, "Proceeding") must be disclosed in a written statement to the Contract Administrator within thirty (30) days of its occurrence. Details of settlements which are prevented from disclosure by the terms of the settlement may be annotated as such. Information provided to the State from Contractor's publicly filed documents referencing its material litigation will be deemed to satisfy the requirements of this Section.

(b) Assurances. In the event that any such Proceeding disclosed to the State pursuant to this Section, or of which the State otherwise becomes aware, during the term of this Contract would cause a reasonable party to be concerned about:

- (i) the ability of Contractor (or a Subcontractor hereunder) to continue to perform this Contract in accordance with its terms and conditions, or
- (ii) whether Contractor (or a Subcontractor hereunder) in performing Services for the State is engaged in conduct which is similar in nature to conduct alleged in such Proceeding, which conduct would constitute a breach of this Contract or a violation of Michigan law, regulations or public policy, then Contractor shall be required to provide the State all reasonable assurances requested by the State to demonstrate that:

(A) Contractor and/or its Subcontractors hereunder will be able to continue to perform this Contract and any Statements of Work in accordance with its terms and conditions, and

(B) Contractor and/or its Subcontractors hereunder have not and will not engage in conduct in performing the Services which is similar in nature to the conduct alleged in such Proceeding.

(c) Contractor shall make the following notifications in writing:

(1) Within thirty (30) days of Contractor becoming aware that a change in its ownership or officers has occurred, or is certain to occur, or a change that could result in changes in the valuation of its capitalized assets in the accounting records, Contractor shall notify Purchasing Operations.

(2) Contractor shall also notify the Purchasing Operations within thirty (30) days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership or officers.

(3) Contractor shall also notify Purchasing Operations within thirty (30) days whenever changes to company affiliations occur.

### **2.272 Governing Law**

The Contract shall in all respects be governed by, and construed in accordance with, the substantive laws of the State of Michigan without regard to any Michigan choice of law rules that would apply the substantive law of any other jurisdiction to the extent not inconsistent with, or pre-empted by federal law.

### **2.273 Compliance with Laws**

Contractor shall comply with all applicable state, federal, and local laws and ordinances ("Applicable Laws") in providing the Services/Deliverables.

### **2.274 Jurisdiction**

Any dispute arising from the Contract shall be resolved in the State of Michigan. With respect to any claim between the parties, Contractor consents to venue in Ingham County, Michigan, and irrevocably waives any objections it may have to such jurisdiction on the grounds of lack of personal jurisdiction of such court or the laying of venue of such court or on the basis of forum non conveniens or otherwise. Contractor agrees to appoint agents in the State of Michigan to receive service of process.



## 2.280 Environmental Provision

### **2.281 Environmental Provision**

For the purposes of this Section, “Hazardous Materials” is a generic term used to describe asbestos, ACBMs, PCBs, petroleum products, such construction materials as paint thinners, solvents, gasoline, oil, etc., and any other material the manufacture, use, treatment, storage, transportation or disposal of which is regulated by the federal, state or local laws governing the protection of the public health, natural resources or the environment. This includes, but is not limited to, materials such as batteries and circuit packs, and other materials that are regulated as (1) “Hazardous Materials” under the Hazardous Materials Transportation Act, (2) “chemical hazards” under the Occupational Safety and Health Administration standards, (3) “chemical substances or mixtures” under the Toxic Substances Control Act, (4) “pesticides” under the Federal Insecticide Fungicide and Rodenticide Act, and (5) “hazardous wastes” as defined or listed under the Resource Conservation and Recovery Act. This Contract does not cover the handling, removal, or disposal of all Hazardous Materials.

(a) The Contractor shall use, handle, store, dispose of, process, transport and transfer any material considered a Hazardous Material in accordance with all federal, State and local laws. The State shall provide a safe and suitable environment for performance of Contractor’s Work. Prior to the commencement of Work, the State shall advise Contractor of the presence at the work site of any Hazardous Material to the extent that the State is aware of such Hazardous Material. If the Contractor encounters material reasonably believed to be a Hazardous Material and which may present a substantial danger, the Contractor shall immediately stop all affected Work, give written notice to the State of the conditions encountered, and take appropriate health and safety precautions.

(b) Upon receipt of a written notice, the State will investigate the conditions. If (a) the material is a Hazardous Material that may present a substantial danger, and (b) the Hazardous Material was not brought to the site by the Contractor, or does not result in whole or in part from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Materials, the State shall order a suspension of Work in writing. The State shall proceed to have the Hazardous Material removed or rendered harmless. In the alternative, the State shall terminate the affected Work for the State’s convenience.

(c) Once the Hazardous Material has been removed or rendered harmless by the State, the affected Work shall be resumed as directed in writing by the State. Any determination by the Michigan Department of Community Health and/or the Michigan Department of Environmental Quality (whichever is applicable) that the Hazardous Material has either been removed or rendered harmless shall be binding upon the State and Contractor for the purposes of resuming the Work. If any such incident with Hazardous Material results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Work will not be counted in **Section 2.076** for a time as mutually agreed by the parties.

(d) If the Hazardous Material was brought to the site by the Contractor, or results in whole or in part from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Material, or from any other act or omission within the control of the Contractor, the Contractor shall bear its proportionate share of the delay and costs involved in cleaning up the site and removing and rendering harmless the Hazardous Material in accordance with Applicable Laws to the condition approved by applicable regulatory agency(ies). If the Contractor fails to take appropriate action pursuant to Applicable Laws and consistent with the State requirements, then the State may take appropriate action.



## 2.290 General

### **2.291 Amendments**

The Contract may not be modified, amended, extended, or augmented, except by a writing executed by the parties.

### **2.292 Assignment**

(a) Neither party shall have the right to assign the Contract, or to assign or delegate any of its duties or obligations under the Contract, to any other party (whether by operation of law or otherwise), without the prior written consent of the other party; provided, however, that the State may assign the Contract to any other State agency, department, division or department without the prior consent of Contractor and Contractor may assign the Contract to an affiliate so long as such affiliate is adequately capitalized and can provide adequate assurances that such affiliate can perform the Contract. Any purported assignment in violation of this Section shall be null and void. It is the policy of the State of Michigan to withhold consent from proposed assignments, subcontracts, or novations when such transfer of responsibility would operate to decrease the State's likelihood of receiving performance on the Contract or the State's ability to recover damages.

