

STATE OF MICHIGAN
 DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET
 PROCUREMENT
 P.O. BOX 30026, LANSING, MI 48909
 OR
 530 W. ALLEGAN, LANSING, MI 48913

CHANGE OF CONTRACTOR NAME AND OR TAX IDENTIFICATION NUMBER

CONTRACT NO. 071B9200176

hereafter referred as

CONTRACT NO. 071B3200018

between

THE STATE OF MICHIGAN

and

| CURRENT NAME & ADDRESS OF CONTRACTOR: | PRIMARY CONTACT | EMAIL |
|-------------------------------------------------------------------------|-----------------|--------------------------------|
| Zayo Group LLC 400 Centennial Pkwy, Ste. 200 Louisville, CO 80027 | Tim Lebel | tim.lebel@zayo.com |
| | TELEPHONE | NEW CONTRACTOR #, MAIL CODE |
| | (517) 492-1336 | |

| PREVIOUS NAME & ADDRESS OF CONTRACTOR: | PRIMARY CONTACT | EMAIL |
|------------------------------------------------------------------------------------|-----------------|-------------------------------------|
| Lansing Fiber Communications 822 Centennial Way, Suite 250 Lansing, MI 48917 | Tim Lebel | tlebel@corp.arialink.com |
| | TELEPHONE | PREVIOUS CONTRACTOR #, MAIL CODE |
| | (517) 492-1336 | |

| DESCRIPTION OF CHANGE NOTICE: |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>THE CONTRACTOR HAS NOTIFIED THE STATE OF MICHIGAN OF A CHANGE IN ITS BUSINESS NAME AND OR TAX IDENTIFICATION NUMBER. DUE TO THE INTERNAL SYSTEMS RELATED TO THE RELEASE OF CONTRACTOR PAYMENTS, A NEW CONTRACT NUMBER MUST BE ASSIGNED. THE NEW CONTRACT NUMBER IS 071B3200018. EXCEPT FOR THE NEWLY-ASSIGNED NUMBER, THE CONTRACT TERMS AND CONDITIONS REMAIN IN EFFECT.</p> <p>THIS CHANGE IS EFFECTIVE: May 1, 2012</p> |
| <p>\$1,318,516.95 REMAINING ON CONTRACT #071B9200176 TO BE TRANSFERRED TO CONTRACT # 071B3200018</p> |

| STATE CONTACTS | AGENCY | NAME | PHONE | EMAIL |
|--------------------------------|-------------------------|-----------------|----------------|-------------------------|
| CONTRACT COMPLIANCE INSPECTOR: | DTMB-Financial Services | Cindy Greenleaf | (517) 335-6583 | greenleafc@michigan.gov |
| BUYER: | DTMB - Procurement | Steve Motz | (517) 241-3215 | motzs@michigan.gov |

| CONTRACT SUMMARY: | | | |
|-------------------------------------------------------------------------------------------------------------|----------------|-------------------|---------------------------------------------------------------------|
| DESCRIPTION: | | | |
| Fiber Ring, Connections, Spurs, and Related Services – DTMB Telecom | | | |
| INITIAL TERM | EFFECTIVE DATE | EXPIRATION DATE | AVAILABLE OPTIONS |
| 9/9/2004 - 9/8/2007 | May 1, 2012 | September 8, 2024 | None |
| PAYMENT TERMS | F.O.B | SHIPPED | SHIPPED FROM |
| N/A | N/A | N/A | N/A |
| ALTERNATE PAYMENT OPTIONS: | | | AVAILABLE TO MiDEAL PARTICIPANTS |
| <input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other | | | <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO |
| MINIMUM DELIVERY REQUIREMENTS: | | | |
| N/A | | | |

| FOR THE CONTRACTOR: | FOR THE STATE: |
|----------------------------------|-----------------------------|
| Zayo Group LLC | Signature |
| Authorized Agent Signature | Greg Faremouth, IT Director |
| Authorized Agent (Print or Type) | DTMB Procurement |
| Date | Date |

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

December 6, 2010

CHANGE NOTICE NO. 2
 TO
CONTRACT NO. 071B9200176
 (replaces 071B4200392)
THE STATE OF MICHIGAN
 and

| | |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------|
| NAME & ADDRESS OF CONTRACTOR Lansing Fiber Communications LLC 822 Centennial Way, Suite 250 Lansing, MI 48917 Email: tlebel@corp.arialink.com | TELEPHONE Tim Lebel (517) 492-1336 |
| | CONTRACTOR NUMBER/MAIL CODE |
| | BUYER/CA (517) 241-3215 Steve Motz |
| Contract Compliance Inspector: Mike Breen Fiber Ring, Connections, Spurs, and Related Services – DTMB Telecom | |
| CONTRACT PERIOD: From: March 12, 2009 To: September 8, 2024 | |
| TERMS <p style="text-align: center;">N/A</p> | SHIPMENT <p style="text-align: center;">N/A</p> |
| F.O.B. <p style="text-align: center;">N/A</p> | SHIPPED FROM <p style="text-align: center;">N/A</p> |
| MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;">N/A</p> | |
| MISCELLANEOUS INFORMATION: | |

NATURE OF CHANGE (S):

Effective immediately this contract is amended to include the addition of a fiber optic cable connecting the existing GMAN Fiber Ring to the new DHS office location at 1760 Abbey Road in Lansing that has resulted from this DHS office re-location. This contract change notice will document the new and discontinued fiber spurs.

The attached modifications are hereby incorporated into this contract with no additional changes in pricing, terms or conditions:

- Attachment D – SOM Acquired Fiber Ring, Connections and Spurs

Please note that the Single Point of Contact for the Contractor has been changed to Tim Lebel.