(b) Contractor may not, without the prior written approval of the State, assign its right to receive payments due under the Contract. In the event of any such permitted assignment, Contractor shall not be relieved of its responsibility to perform any duty imposed upon it herein, and the requirement under the Contract that all payments shall be made to one entity shall continue.

### **2.293 Entire Contract; Order of Precedence**

(a) The Contract, including any Statements of Work and Exhibits, to the extent not contrary to the Contract, each of which is incorporated for all purposes, constitutes the entire agreement between the parties with respect to the subject matter and supersedes all prior agreements, whether written or oral, with respect to such subject matter and as additional terms and conditions on the purchase order shall apply as limited by **Section 2.061**.

(b) In the event of any inconsistency between the terms of the Contract and a Statement of Work, the terms of the Statement of Work will take precedence (as to that Statement of Work only); provided, however, that a Statement of Work may not modify or amend the terms of **Sections 2.110 through 2.220** of the Contract, which may be modified or amended only by a formal Contract amendment.

### **2.294 Headings**

Captions and headings used in the Contract are for information and organization purposes. Captions and headings, including inaccurate references, do not, in any way, define or limit the requirements or terms and conditions of the Contract.

### **2.295 Relationship of the Parties (Independent Contractor Relationship)**

The relationship between the State and Contractor is that of client and independent Contractor. No agent, employee, or servant of Contractor or any of its Subcontractors shall be or shall be deemed to be an employee, agent or servant of the State for any reason. Contractor will be solely and entirely responsible for its acts and the acts of its agents, employees, servants and Subcontractors during the performance of the Contract.

### **2.296 Notices**

(a) Any notice given to a party under the Contract shall be deemed effective, if addressed to such party as addressed below, upon: (i) delivery, if hand delivered; (ii) receipt of a confirmed transmission by facsimile if a copy of the notice is sent by another means specified in this Section; (iii) the third (3rd) Business Day after being sent by U.S. mail, postage pre-paid, return receipt requested; or (iv) the next Business Day after being sent by a nationally recognized overnight express courier with a reliable tracking system.

State:  
State of Michigan  
DMB-Purchasing Operations  
Attention: Douglas Collier  
PO Box 30026  
530 West Allegan  
Lansing, Michigan 48909

with a copy to:

Name Michael Breen  
Department Michigan Department of Information Technology  
Building/Floor Constitution Hall, 2<sup>nd</sup> floor  
Address 525 West Allegan  
City/State/Zip Lansing, MI 48909  
Phone Number (517) 241-7720  
Fax Number  
Email Address [breenm@michigan.gov](mailto:breenm@michigan.gov)

Project Manager

Name Dick Novello  
Department Michigan Department of Information Technology  
Area Data Center Operations  
City/State/Zip 515 Westshire, Lansing, MI 48917  
Phone Number (517) 241-8874  
Fax Number (517) 241-1769  
Email Address [novellod@michigan.gov](mailto:novellod@michigan.gov)

Contractor(s):

Aperture Technologies, Inc.  
9 Riverbend Drive South  
Stamford, Connecticut 06907  
Attn: Diane Mays, Director of Legal  
Phone: (203)357- 9462  
Fax Number: (203) 357-0809  
Email address: [Diane\\_Mays@aperture.com](mailto:Diane_Mays@aperture.com)

Either party may change its address where notices are to be sent by giving notice in accordance with this Section.

(b) Binding Commitments

Representatives of Contractor identified in above shall have the authority to make binding commitments on Contractor's behalf within the bounds set forth in such table. Contractor may change such representatives from time to time upon written notice.

**2.297 Media Releases and Contract Distribution**

(a) Media Releases

Neither Contractor nor the State will make any news releases, public announcements or public disclosures, nor will they have any conversations with representatives of the news media, pertaining to the Contract, the Services or the Contract without the prior written approval of the other party, and then only in accordance with explicit written instructions provided by that party. In addition, neither Contractor nor the State will use the name, trademarks or other proprietary identifying symbol of the other party or its affiliates without



such party's prior written consent. Prior written consent of the Contractor must be obtained from authorized representatives.

(b) Contract Distribution

Purchasing Operations shall retain the sole right of Contract distribution to all State agencies and local units of government unless other arrangements are authorized by Purchasing Operations.

### **2.298 Reformation and Severability**

Each provision of the Contract shall be deemed to be severable from all other provisions of the Contract and, if one or more of the provisions of the Contract shall be declared invalid, the remaining provisions of the Contract shall remain in full force and effect.

### **2.299 Consents and Approvals**

Except as expressly provided otherwise in the Contract, if either party requires the consent or approval of the other party for the taking of any action under the Contract, such consent or approval shall be in writing and shall not be unreasonably withheld or delayed.

### **2.300 No Waiver of Default**

The failure of a party to insist upon strict adherence to any term of the Contract shall not be considered a waiver or deprive the party of the right thereafter to insist upon strict adherence to that term, or any other term, of the Contract.

### **2.301 Survival**

Any provisions of the Contract that impose continuing obligations on the parties including the parties' respective warranty, indemnity and confidentiality obligations, shall survive the expiration or termination of the Contract for any reason. Specific references to survival in the Contract are solely for identification purposes and not meant to limit or prevent the survival of any other section.

### **2.302 Covenant of Good Faith**

Each party agrees that, in its dealings with the other party or in connection with the Contract, it shall act reasonably and in good faith. Unless stated otherwise in the Contract, the parties will not unreasonably delay, condition or withhold the giving of any consent, decision or approval that is either requested or reasonably required of them in order for the other party to perform its responsibilities under the Contract.

### **2.303 Permits**

Contractor shall obtain and pay any associated costs for all required governmental permits, licenses and approvals for the delivery, installation and performance of the Services. The State shall pay for all costs and expenses incurred in obtaining and maintaining any necessary easements or right of way.