AUTHORITY/REASON:

Per vendor and agency agreement.

TOTAL ESTIMATED CONTRACT VALUE REMAINS: \$1,396,300.00

Lansing Fiber Communications LLC
 230 N. Washington Square Suite 300
 Lansing, MI 48933
 517-492-1350

Subscriber Order Form

| | | | |
|---------------------------------------------------------------------------|-----------|-------------------|-------------------|
| Customer Information State of Michigan DTMB Steve McMahon | | | |
| Prepared by | Tim Lebel | Quote Date | November 29, 2010 |
| Sales agent | | Quote # | |

| Service Location and Description | NRC |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|
| 8 fiber strands from 1760 Abbey Rd to SOM ring at CRT92M. | \$15,000.00 |
| Spur is warranted for a period of one (1) year from date of client acceptance. Upon expiration of the warranty period, annual preventative maintenance fees shall apply per the terms of the master contract. | |
| Reference terms of SOM Contract #071B9200176 | |
| Total | \$15,000.00 |

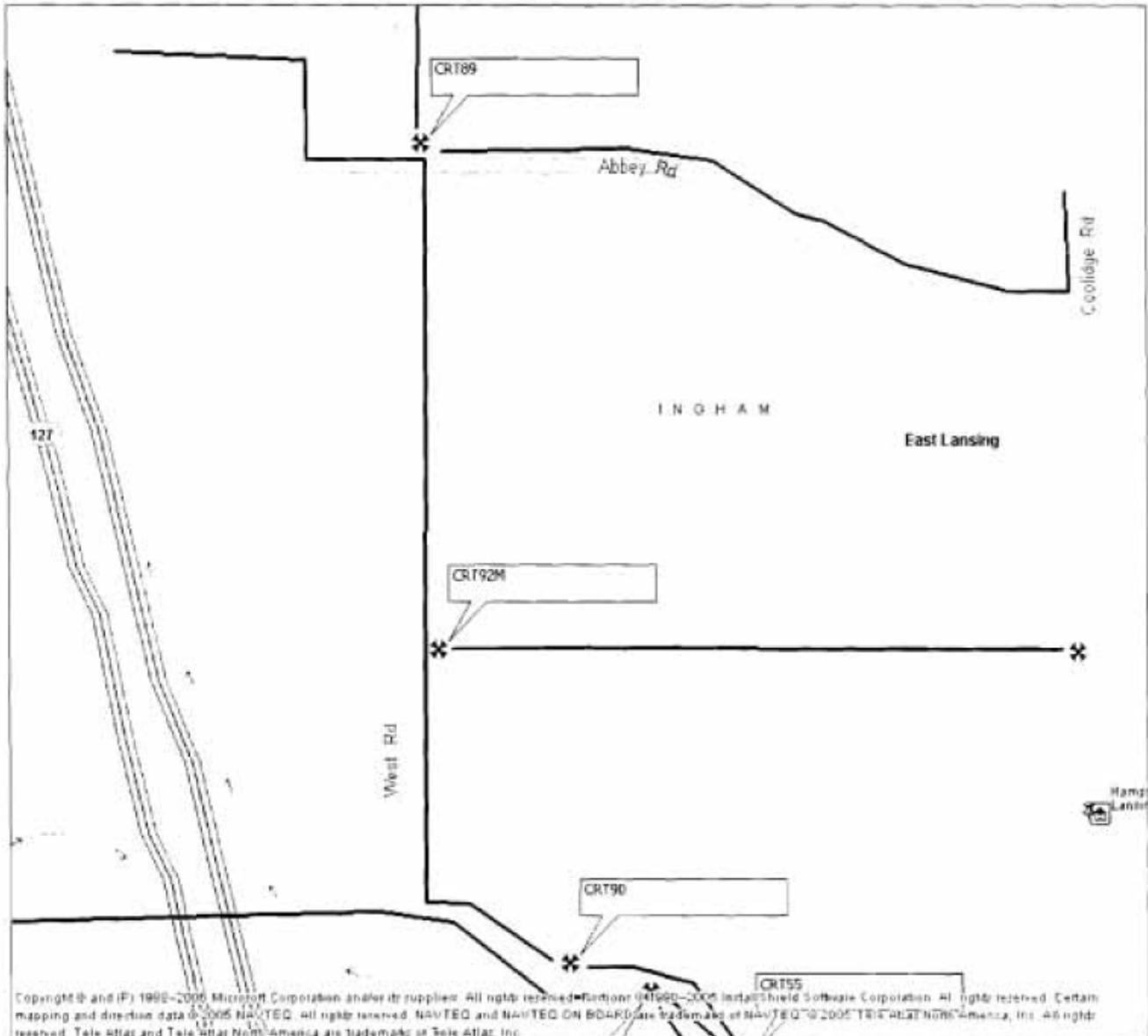
Prices do not include applicable taxes, regulatory recovery or service fees. A \$4 monthly service fee will be charged to all accounts not using e-Pay. NRC = Non Recurring Charge

Printed Name _____

Customer Acceptance _____

Title _____ Date _____

Lansing Fiber Communications LLC
230 N. Washington Square Suite 300
Lansing, MI 48933
517-492-1350