### **2.304 Website Incorporation**

State expressly states that it will not be bound by any content on the Contractor's website, even if the Contractor's documentation specifically referenced that content and attempts to incorporate it into any other communication, unless the State has actual knowledge of such content and has expressly agreed to be bound by it in a writing that has been manually signed by an authorized representation of the State.

### **2.305 Taxes**

Vendors are expected to collect and pay all applicable federal, state, and local employment taxes, including the taxes defined in Section 3.022 for all persons involved in the resulting Contract.

The State may refuse to award a contract to any Vendor who has failed to pay any applicable State taxes. The State may refuse to accept Vendor's bid, if Vendor has any outstanding debt with the State. Prior to any award, the State will verify whether Vendor has any outstanding debt with the State.



### **2.306 Prevailing Wage**

The rates of wages and fringe benefits to be paid each class of individuals employed by the Contractor, its subcontractors, their subcontractors, and all persons involved with the performance of this Contract in privity of contract with the Contractor shall not be less than the wage rates and fringe benefits established by the Michigan Department of Labor and Economic Development, Wage and Hour Bureau, schedule of occupational classification and wage rates and fringe benefits for the local where the work is to be performed. The term Contractor shall include all general contractors, prime contractors, project managers, trade contractors, and all of their contractors or subcontractors and persons in privity of contract with them.

The Contractor, its subcontractors, their subcontractors, and all persons involved with the performance of this contract in privity of contract with the Contractor shall keep posted on the work site, in a conspicuous place, a copy of all wage rates and fringe benefits as prescribed in the contract. You must also post, in a conspicuous place, the address and telephone number of the Michigan Department of Labor and Economic Development, the office responsible for enforcement of the wage rates and fringe benefits. You shall keep an accurate record showing the name and occupation of the actual wage and benefits paid to each individual employed in connection with this contract. This record shall be available to the State upon request for reasonable inspection.

If any trade is omitted from the list of wage rates and fringe benefits to be paid to each class of individuals by the Contractor, it is understood that the trades omitted shall also be paid not less than the wage rate and fringe benefits prevailing in the local where the work is to be performed.

### **2.307 Call Center Disclosure**

Contractor and/or all subcontractors involved in the performance of this Contract providing call or contact center services to the State must disclose the location of its call or contact center services to inbound callers. Failure to disclose this information shall be a material breach of this Contract.

### **2.308 Future Bidding Preclusion (Reserved)**

*2.310 Reserved*

*2.320 Extended Purchasing*

### **2.321 MiDEAL (Reserved)**

### **2.322 State Employee Purchases (Reserved)**

*2.330 Federal Grant Requirements*

### **2.331 Federal Grant Requirements (Reserved)**

Exhibit A

**Software the State is required to purchase for completion of the Contract.**

VISTAe

**Exhibit B**

**License Agreement**

**LICENSE AGREEMENT**

This License Agreement ("**Agreement**") is made and entered into this 20<sup>th</sup> day of March 2008 ("**Effective Date**") by and between Aperture Technologies, Inc., a Delaware corporation with a place of business at 9 Riverbend Drive South, Stamford, CT 06907 ("**Aperture**"), and the entity whose name, principal business address and other relevant information are set forth below ("**Customer**"):

<b>Customer Information</b>	
<b>Customer Name:</b>	STATE OF MICHIGAN
<b>Business Address:</b>	530 Allegan Street Lansing, Michigan 48909
<b>Representative:</b>	Doug Collier
<b>Telephone:</b>	517-335-4804
<b>Fax:</b>	517-335-0046
<b>Email:</b>	Collierd1@michigan.gov

**1. Definitions.** Capitalized terms not otherwise defined herein shall have the meanings set forth below:

**1.1 "Authorized Users"** means, and shall be limited to, employees of and consultants to Aperture or Customer and its Controlled Affiliates who have been designated by Customer as authorized users of the Products and for whom Customer has paid all applicable fees for use of the Products.

**1.2 "Controlled Affiliates"** means any entity over which Customer possesses the power, directly or indirectly, to direct or cause the direction of the management or policies of such entity, whether through ownership of voting securities, partnership interest, equity, by contract or otherwise.

**1.3 "Designated Operating System Platform"** means the hardware and operating system specified in the applicable Product Schedule or Documentation.

**1.4 "Documentation"** means the published user manuals and other documentation that Aperture makes generally available for use with the Software, together with any Updates thereto.

**1.5 "Licensed Units"** means the total number of units for which Customer is authorized to use the Products, as set forth on the applicable Product Schedule. Calculations are based on total square footage of the designated areas. Measurements are from wall to wall and defined as all surface area of a site housing data center equipment.

**1.6 "Maintenance Fees"** means the annual fees for Support and Maintenance, as detailed in the applicable Product Schedule.

**1.7 "Products"** means, collectively, the Software, Documentation and all copies thereof.

**1.8 "Software"** means the machine-readable object code version of the computer programs specifically identified and described in one or more separately executed Product Schedule(s) and which have been furnished by Aperture pursuant to this Agreement, together with any Updates thereto.

**1.9 "Suppliers"** means all third party licensors and other suppliers that provide any portion of the Products.

**1.10 "Upgrades"** means any updates, fixes or new versions of the Software or Documentation that Aperture may furnish to Customer under this Agreement from time to time. Updates shall not include any upgrade or new version of the Software or Documentation that Aperture makes generally available as a separately-priced item.

**2. Ordering Products.** Each Product shall be ordered pursuant to an applicable product schedule (each, a "**Product Schedule**"). Each Product Schedule shall refer specifically to this Agreement and shall become effective only when signed by an authorized representative of Aperture. Each duly executed Product Schedule shall become a part of this Agreement and shall be subject to all of the terms and conditions set forth herein.

**3. Software License.**

**3.1 Grant of License.** Subject to the terms and conditions of this Agreement and Customer's payment of all applicable fees (including, without limitation, any additional license fees that may become due pursuant to **Section 3.2** below), Aperture hereby grants to Customer a non-exclusive, non-transferable, perpetual license for



Customer's Authorized Users to use the Products, up to the maximum number of Licensed Units, solely for Customer's and its Controlled Affiliates' own internal business purposes. Customer shall use the Software only on the Designated Operating System Platform. Licensee agrees that neither the Aperture Software nor any direct product thereof will be transferred or exported for sale, directly or indirectly, into any country other than the USA and Canada, without Aperture's prior written approval.