Attachment D
Contract #071B9200176
SOM Acquired Fiber Ring, Connections and Spurs as of 11/23/2010
Lansing Fiber Communications, LLC

| Item # | Address | SOM Agency | Distance (mi) |
|--------|-----------------------------------------------------------------------|---------------|---------------|
| 1 | Fiber Ring | DTMB | 43.2 |
| 2 | Splice case near the intersection of N. Waverly Rd. and W. Willow St. | DTMB | n/a |
| 3 | Splice case near the intersection of Lansing Rd. and Mt. Hope Rd. | DTMB | n/a |
| 4 | 320 N. Washing to 235 Grand Ave. (Norlight POP to Grand Tower) | DTMB | 0.5 |
| 5 | 735 Hazel St. | State | 0.8 |
| 6 | 5015 S. Cedar St. | DELEG/UA | 0.3 |
| 7 | 5656 S. Cedar St. | DOC | 0.7 |
| 8 | 5341 S. Pennsylvania | DOC | 0.5 |
| 9 | 4000 Collins E. Lansing | MSP | 0.9 |
| 10 | 2860 Eyde Pkwy | AG | 0.5 |
| 11 | 1615 Harrison | DOA | 1.0 |
| 12 | 714 Harrison | MSP | 0.4 |
| 13 | 2501 Woodlake Circle | DELEG | 0.6 |
| 14 | 1808 W. Saginaw | DCH | 0.7 |
| 15 | 7109 W. Saginaw | DHS | 2.4 |
| 16 | 735 E. Michigan | DELEG/MSHDA | 2.0 |
| 17 | 1375 S. Washington | DOC | 0.2 |
| 18 | 1048 Pierpont | DELEG | 1.0 |
| 19 | 1033 S. Washington | DELEG & DHS | 0.3 |
| 20 | 2501 Coolidge | Treasury | 0.5 |
| 21 | 2700 East Airport Service Dr | MDOT Aviation | 0.5 |
| 22 | 5513 Enterprise Dr. | DTMB Depot | 0.7 |
| 23 | 1760 Abbey Road (to be added Dec., 2010) | DHS | 0.3 |
| 24 | 5303 S. Cedar St | DHS | 1.0 |

Note 1) With this Change Notice #2, the 1760 Abby Road location replaces the 5913 Executive Drive location.

Note 2) Annual preventative maintenance and RTU

The Contractor shall invoice the State \$24,000.00 on an annual basis for the performance of the scheduled maintenance on the above items.

Note 3) The following have been removed:

| Item # | Address | SOM Agency | Distance (mi) |
|--------|--------------------------------------|------------|---------------|
| 1 | 940 Long Blvd | DHS / CSES | 0.8 |
| 2 | 1500 Abbott | Treasury | 0.3 |
| 3 | 3222 S. Martin Luther King | DOC | 1.1 |
| 4 | 5913 Executive Dr (old Jackson Natl) | DHS | 0.3 |

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

September 30, 2010

**CHANGE NOTICE NO. 1
 TO
 CONTRACT NO. 071B9200176
 (replaces 071B4200392)
 THE STATE OF MICHIGAN
 and**

| | |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------|
| NAME & ADDRESS OF CONTRACTOR Lansing Fiber Communications LLC 822 Centennial Way, Suite 250 Lansing, MI 48917 Email: jschreiber@corp.arialink.com | TELEPHONE Jason Schreiber 517/492-1300 |
| | CONTRACTOR NUMBER/MAIL CODE |
| | BUYER/CA (517) 241-3215 Steve Motz |
| Contract Compliance Inspector: Mike Breen Fiber Ring, Connections, Spurs, and Related Services – DTMB Telecom | |
| CONTRACT PERIOD: From: March 12, 2009 To: September 8, 2024 | |
| TERMS <p style="text-align: center;">N/A</p> | SHIPMENT <p style="text-align: center;">N/A</p> |
| F.O.B. <p style="text-align: center;">N/A</p> | SHIPPED FROM <p style="text-align: center;">N/A</p> |
| MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;">N/A</p> | |
| MISCELLANEOUS INFORMATION: | |

NATURE OF CHANGE (S):

Effective immediately this contract is **INCREASED** by \$839,200.00 and AriaLink has been added as a subcontractor. The attached modifications are hereby incorporated into this contract with no additional changes in pricing, terms or conditions:

- **Statement of Work for Change Notice #1**
- **Attachment D – SOM Acquired Fiber Ring, Connections and Spurs**
- **Attachment E – Arialink Price List**

Please note that the buyer has been changed to **Steve Motz**.

AUTHORITY/REASON:

Per vendor and agency agreement and Administrative Board Approval on 9/30/2010.

INCREASE: \$ 839,200.00

TOTAL REVISED ESTIMATED CONTRACT VALUE: \$1,396,300.00



**MICHIGAN DEPARTMENT OF TECHNOLOGY,
MANAGEMENT AND BUDGET
IT SERVICES
STATEMENT OF WORK FOR CHANGE NOTICE #1**

| | |
|------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| Project Title: Contract Change Notice - Lansing Fiber Communications LLC | Period of Coverage: March, 2009 through September, 2024 |
| Requesting Department: DTMB Telecommunications | Date: 08-12-10 |
| Agency Project Manager: Steve McMahon | Phone: 517-373-6353 |
| DTMB Contract Administrator: Mike Breen | Phone: 517-241-7720 |

Brief Description of Services to be provided:

Fiber ring, connections, fiber spurs and associated services including maintenance & right to use specific fiber strands. This amendment documents certain Lansing area locations connected to the original fiber ring and adds a lambda spur (2.5 Gb wavelength) to Grand Rapids.

BACKGROUND:

The Lansing area fiber ring strands were originally acquired from Waypoint in 2004. Eighteen fiber spurs were originally purchased. Since then, the contract was extended to 2024 for additional fiber service purchases, right-to-use and preventative maintenance. Additionally, three locations/spurs have been removed and seven interconnect locations have been added. Lansing Fiber Communications LLC (LFC LLC) acquired the Waypoint fiber assets in March, 2009 and the SOM now desires to add more fiber-based locations in order to save money.