**3.2 Licensed Units.** License fees for the Products are calculated based on the maximum number of Licensed Units. At no time shall Customer's use of the Products exceed the maximum number of Licensed Units. Subject to Aperture's then-applicable policies, the maximum number of Licensed Units may be increased by Customer at any time upon written notice to Aperture and payment of Aperture's then-current fees for the additional number of Licensed Units. Customer's failure to promptly notify Aperture of any increase in usage and submit payment for any additional fees that may become due shall constitute a material breach of this Agreement.

**3.3 Copies.** Customer may make a reasonable number of copies of the Software solely for back-up, archival and quality assurance purposes. Customer shall reproduce all confidentiality and proprietary notices on each copy as they appear on copies of the Software furnished by Aperture, and Customer shall maintain an accurate record and report to Aperture the location(s) of the Software. Additional copies of the Products may be obtained from Aperture upon request, at a nominal charge, for deployment at additional Customer locations.

**3.4 Restrictions.** Customer shall not: (a) sell, rent, lease, loan, sublicense, disseminate, assign, transfer or otherwise provide the Products to third parties, make the Products available for use by third parties or use the Products for the benefit of any third party including, without limitation, through any outsourcing, timesharing or service bureau arrangement; (b) copy (except as expressly provided in **Section 3.3**), reproduce, modify, adapt, translate or create any derivative works from the Products; (c) disassemble, decompile, reverse engineer or make any other attempt by any means to discover or obtain the source code for the Software, except as may be expressly permitted under applicable law; (d) remove, alter, obscure or tamper with any trademark, copyright or other proprietary markings or notices affixed to or contained within the Products; or (e) encourage or permit any Authorized User or other third party to engage in any of the foregoing. Customer shall be responsible for ensuring that all Authorized Users comply with the terms of this Agreement, and Customer shall be liable for any breach by any Authorized User of the license restrictions or other terms of this Agreement.

**4. Implementation and Acceptance.** The Software shall be installed only by Aperture, Aperture's Authorized User or Customer personnel that have been certified by Aperture as a "certified installer." Each Product shall be deemed accepted by Customer upon shipment by Aperture. The Product is warranted under the terms of Section 7.2.

**5. Fees and Payment.**

**5.1 Fees.** License fees for the Products shall be set forth in the applicable Product Schedule. Customer shall pay such fees in accordance with the payment schedule set forth in the applicable Product Schedule. Maintenance Fees, shall be payable annually in advance not later than sixty (60) days prior to the applicable anniversary date. All other fees, if any, shall be invoiced as incurred and shall be payable within forty-five(45) days of the date of the applicable invoice. Customer shall pay all applicable shipping charges. All payments shall be made in U.S. dollars. Any amount not paid when due shall accrue interest at the rate of three quarters of one percent(.075%)per month or the maximum rate permitted by applicable law, whichever is less. Customer shall pay all collection costs, including but not limited to reasonable attorneys' fees, costs and expenses.

**5.2 Taxes. (Reserved)**

**6. Support and Maintenance.** During the initial maintenance period specified in the applicable Product Schedule ("**Initial Maintenance Period**") and any Extended Maintenance Period (defined below) for which Customer has committed to the term and agrees to pay the applicable Maintenance Fees, Aperture will provide Customer with support and maintenance services for the Products in accordance with Aperture's then-current standard Support and Maintenance policies, a copy of the current policy is attached hereto as **SCHEDULE 1 ("Support and Maintenance")**. Support and Maintenance includes the Updates that Aperture may make generally available as part of its standard support and maintenance policies, Aperture's VISTA® Symbols Library as well as Aperture's telephone support, which includes general technical information and assistance with diagnosing and correcting problems Customer may encounter. Aperture may offer on-site support to Customer for additional charges. Customer shall be required to purchase Support and Maintenance for the duration of the applicable Initial Maintenance Period. Thereafter, for so long as Aperture offers Support and Maintenance for the applicable Product, Customer may elect to extend Support and Maintenance for one or more additional consecutive twelve (12)-month periods (each, an "**Extended Maintenance Period**") by paying the applicable Maintenance Fees referenced in the Product Schedule and in accordance with **Section 5.1**.



Support and Maintenance automatically shall terminate at the end of the Initial Maintenance Period or then-current Extended Maintenance Period, as the case may be, if payment for renewal is not timely made. Aperture may cease providing Support and Maintenance at any time upon completion of the Initial Maintenance Period or then-current Extended Maintenance Period and may charge for re-instatement fees should Customer terminate any Extended Maintenance Fees and then wish to re-elect Maintenance. In addition, Customer shall not receive any reimbursements for advanced fees paid due to early termination. Subject to the foregoing, Aperture shall be required to support only the then-current release of any Product and, for a period of one (1) year after release thereof, the immediately prior release of such Product. This Section shall not be interpreted to require Aperture to develop and release Updates or customize the Products to satisfy Customer's particular requirements. If an Update replaces a prior version of a Product, Customer shall destroy such prior version upon installing the Update. For purposes of clarification, Customer shall not be entitled to receive Updates after any termination or expiration without renewal of Support and Maintenance.

## **7. Limited Warranties.**

**7.1 Media Warranty.** Aperture warrants that, at the time of delivery of the Products, the media containing the Products shall be free of material defects. In the event of breach of this warranty, Aperture will replace the defective media at no additional charge if Customer notifies Aperture of any such defect and returns the defective media to Aperture within sixty (60) days after delivery of the defective media.