PROJECT OBJECTIVE:

The implementation of these services will save the SOM annual expenses associated with individual circuit lease costs while providing new service revenues to LFC LLC.

SCOPE OF WORK:

Current service additions include 100 Mb connectivity to the LSB Ranger Road print shop and a 2.5 Gb spur via a protected path wavelength / lambda to the Grand Rapids state office building.

TASKS:

This is a Telecom internal project. Project coordination will be accomplished between Telecom and the vendor. Telecom Design Services will order services and equipment. Telecom Delivery Services will install equipment and coordinate the testing and turn-up of the new services.

DELIVERABLES:

- 1) Updated contract amendment documenting service locations and pricing.
- 2) New connectivity from Lansing to Ranger road providing dedicated 100 Mb service.
- 3) New connectivity from Lansing to Grand Rapids providing 2.5 Gb of protected path connectivity. The protect path will maintain fiber sheath and route diversity.

ACCEPTANCE CRITERIA:

Telecom technicians will test and verify the new services are working properly.

PAYMENT SCHEDULE:

- *Non-recurring and deployment charges (per Attachment E) will be invoiced and paid upon State acceptance of Deliverables #2 and #3.*

- *The charge for preventative maintenance and RTU (per Attachment D) will be invoiced annually each September.*
- *All invoices must include the following:*
 - Contract number;
 - Purchase Order number
 - Contractor name, address, phone number, and Federal Tax Identification Number;
 - Description of any commodities/hardware, including quantity ordered;
 - Date(s) of delivery and/or date(s) of installation and set up;
 - Price for each item, or Contractor's list price for each item and applicable discounts;
 - Maintenance charges;
 - Net invoice price for each item;
 - Shipping costs;
 - Other applicable charges;
 - Total invoice price; and
 - Payment terms, including any available prompt payment discount.

DTMB Contracts area will coordinate obtaining DTMB Telecom Project Manager approvals. All invoices should reflect actual work completed by payment date, and must be approved by the DTMB Telecom Project Manager prior to payment. The invoices shall describe and document to the State's satisfaction a description of the work performed, the progress of the project, and fees. When expenses are invoiced, receipts will need to be provided along with a detailed breakdown of each type of expense.

Payment shall be considered timely if made by the DTMB within forty-five (45) days after receipt of properly completed invoices.

EXPENSES:

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

PROJECT CONTACTS:

DTMB Telecom Project Manager:

Steve McMahon
 DTMB Telecommunications
 Planning & Architecture
 Hannah Building / 1st Floor
 608 W. Allegan St.
 Lansing, MI 48933
 phone: 517-373-6353
 fax: 517-373-0303
 email: mcmahons@mi.gov

DTMB Contract Administrator:

Mike Breen
 Michigan Department of Technology, Management and Budget
 DTMB Purchasing Operations - Stevens T. Mason Building – 2nd Floor
 530 W. Allegan Street
 Lansing, MI 48933
 Phone: 517- 241-7720
 Email: BreenM@michigan.gov

Lansing Fiber Communications LLC

Tim Lebel
 230 N. Washington Square Suite 300
 Lansing, MI 48933
 Phone: 517-492-1336
 Fax: 517-492-1327
 Email: tlebel@corp.arialink.com

Attachment D
Contract #071B9200176
SOM Acquired Fiber Ring, Connections and Spurs as of 08/25/2010
Lansing Fiber Communications, LLC

| Item # | Address | SOM Agency | Distance (mi) |
|---------------|-----------------------------------------------------------------------|-------------------|----------------------|
| 1 | Fiber Ring | DTMB | 43.2 |
| 2 | Splice case near the intersection of N. Waverly Rd. and W. Willow St. | DTMB | n/a |
| 3 | Splice case near the intersection of Lansing Rd. and Mt. Hope Rd. | DTMB | n/a |
| 4 | 320 N. Washing to 235 Grand Ave. (Norlight POP to Grand Tower) | DTMB | 0.5 |
| 5 | 735 Hazel St. | State | 0.8 |
| 6 | 5015 S. Cedar St. | DELEG/UA | 0.3 |
| 7 | 5656 S. Cedar St. | DOC | 0.7 |
| 8 | 5341 S. Pennsylvania | DOC | 0.5 |
| 9 | 4000 Collins E. Lansing | MSP | 0.9 |
| 10 | 2860 Eyde Pkwy | AG | 0.5 |
| 11 | 1615 Harrison | DOA | 1.0 |
| 12 | 714 Harrison | MSP | 0.4 |
| 13 | 2501 Woodlake Circle | DELEG | 0.6 |
| 14 | 1808 W. Saginaw | DCH | 0.7 |
| 15 | 7109 W. Saginaw | DHS | 2.4 |
| 16 | 735 E. Michigan | DELEG/MSHDA | 2.0 |
| 17 | 1375 S. Washington | DOC | 0.2 |
| 18 | 1048 Pierpont | DELEG | 1.0 |
| 19 | 1033 S. Washington | DELEG & DHS | 0.3 |
| 20 | 2501 Coolidge | Treasury | 0.5 |
| 21 | 2700 East Airport Service Dr | MDOT Aviation | 0.5 |
| 22 | 5513 Enterprise Dr. | DTMB Depot | 0.7 |
| 23 | 5913 Executive Dr (old Jackson Natl) | DHS | 0.3 |
| 24 | 5303 S. Cedar St | DHS | 1.0 |

Note 1) All fiber routes, spurs & laterals listed on the contract have been fully delivered by LFC and accepted as fully functional. There is no further delivery obligation of LFC on any of the listed laterals.