**7.2 Limited Warranty.** Aperture warrants that the Software, when operated on the Designated Operating System Platform, will perform substantially as described in the applicable Documentation. In the event of breach of this warranty within 90 days of Acceptance of the product as per section 4, Aperture will provide Support and Maintenance to correct any material defects in the Software of which Aperture has been notified by Customer in writing. Such notice shall include a reasonably detailed explanation of the alleged material defect as necessary to enable Aperture to identify, reproduce and analyze such defect. This warranty shall not apply if: (a) the Software is not used in accordance with the Documentation; (b) any modifications are made to the Software by anyone other than Aperture or its agents; (c) the Software is used in connection with software, hardware or other products other than the Designated Operating System Platform; (d) the defect is caused by Customer or any third party hardware, software or other products; or (e) the Software is not properly installed. Moreover, this warranty shall not

apply with respect to any modifications to the Software provided at Customer's request.

**7.3 Exclusive Remedies.** Customer acknowledges and agrees that this **Section 7** sets forth Aperture's sole and exclusive liability, and Customer's sole and exclusive remedy, for any breach of the warranties set forth herein.

**7.4 Disclaimer.** EXCEPT FOR THE EXPRESS LIMITED WARRANTIES SET FORTH IN THIS SECTION 7, APERTURE MAKES NO WARRANTIES WHATSOEVER AND PROVIDES THE PRODUCTS AND RELATED SERVICES ON AN "AS IS" AND "AS AVAILABLE" BASIS. APERTURE AND ITS AFFILIATES AND SUPPLIERS HEREBY DISCLAIM ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND, EXCEPT AS EXPRESSLY PROVIDED IN SECTION 12, NON-INFRINGEMENT OF THIRD PARTY RIGHTS. APERTURE DOES NOT WARRANT THE OPERATION OF THE PRODUCTS TO BE UNINTERRUPTED OR ERROR-FREE OR THAT ALL DEFICIENCIES OR ERRORS ARE CAPABLE OF BEING CORRECTED. FURTHERMORE, APERTURE DOES NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE USE OF THE PRODUCTS OR THE RESULTS OBTAINED THEREFROM OR THAT THE PRODUCTS WILL SATISFY CUSTOMER'S REQUIREMENTS.

**8. Limitation of Liability.** IN NO EVENT SHALL EITHER PARTY, ITS AFFILIATES OR ITS SUPPLIERS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES (INCLUDING, WITHOUT LIMITATION, ANY DAMAGES FOR LOSS OF DATA, GOODWILL, BUSINESS, PROFITS OR INTERRUPTION IN USE OR AVAILABILITY OF THE PRODUCTS OR THE LIKE), EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. APERTURE, ITS AFFILIATES AND ITS SUPPLIERS SHALL NOT BE LIABLE FOR ANY EXPENSE OR DAMAGE ARISING OUT OF ANY ERASURE, DAMAGE OR DESTRUCTION OF FILES, DATA OR SOFTWARE. CUSTOMER SHALL BE RESPONSIBLE FOR MAKING BACKUP COPIES OF SUCH MATERIALS. IN NO EVENT SHALL APERTURE'S, ITS AFFILIATES' AND ITS SUPPLIERS' AGGREGATE LIABILITY FOR ANY CAUSE OF ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT EXCEED THE LICENSE FEE ACTUALLY PAID BY CUSTOMER FOR THE SPECIFIC PRODUCT SUBJECT TO THE DAMAGE CLAIM. THE FOREGOING LIMITATIONS SHALL APPLY REGARDLESS OF THE CAUSE OR THE FORM OF ACTION (WHETHER BASED IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, WARRANTY OR



**OTHERWISE) AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.**

**9. Ownership Rights Reserved.** Customer acknowledges and agrees that all worldwide right, title and interest in and to the Products (including but not limited to all Updates) and all copies thereof, including but not limited to all trademarks, service marks, patents, copyrights, trade secrets and other intellectual property and proprietary rights in or related to the Products, are and shall remain the exclusive property of Aperture, its affiliates and/or its Suppliers, as the case may be. The Products are protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. The Products are licensed, not sold. Except for the license expressly granted in **Section 3.1**, Customer shall have no rights to or other interests in the Products. Customer shall keep the Products free and clear of all liens and security interests. Aperture reserves all rights not explicitly granted to Customer under this Agreement.

**10. Confidentiality.**

**10.1 General.** Customer acknowledges that the Products, including but not limited to the ideas, methods of operation, architecture, processes, know-how, graphical user interfaces, aesthetic aspects and look and feel of or embodied in the Products, constitute and incorporate valuable trade secrets and other confidential and proprietary information developed or acquired by or licensed to Aperture. Customer shall take all reasonable precautions, including at a minimum those precautions taken by Customer to protect its own confidential information, to prevent the unauthorized use or disclosure of the Products or the results of any performance or benchmark tests of the Products. Customer shall not permit the Products or any such test results to be made available to any third party who is not an Authorized User, unless Aperture approves such use or disclosure in advance and in writing and the third party enters into a written non-disclosure and non-use agreement with Customer on terms acceptable to Aperture and its Suppliers. Customer hereby acknowledges that any unauthorized use or disclosure of the Products will cause irreparable harm to Aperture and its Suppliers for which monetary damages may be difficult to ascertain or may provide an inadequate remedy. Accordingly, Customer agrees that Aperture, in addition to any other rights and remedies to which Aperture may be entitled under this Agreement or by law, shall be entitled to seek injunctive or other equitable relief for any such unauthorized use or disclosure. If any unauthorized use or disclosure occurs, Customer shall immediately notify Aperture and, at Customer's expense, take all steps that may be available to recover the Products and to prevent their subsequent unauthorized

use or dissemination. Aperture agrees to take similar measures to protect any information received from Customer that Customer specifically designates in writing as proprietary and confidential.

**10.2 Limitations.** Neither party shall have any confidentiality obligation with respect to any information that: (a) is public knowledge at the time of disclosure; (b) was demonstrably known by the receiving party before disclosure by the disclosing party, or becomes public knowledge or otherwise known to the receiving party after such disclosure, other than by breach of a confidentiality obligation; or (c) is independently developed by the receiving party by persons without access to such information. The placement of a copyright notice on the Products shall not constitute publication or otherwise impair the confidential or trade secret nature thereof.