Annual preventative maintenance and RTU

The Contractor shall invoice the State \$24,000.00 on an annual basis for the performance of the scheduled maintenance on the above items.

Note 2) The following have been removed:

| Item # | Address | SOM Agency | Distance (mi) |
|---------------|----------------------------|-------------------|----------------------|
| 1 | 940 Long Blvd | DHS / CSES | 0.8 |
| 2 | 1500 Abbott | Treasury | 0.3 |
| 3 | 3222 S. Martin Luther King | DOC | 1.1 |

Attachment E – Arialink Price List

| Service Description | Service Code | Deployment Cost | NRC | MRC |
|---------------------------------------------------------------|---------------------|------------------------|------------|------------|
| Grand Rapids to Lansing 2.5 Gb/s Wavelength (dual/protected) | GR2.5PROTWAVE | \$10,000.00 | \$3,000.00 | \$4,000.00 |
| LSB Print Shop to LSB - State Capitol 100 Mb/s Ethernet E-LAN | LSB100ELINE | \$0.00 | \$3,000.00 | \$900.00 |

Note 1: For the Wavelength service, the Lansing area fiber interconnections will be accomplished at the existing fiber panel in the Capitol Annex (primary path) and the existing splice case near the intersections of Mt. Hope and Lansing roads (protect path).

Note 2: The SOM will provide rackspace and power to Arialink at the Lansing and Grand Rapids SOM locations.

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

June 5, 2009

NOTICE
OF
CONTRACT NO. 071B9200176
 (replaces 071B4200392)
between
THE STATE OF MICHIGAN
and

| | |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------|
| NAME & ADDRESS OF CONTRACTOR Lansing Fiber Communications LLC 822 Centennial Way, Suite 250 Lansing, MI 48917 Email: jschreiber@corp.arialink.com | TELEPHONE Jason Schreiber 517/492-1300 |
| | CONTRACTOR NUMBER/MAIL CODE |
| | BUYER/CA (517) 335-4804 Douglas S. Collier |
| Contract Compliance Inspector: Mike Breen Fiber Ring Connections – DIT Telecom | |
| CONTRACT PERIOD: From: March 12, 2009 To: September 8, 2024 | |
| TERMS <p style="text-align: center;">N/A</p> | SHIPMENT <p style="text-align: center;">N/A</p> |
| F.O.B. <p style="text-align: center;">N/A</p> | SHIPPED FROM <p style="text-align: center;">N/A</p> |
| MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;">N/A</p> | |
| MISCELLANEOUS INFORMATION: | |

Estimated Contract Value: \$557,100.00

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

CONTRACT NO. 071B9200176
 (replaces 071B4200392)

between
THE STATE OF MICHIGAN
and

| | |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------|
| NAME & ADDRESS OF CONTRACTOR Lansing Fiber Communications LLC 822 Centennial Way, Suite 250 Lansing, MI 48917 Email: jschreiber@corp.arialink.com | TELEPHONE Jason Schreiber 517/492-1300 CONTRACTOR NUMBER/MAIL CODE BUYER/CA (517) 335-4804 Douglas S. Collier |
| Contract Compliance Inspector: Mike Breen <p style="text-align: center;">Fiber Ring Connections – DIT Telecom</p> | |
| CONTRACT PERIOD: From: March 12, 2009 To: September 8, 2024 | |
| TERMS <p style="text-align: center;">N/A</p> | SHIPMENT <p style="text-align: center;">N/A</p> |
| F.O.B. <p style="text-align: center;">N/A</p> | SHIPPED FROM <p style="text-align: center;">N/A</p> |
| MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;">N/A</p> | |
| MISCELLANEOUS INFORMATION: The terms and conditions of this Contract are those of 071B4200392. 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. | |
| Estimated Contract Value: \$557,100.00 | |

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

| | |
|---------------------------------------------------------------------------------|--------------------------------------------------------------------|
| FOR THE CONTRACTOR: Lansing Fiber Communications LLC Firm Name | FOR THE STATE: Signature Greg Faremouth, Director |
| Authorized Agent Signature | Name/Title IT Division |
| Authorized Agent (Print or Type) | Division |
| Date | Date |

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

March 11, 2009

CHANGE NOTICE NO. 4
 TO
 CONTRACT NO. 071B4200392
 between
 THE STATE OF MICHIGAN
 and

| | |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------|
| NAME & ADDRESS OF VENDOR Waypoint Telecommunications, LLC 1111 Michigan Avenue, Suite 301 East Lansing, MI 48823 ictpete@aol.com | TELEPHONE (517) 351-1027 Jim Bullock |
| | VENDOR NUMBER/MAIL CODE |
| | BUYER/CA (517) 335-4804 Doug Collier |
| Contract Compliance Inspector: Jack Harris Fiber Ring Connections – DIT Telecom | |
| CONTRACT PERIOD: | From: September 9, 2004 To: March 11, 2009 From: September 9, 2004 |
| TERMS | SHIPMENT N/A |
| F.O.B. N/A | SHIPPED FROM N/A |
| MINIMUM DELIVERY REQUIREMENTS N/A | |

NATURE OF CHANGE (S):

Effective immediately, this contract is CANCELLED and replaced with 071B9200176 due to a change in vendor.

AUTHORITY/REASON:

Per agency and vendor agreement and DMB approval

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

June 3, 2007

CHANGE NOTICE NO. 3
TO
CONTRACT NO. 071B4200392
between
THE STATE OF MICHIGAN
and

| | |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------|
| NAME & ADDRESS OF VENDOR Waypoint Telecommunications, LLC 1111 Michigan Avenue, Suite 301 East Lansing, MI 48823 ictpete@aol.com | TELEPHONE (517) 351-1027 Jim Bullock |
| | VENDOR NUMBER/MAIL CODE |
| | BUYER/CA (517) 335-4804 Doug Collier |
| Contract Compliance Inspector: Jack Harris Fiber Ring Connections – DIT Telecom | |
| CONTRACT PERIOD: From: September 9, 2004 From: September 9, 2004 | To: September 8, 2008 (For Purchase) To: September 8, 2024 (For Maintenance & RTU) |
| TERMS | SHIPMENT N/A |
| F.O.B. N/A | SHIPPED FROM N/A |
| MINIMUM DELIVERY REQUIREMENTS N/A | |

NATURE OF CHANGE (S):

Effective immediately, this contract is EXTENDED to September 8, 2024 to provide for ongoing scheduled and unscheduled maintenance support and for the indefeasible exclusive right to use (RTU) the fiber and non-exclusive use of the associated property. All other pricing, terms and conditions remain unchanged.

AUTHORITY/REASON:

State Administrative Board approval was granted on June 3, 2008 to revise and clarify Contract Change Notices 1 and 2. Contract Change Notice #1 establishes two contract periods - for product purchases, contract period is September 9, 2004 to September 8, 2007. For maintenance and support, the firm fixed contract period September 9, 2004 to September 8, 2024. Contract Change Notice #2 corrects the end date for purchases to September 8, 2008.

TOTAL ESTIMATED CONTRACT VALUE REMAINS: \$1,441,246.00

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

August 31, 2007

CHANGE NOTICE NO. 2
TO
CONTRACT NO. 071B4200392
between
THE STATE OF MICHIGAN
and

| | |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------|
| NAME & ADDRESS OF VENDOR Waypoint Telecommunications, LLC 1111 Michigan Avenue, Suite 301 East Lansing, MI 48823 ictpete@aol.com | TELEPHONE (517) 351-1027 Jim Bullock |
| | VENDOR NUMBER/MAIL CODE |
| | BUYER/CA (517) 335-4804 Doug Collier |
| Contract Compliance Inspector: Jack Harris Fiber Ring Connections – DIT Telecom | |
| CONTRACT PERIOD: From: September 9, 2004 From: September 9, 2004 | To: September 8, 2007 (For Purchase) To: September 8, 2024 (For Maintenance & RTU) |
| TERMS | SHIPMENT N/A |
| F.O.B. N/A | SHIPPED FROM N/A |
| MINIMUM DELIVERY REQUIREMENTS N/A | |

NATURE OF CHANGE (S):

Effective immediately, an option to **EXTEND** the contract term by one year is hereby exercised. Please note that the buyer has been changed to Doug Collier. All other pricing, terms and conditions remain unchanged.

AUTHORITY/REASON:

Per vendor request, agency agreement and DMB approval.

TOTAL ESTIMATED CONTRACT VALUE REMAINS: \$1,441,246.00

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

March 29, 2005

CHANGE NOTICE NO. 1
TO
CONTRACT NO. 071B4200392
between
THE STATE OF MICHIGAN
and

| | |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------|
| NAME & ADDRESS OF VENDOR Waypoint Telecommunications, LLC 1111 Michigan Avenue, Suite 301 East Lansing, MI 48823 ictpete@aol.com | TELEPHONE (517) 351-1027 Jim Bullock |
| | VENDOR NUMBER/MAIL CODE |
| | BUYER/CA (517) 335-0462 Christine Mitchell |
| Contract Compliance Inspector: Jack Harris Fiber Ring Connections – DIT Telecom | |
| CONTRACT PERIOD: From: September 9, 2004 To: September 8, 2007 (For Purchase) From: September 9, 2004 To: September 8, 2024 (For Maintenance & RTU) | |
| TERMS | SHIPMENT N/A |
| F.O.B. N/A | SHIPPED FROM N/A |
| MINIMUM DELIVERY REQUIREMENTS N/A | |

NATURE OF CHANGE (S):

Effective immediately, the attached modifications are hereby incorporated into this contract with no additional changes in pricing, terms or conditions, with the exception of an additional contract term added for maintenance and the right to use (RTU) of 20 years.

AUTHORITY/REASON:

Per vendor request (Pete Empie) on 11/2/04 and agency agreement (Dave Reicosky) on 1/15/05.

INCREASE: \$600,000.00

TOTAL REVISED ESTIMATED CONTRACT VALUE: \$1,441,246.00

CCN #1, Contract 071B4200392
Waypoint Telecommunications, LLC and State of Michigan DIT Telecommunications
For 04/28/04 Dark Fiber Quote

Agreeing Parties:

- Waypoint Telecommunications, LLC
- State of Michigan DIT Telecommunications

The Customer reserves the right to add new locations to those currently listed in the State of Michigan (SOM) Contract #071B4200392 depending on the Customer's business needs. Below are address locations for new Dark Fiber runs that are being considered in future Customer business plans. Any additional fiber purchases by the Customer from Waypoint Telecommunications will be executed through a purchase order issued against the Contract agreement incorporating this amendment.

| Future Address | Distance |
|-------------------------|-----------------|
| 735 W. Willow (DOC) | .5mi |
| JNL Executive Dr. (FIA) | .25mi |
| Lansing Road (MDOT) | 1.0mi |

The Customer also reserves the right to remove locations from the schedule depending on the Customer's business needs, and will prioritize the installation schedule.