**10.3 Non-disclosure of Agreement Terms.** Neither party shall disclose the terms of this Agreement without the prior written consent of the other party, except that each party may: (a) make such disclosures as are necessary to comply with applicable laws, rules and regulations or as necessary to enforce this Agreement; and (b) disclose the terms of this Agreement to such party's auditors, attorneys, bankers or investment bankers as necessary for their rendition of services to such party, or to potential investors in connection with their due diligence reviews of such party, provided that such persons agree to keep the information confidential.

**11. Inspection.** During the term of this Agreement and for a period of one (1) year thereafter, Aperture or its representative may, upon prior written notice to Customer, inspect the files, computer equipment and facilities of Customer during normal working hours to verify Customer's compliance with this Agreement. In addition, Customer must provide written notice to Aperture where the Software is deployed and at what specific data center locations it is being used. While conducting such inspection, Aperture or its representative shall be entitled to copy any item that Customer may possess in violation of this Agreement. In the event an inspection reveals an underpayment by Customer as a result of exceeding the maximum number of Licensed Units or otherwise, the amount by which Aperture was underpaid shall become immediately payable by Customer, together with interest thereon at the rate of one and one-half percent (1.5%) per month or the maximum rate permitted by law, whichever is less, compounded monthly beginning on the date such payment should have been made. In addition, in the event an inspection reveals an underpayment of five percent (5%) or more, Customer shall reimburse Aperture for the reasonable costs of such inspection. The foregoing remedies are in addition to, and not in lieu



of, any other remedies that may be available to Aperture under this Agreement, at law or in equity.

## **12. Infringement.**

**12.1 Indemnification.** , Aperture, at its own expense, shall defend or settle, at Aperture's option, any third party claim, suit or proceeding ("**Third Party Claim**") brought against Customer claiming that the Products infringe upon such third party's valid United States patent or copyright, and Aperture shall pay any final judgment entered against Customer by a court of competent jurisdiction or settlement agreed to by Aperture with respect to any such Third Party Claim, but only if: (a) Customer notifies Aperture in writing within a reasonable time after first becoming aware of such Third Party Claim; (b) Aperture has sole control over the defense and settlement of such Third Party Claim; (c) at Aperture's request and expense, Customer reasonably cooperates with Aperture in defending such Third Party Claim; and (d) Customer takes no action that is contrary to Aperture's interests with respect to such Third Party Claim.

**12.2 Alternative Remedy.** Upon assertion of any such Third Party Claim, Aperture shall have the right, at its sole option and expense, to: (a) obtain the right to continue using the Products; (b) replace or modify the affected portions of the Products so that they are no longer infringing; or, if neither of the foregoing options is reasonably available to Aperture, then (c) accept return of the affected Products and refund to Customer (i) the license fee actually paid to Aperture for such Products, less depreciation based on a thirty-six (36)-month straight-line depreciation schedule, plus (ii) the unused portion of any pre-paid Maintenance Fees actually paid by Customer, calculated based on the number of days remaining in the applicable Support and Maintenance period.

**12.3 Limitations.** This **Section 12** states Aperture's entire liability and Customer's exclusive remedies for infringement. Aperture shall have no liability or obligation to Customer under this **Section 12** if the Third Party Claim results from: (a) modifications or alterations to the Products made by Customer or a party other than Aperture or its authorized agents, or made by Aperture pursuant to specific design instructions furnished by Customer; (b) Customer's failure to promptly install an Update if installation of such Update would have avoided the infringement; or (c) Customer's use of the Products in combination with any products, services or materials not provided by Aperture or use other than in accordance with this Agreement.

**13. Term and Termination.** This Agreement shall commence on the Effective Date and shall remain in effect unless terminated for cause. Either party shall

be entitled to terminate this Agreement in the event of any material breach by the other party (including but not limited to any failure by Customer to make payments when due) if such breach, if curable, is not cured within thirty (30) days after receipt of written notice thereof or within ten (10) days after receipt of such notice if such breach relates to the payment of fees or other amounts owed hereunder by Customer. Upon termination of this Agreement for any reason, all rights granted to Customer hereunder with respect to the Products shall cease, and Customer shall: (a) immediately cease all use of the Products and purge the Products from Customer's computer systems, storage media and files; (b) promptly return or destroy, at Aperture's direction, the Products and all copies thereof, and all other confidential information of Aperture then in Customer's possession or under Customer's control; and (c) promptly deliver to Aperture an affidavit, signed by an executive officer of Customer, certifying that Customer has complied with these termination obligations. In addition, Customer promptly shall pay to Aperture all fees and other amounts due and owing under this Agreement. Notwithstanding anything to the contrary contained herein, the provisions of **Sections 3.4, 5, 8, 9, 10, 11, 13, 16, 17, 18 and 19** shall survive any termination of this Agreement.

**14. Publicity.** Customer may agree to cooperate with Aperture and its agents in the creation of a press release on or immediately after the Effective Date, announcing the selection of Aperture's software products by the Customer. Further, Customer may agree to participate in at least three telephonic or in-person press interviews per year during the term of this agreement describing Customer's use of Aperture products. Aperture may identify Customer as a client, and use Customer's logos, in connection with publicized client lists, advertising and other promotional and marketing materials, including placing references to Customer on Aperture's website, provided that Aperture complies with any reasonable written trademark usage guidelines furnished by Customer and obtains the Customer's prior written consent to such use.

**15. Compliance with Law.** Both parties agree to comply with all applicable international and national laws and regulations that apply to the Products, including but not limited to the U.S. Export Administration Regulations, as well as end-user, end-use and destination restrictions issued by U.S. and other governments. Aperture represents and warrants that the Products are suitable for export under the U.S. Export Administration Regulations, as well as end-user, end-use and destination restrictions issued by U.S. and other governments.

**16. U.S. Government Restricted Rights.** The Software and accompanying Documentation are



"commercial items" as that term is defined in 48 CFR 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 CFR 12.212. Consistent with 48 CFR 12.212 and 48 CFR 227.7202-1, 227.7202-3 and 227.7202-4, all U.S. Government End Users acquire the Software and Documentation with only those restricted or limited rights conveyed under the license customarily provided to the public (i.e., as set forth herein). All rights not expressly granted herein are reserved by Aperture.