Contractor hereby grants to Customer, for the Term of 25 years, an indefeasible right of use ("IRU" means an indefeasible right of use permitting Customer to have exclusive use of the Customer Fibers and non-exclusive use of the Associated Property throughout the Term) in and to the individual strands of optical Fiber (the "Customer Fibers") identified above, together with an IRU in common with others to use so much of the Associated Property as is reasonably required for the beneficial use of the Customer Fibers. The foregoing IRU to use the Customer Fibers and Associated Property is subject to the terms, conditions and restrictions set forth in the terms and conditions of the Contractual and IRU Agreements.

The contractor will perform scheduled maintenance and unscheduled maintenance on the fibers described above after final acceptance of each location for the 25-year term of the agreement. The maintenance activities are defined below:

Scheduled Maintenance. Scheduled maintenance on fibers and locations described above. Routine maintenance and repair of the Provider System described in this section ("Scheduled Maintenance") will include the following activities:

1. Patrol of the Provider System route on a regularly scheduled basis. Each Route Segment shall be patrolled at least once in any sixty (60) day period. Such patrols may be combined with ride outs to perform work.
2. Registration with and participation in the relevant local "Call-Before-You-Dig" program and performance of all cable locate requests received through participation in the program.
3. Maintenance of sign posts at reasonable intervals, in compliance with industry standards to the extent permitted by applicable laws and codes, along the Provider System route with the number of the local "Call-Before-You-Dig" organization and the toll free number for Provider's network operation center or other twenty-four hour response unit.
4. Performance of routine preventive maintenance such as lubricating, painting, caulking and bolt tightening.

5. Perform maintenance activities on the Provider System when informed of fiber performance/quality issues by the Customer Side so that the Cable Parameters are within acceptable performance specifications as specified in Attachment B.

Unscheduled Maintenance. Non-routine maintenance and repair of the Provider System that is not included above as Scheduled Maintenance shall be referred to herein as “Unscheduled Maintenance.” Unscheduled Maintenance will consist of:

1. “Emergency Unscheduled Maintenance” in response to an alarm identification, notification by Customer or notification by any Third Party of any failure, interruption or impairment in the operation of the Provider System, or any event or circumstances imminently likely to cause the failure, interruption or impairment in the operation of the Provider System.

2. “Non-Emergency Unscheduled Maintenance” in response to any potential service-affecting situation that is reasonably likely to result at some point in the future in any failure, interruption or impairment in the operation of the Provider System, and that is not covered by Scheduled Maintenance above.

The installation and acceptable operation of the fibers will be complete when the mutually agreed upon acceptance criteria (see Attachment B) is accepted by the Customer. The Customer at this time will provide an acceptance document for the fiber location(s) that are being accepted. The contractor will then invoice the Customer for payment of the installation and the IRU for the completed fiber at the accepted location(s). The 1 year warranty period and unscheduled maintenance will start at the time of Customer acceptance. Scheduled Maintenance will start at the end of the warranty period.

State shall pay Contractor an amount not to exceed \$2000 per month for the performance of all activities necessary for or incidental to the performance of the scheduled maintenance work as set forth in this document. Authorized Services and Price List as follows:

| Address | Distance | Scheduled Maintenance |
|---------------------------------------------------------------------------|-----------------|------------------------------|
| 735 Hazel St. | .8 mi | \$ 100.00 |
| 5015 S. Cedar St. | .3mi | \$ 100.00 |
| 940 Long Blvd | .8mi | \$ 100.00 |
| 5656 S. Cedar St. | .7mi | \$ 100.00 |
| 5341 S. Pennsylvania | .5mi | \$ 100.00 |
| 1500 Abbott | .3mi | \$ 100.00 |
| 4000 Collins E. Lansing | .9mi | \$ 100.00 |
| 2860 Eyde Pkwy | .5mi | \$ 100.00 |
| 1615 Harrison | 1mi | \$ 100.00 |
| 714 Harrison | .4mi | \$ 100.00 |
| 2501 Woodlake Circle | .6mi | \$ 100.00 |
| 1808 W. Saginaw | .7mi | \$ 100.00 |
| 7109 W. Saginaw | 2.4mi | \$ 100.00 |
| 735 E. Michigan | 2mi | \$ 100.00 |
| 1375 S. Washington | .2mi | \$ 100.00 |
| 1048 Pierpont | .95mi | \$ 100.00 |
| 3222 S. Martin Luther King | 1.1mi | \$ 100.00 |
| 1033 S. Washington | .3mi | \$ 100.00 |
| Fiber Ring | | \$ 100.00 |
| East Lansing Central Office to Lansing Rd. and Mt. Hope Road intersection | | \$ 100.00 |
| TOTAL | | \$ 2000.00 |

Scheduled Maintenance payments will start after final acceptance at each address location as described above and after the 1 year warranty period. The Contractor will invoice annually for the scheduled maintenance and scheduled maintenance payments will be made annually for the 25 year term of the contract.

The annual scheduled maintenance will not be adjusted for the CPI (Consumer Price Index) changes and will remain at the \$2000 per month rate for the term of the contract.

Provider shall initially pay all of the Actual Cost of performing any Unscheduled Maintenance. Within forty five (45) days after receipt of a reasonably itemized invoice, Customer shall reimburse Provider for Customer's Pro Rata Share of the Actual Costs incurred by Provider for performing Unscheduled Maintenance. Repair cost to the Customer will be established on a Time and Materials basis using the Resource Time Bill Rates outlined in Attachment C. Notwithstanding the foregoing, if the grossly negligent or intentionally wrongful actions of one Party caused the need for the Unscheduled Maintenance, that Party shall pay the entire amount of such Actual Costs.

Attachment A
Cable Parameters

No fiber shall show a point discontinuity greater than 0.15dB. However, Fiber spans that include a discontinuity in excess of specifications shall still be considered acceptable provided said Fiber still meets the overall attenuation and dispersion specifications set forth in the table below.