**17. Relationship of Aperture and Resellers.**

Customer hereby acknowledges and agrees that the relationship of Aperture and its authorized resellers ("Resellers") is that of independent contractors. The Resellers do not have any right or authority to bind or assume or create any obligation or responsibility, express or implied, for or on behalf of Aperture or in Aperture's name. Aperture and the Resellers are not partners or joint venturers and their relationship is not one of employer and employee, master and servant, franchisor and franchisee or principal and agent. Customer agrees that Aperture is not responsible for any act, omission, failure or damage relating to work or any other matter performed by, or on behalf of, any Reseller for Customer.

**18. Dispute Resolution; Arbitration.**

PARAGRAPH INTENTIONALLY OMITTED

**19.**

**19. Miscellaneous.**

**19.1 Assignment.** Customer shall not assign this Agreement or any rights or obligations hereunder, whether by operation of law or otherwise, without Aperture's express prior written consent, not to be unreasonably withheld. Any assignment in violation of this Section shall be void. Subject to the foregoing, this Agreement shall be binding upon, and inure to the benefit of, the permitted successors and assigns of the parties.

**19.2 Independent Parties; No Authority to Bind.** The relationship of Aperture and Customer is that of independent contractors. Neither party nor their employees are agents, employees or joint venturers of the other party. Neither party shall have any authority to bind the other party to any obligation by contract or otherwise.

**19.3 Governing Law; Exclusive Venue.** This Agreement shall be governed by the laws of the State of Michigan, U.S.A., irrespective of its choice of law principles. The parties hereby agree to exclude, waive and opt out of any application of the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act (UCITA), or any version thereof,

adopted by any State in any form. Each party hereby waives its right to a trial by jury for any disputes between the parties.

**19.4 Severability; Enforcement; No Waiver.** If any provision of this Agreement shall be deemed invalid or unenforceable, in whole or in part, this Agreement shall be deemed amended to delete or modify, as necessary, the invalid or unenforceable provision to render it valid, enforceable and, insofar as possible, consistent with the original intent of the parties. The failure of a party to require performance of any obligations of the other party hereunder shall not be deemed a waiver and shall not affect its right to enforce any provision of this Agreement at a subsequent time.

**19.5 Third Party Beneficiaries.** No provisions of this Agreement are intended nor shall be interpreted to provide or create any third party beneficiary rights or any other rights of any kind in any other party under this Agreement, except that Aperture's Suppliers shall be deemed third party beneficiaries under this Agreement for purpose of enforcing their rights in their respective intellectual property and confidential information.

**19.6 Time Limit for Bringing Claims** PARAGRAPH INTENTIONALLY OMITTED

**19.7 Construction; Headings.** Titles and headings to sections in this Agreement are inserted for convenience of reference only and are not intended to affect the interpretation or construction of this Agreement. If an ambiguity or question of intent arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring either party by virtue of authorship of any of the provisions of this Agreement. The terms "herein," "hereof," "hereunder" and similar expressions refer to this Agreement and not to any particular section or other portion hereof.

**19.8 Counterparts.** This Agreement may be executed in one or more duplicate counterparts, each of which shall be deemed an original, but which collectively shall constitute one and the same instrument.

**19.9 Amendment.** Any term or provision of this Agreement may be amended, and the observance of any term of this Agreement may be waived, only by a writing signed by the party to be bound thereby.

**19.10 Notices.** All notices or approvals required or permitted hereunder shall be in writing and shall be deemed to have been given upon: (a) receipt if sent by certified or registered mail, postage prepaid, return receipt requested; (b) delivery if sent by a courier service that confirms delivery in writing; or (c) the date sent by facsimile, with a confirmation copy sent via national



overnight courier, in each case addressed as follows: (x) if to Customer, then to the address set forth on the first page of this Agreement; or (y) if to Aperture, then to Aperture Technologies, Inc., 9 Riverbend Drive South, Stamford, Connecticut 06907, Attn: Director of Legal, Telecopier: (203) 357-0809. Either party may change its address for such communications by giving notice thereof to the other party in conformity with this Section.

In the event of any conflict between the terms and conditions of this Agreement and those contained in a Product Schedule or other schedule or attachment hereto, the terms and conditions of this Agreement shall prevail. In the event of any conflict between the terms and condition of this Agreement and those contained in the Terms and Conditions with the State of Michigan dated March 20, 2008 the terms and conditions of the State of Michigan shall prevail. Any terms set forth on a purchase order or other written documentation provided by Customer are hereby rejected and shall not be binding on Aperture. This Agreement shall supersede the terms of any "shrink wrap" or "break-the-seal" license agreement included in any package for Aperture-furnished Software.

**19.11 Entire Agreement.** This Agreement, including all Product Schedules and other schedules and attachments hereto, all of which are incorporated herein by reference, constitutes an understanding and agreement of the parties, whether written or oral, with respect to the subject matter hereof and the Products and related services furnished by Aperture hereunder.

**IN WITNESS WHEREOF**, the parties hereto, intending to be legally bound, have caused this License Agreement to be executed by their duly authorized representatives as of the Effective Date.

**APERTURE TECHNOLOGIES, INC.**

**THE STATE OF MICHIGAN**

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

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

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

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

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

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

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

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

—

—



## Schedule 1

### SUPPORT AND MAINTENANCE POLICY

#### Availability

Aperture Technical Support offers direct access via both the telephone and e-mail to our skilled staff of technical analysts for problem resolution, bug reporting and technical guidance. Aperture Support Offerings provide different plans to meet the needs of a variety of organizations in a cost effective manner. All of our Support Offerings provide Technical assistance via telephone at (800) 342-9022, the latest updates and newest releases to our solutions as well as our Symbol Subscription program. Aperture also provides web access to rich technical resources at <http://www.aperture.com> and/or at <http://support@aperture.com>. All Aperture Technical Support is provided in English.

#### Contact Information

Issues can be reported using the following methods:

1. Email – Send a note to [support@aperture.com](mailto:support@aperture.com) where each Aperture Support Technician has access in order to answer these issues as quickly as possible.
2. Voice – Aperture uses an Automatic Call Distribution (ACD) system to route calls to the next available support personnel. (800) 342-9022.
3. Voice Mail – If no one is available to answer the ACD, messages can be left in the Technical Support voice mail box, which pages the Support Team to let us know a message has been left.
4. Web – At our [www.aperture.com](http://www.aperture.com) web site, we have a support form available off of the Customer Support page in the event a user needs to send a request via the Internet.
5. FTP – At our FTP site (<ftp://web1.aperture.com>) there are numerous downloads available as well as an Uploads area for clients to send their project backups.
6. Fax – When faxing a request please include all necessary contact information so that we may reply accordingly. (203) 357-0809.

#### Aperture Gold Support

Aperture Gold Support is our inclusive offering which provides value for those organizations requiring business hour support for small to medium sized organizations. Aperture Gold Support is available during Aperture's extended office hours (5 days X 12 hours) and excludes holidays. Gold Support allows 5 support contacts at your organization and includes a 2 hour response time on Severity 1 and 2 issues and a 12 hour response time for Severity 3 and 4 issues.

#### Aperture Platinum Support

Aperture Platinum Support is our most comprehensive offering with all the benefits of Gold Support plus increased responsiveness for larger organizations or those whose solutions are mission critical. Aperture Platinum Support is available 7 days a week, 24 hours a day. Platinum Support allows 10 support contacts at your organization and includes a 1 hour response time on Severity 1 and 2 issues and an 8 hour response time for Severity 3 and 4 issues.

#### Problem Resolution

Aperture's problem resolution assistance includes:

- Diagnostic information review(s) to help isolate the cause of a problem
- Prioritization of problems based on problem severity
- Defect resolution

#### Severity Definitions

Aperture, in consultation with Customer, will assign each reported problem a severity level based on the nature of the problem, in accordance with the following descriptions:

## Aperture®

The problem causes complete loss of service. Work cannot reasonably continue, the operation is mission critical to the business and the situation is an emergency. A Severity 1 problem has one or more of the following characteristics:

- Data corrupted
- A critical function is not available
- System hangs indefinitely, causing unacceptable or indefinite delays for resources or response
- System crashes, and crashes repeatedly after restart attempts

Aperture Support will work with Customer to resolve Severity 1 problems until the issue is resolved or as long as useful progress can be made. Specifically, Aperture will have a Developer liaison with Customer Support to provide an in-depth analysis of the code whereby jointly they will use all reasonable efforts to resolve the issue. In order for Aperture to succeed, Customer must provide Aperture Support with a contact during this period, either on-site or by other electronic means, to assist with data gathering, testing and applying fixes.

### **Severity 2**

The problem causes a severe loss of service. No acceptable workaround is available; however, operation can continue in a restricted fashion.

### **Severity 3**

The problem causes minor loss of service. The impact is an inconvenience, which may require a workaround to restore functionality.

### **Severity 4**

The problem causes no loss of service. The result is a minor error, incorrect behavior, or a documentation error that does not impede the operation of a system.

## **Responses to Technical Questions**

Technical Support answers product specific, task-oriented questions regarding the installation and operation of currently supported Aperture software. In the course of providing answers to your technical questions, we may refer you to product documentation, other publications, Aperture Professional Services, or we may be able to provide a direct answer to assist you in the following areas.

### **Short duration problems involving...**

- Installation issues/questions
- Usage (how to questions)
- Specific usage/installation questions for documented functions
- Product compatibility and interoperability questions
- Technical references to publications (i.e., reference manuals, on-line knowledge base)
- Assistance with interpretation of Aperture provided publications
- Assistance with acquiring Aperture created configuration examples
- Information on software fixes

## **Symbols Subscription**

Aperture's Symbols Subscription provides customers with access to the Aperture VISTA® Symbol Library. The Aperture Symbol Library, an indispensable component of Aperture VISTA®, is made up of detailed, scaled drawings of data center devices and equipment with their associated technical specifications (from their respective vendors). Access to the Aperture VISTA® Symbols Library, which contains over 30,000 Symbols, is available 24X7X365 via aperture's Symbol Web Site. If a Symbol is not available in our library, it can be requested via the Web and created to manufacturer's specifications and delivered to you by our Symbols Team.

## **Access to Technical Support**

Technical Support may be accessed only by users trained in the installation and operation of the Products.

 **Aperture**  
**PRODUCT SCHEDULE #1**  
**TO LICENSE AGREEMENT**

Upon execution of this Product Schedule ("**Schedule**"), this Schedule shall be made a part of, and incorporated into, that certain License Agreement ("**Agreement**") between Aperture and The State of Michigan dated as of \_\_\_\_\_, 20\_\_.

**Products and License Fees:**

	Maintenance Program	Aperture Software Product	Licensed Units	Purchase Price
<b>Perpetual License</b>		VISTAe	29,898 sq. ft.	\$ 220,498
<b>Initial Maintenance Period Three Year Term</b>	<b>Start Date:</b> April 15, 2008  <b>End Date:</b> April 14, 2011	Software Maintenance		\$ 39,690/annual
<b>Perpetual License</b>		Remedy Interface		\$ 15,000
<b>Initial Maintenance Period Three Year Term</b>	<b>Start Date:</b> April 15,, 2008  <b>End Date:</b> April 14, 2011	Software Maintenance		\$2,700/annual
<b>Total Year One Investment</b>				\$ 277,888

**Maintenance Fees:**

- During the Initial Maintenance Period, Support and Maintenance Fees for **Aperture Gold Support** are calculated at eighteen percent (18%) of Aperture's volume software price at the time of purchase for the applicable Products. Thereafter, should Customer elect to continue Support and Maintenance during any Extended Maintenance Period, it shall be calculated at eighteen percent (18%) of Aperture's then-current software price for the applicable Products.

**Designated Operating System Platform: WINDOWS**

**Payment Schedule:** All license fees are due upon execution of this Schedule. Maintenance Fees shall be payable in accordance with **Section 5.1** of the Agreement.

**IN WITNESS WHEREOF**, the parties hereto, intending to be legally bound, have entered into this Product Schedule as of the date signed below by an authorized representative of Aperture.

**APERTURE TECHNOLOGIES, INC.**

**STATE OF MICHIGAN**

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

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

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

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

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

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

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

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