Fiber Facilities Loss Table

| Wave Length (nm) | Typical Fiber Loss (dB/km) | Max. Connector Loss (dB) | Avg. Splice Loss (dB) Per Section | Max. Loss (dB) per Splice | Avg. Bidirectional Splice Loss (dB) per Splice Point |
|------------------|----------------------------|--------------------------|-----------------------------------|---------------------------|------------------------------------------------------|
| 1310 | 0.35 | 0.5 | 0.15 | 0.2 | 0.15 |
| 1550 | 0.25 | 0.5 | 0.15 | 0.2 | 0.15 |

Acceptance

CRITERIA

The following criteria will be used by the State to determine Acceptance of the Services and/or Deliverables provided under this SOW.

- Provider shall provide bi-directional optical time domain reflectometer (“OTDR”) and power meter testing data of each of the Customer Fibers at each location with industry accepted equipment. Provider shall record OTDR traces and loss measurements and make such data available to Customer.
- Provider will provide discontinuity measurements (known as steps, splices, or attenuation non-uniformities) with an OTDR to determine the loss of the localized attenuation.
- Continuity tests and Fiber strand integrity confirmation with strand count will be presented to the Customer to verify that no fibers have been crossed and that the fiber bundle and strand of the Customer’s fiber is the same throughout the fiber loop.
- No fiber shall show a point discontinuity greater than 0.15dB. However, Fiber spans that include a discontinuity in excess of specifications shall still be considered acceptable provided said Fiber still meets the overall attenuation and dispersion specifications set forth in Attachment D.
- Project documentation provided “As Built Drawings” to each location is satisfactorily completed.

When the installation and testing are completed, the State will provide written sign off and acceptance of the fiber provided.

Resource Time Bill Rates

| |
|-------------------------------------------------------|
| Waypoint / Turnkey Network Solutions Pricing Schedule |
|-------------------------------------------------------|

| # | Description | Unit(s) | Unit Qty. | \$s per Unit | Unit Totals | Notes |
|---|-------------|---------|-----------|--------------|-------------|-------|
|---|-------------|---------|-----------|--------------|-------------|-------|

| | | | | | | |
|----|--------------------------------------------------------|--|--|--|--|--|
| A. | Fiber Splicing - Dielectric / Armored Loose Tube Cable | | | | | |
|----|--------------------------------------------------------|--|--|--|--|--|

| | | | | | | |
|---|--------------------------------------------------------|-----|------|----------|--------|---------------------------------|
| 1 | Cable Prep | ea. | 0.00 | \$50.00 | \$0.00 | |
| 2 | Establish New Enclosure | ea. | 0.00 | \$75.00 | \$0.00 | |
| 3 | Enter Existing Enclosure | ea. | 0.00 | \$75.00 | \$0.00 | |
| 4 | Loop Splice Preparation 1 man, splicing eqpt., test | ea. | 0.00 | \$325.00 | \$0.00 | plus splicing |
| 5 | eqpt. 2 men, splice eqpt., test | hr. | 0.00 | \$125.00 | \$0.00 | |
| 6 | eqpt. 3 men, bucket, trailer, splice | hr. | 0.00 | \$185.00 | \$0.00 | |
| 7 | / test eqpt. | hr. | 0.00 | \$255.00 | \$0.00 | |
| 8 | Materials | ea. | 0.00 | \$0.00 | \$0.00 | Billed at Cost + shipping + 15% |

| | | | | | | |
|----|-------------------------------------------|--|--|--|--|--|
| B. | Hourly Charges - Splicing and Engineering | | | | | |
|----|-------------------------------------------|--|--|--|--|--|

| | | | | | | |
|---|-----------------------|-----|------|----------|--------|-------------------------------------------------------|
| 1 | Fiber Troubleshooting | hr. | 0.00 | \$185.00 | \$0.00 | 2 men, bucket truck, splice trailer, pickup, OTDR, PM |
| 2 | OTDR Analysis | hr. | 0.00 | \$100.00 | \$0.00 | |
| 3 | Splice Assignments | hr. | 0.00 | \$65.00 | \$0.00 | |
| 4 | Network Architecture | hr. | 0.00 | \$80.00 | \$0.00 | |
| 5 | AutoCad Design | hr. | 0.00 | \$48.00 | \$0.00 | |
| 6 | Materials | ea. | 0.00 | \$0.00 | \$0.00 | Billed at Cost + shipping + 15% |

| | | | | | | |
|----|---------------------|--|--|--|--|--|
| C. | Aerial Construction | | | | | |
|----|---------------------|--|--|--|--|--|

| | | | | | | |
|----|--------------------------------------|-----|------|----------|--------|---------------------------------|
| 1 | Install Strand - no materials | ft. | 0.00 | \$0.60 | \$0.00 | |
| 2 | Install Fiber - no materials | ft. | 0.00 | \$0.60 | \$0.00 | |
| 3 | Overlash Single Fiber - no materials | ft. | 0.00 | \$0.65 | \$0.00 | |
| 6 | F/I Anchor and Down Guy | ea. | 0.00 | \$75.00 | \$0.00 | |
| 7 | F/I Riser Guard - 2" Steel | ea. | 0.00 | \$40.00 | \$0.00 | |
| 8 | Strand / Lash Materials | ft. | 0.00 | \$0.40 | \$0.00 | |
| 9 | 2 Men, bucket, aerial eqpt. | ea. | 0.00 | \$185.00 | \$0.00 | |
| 10 | Materials | ea. | 0.00 | \$185.00 | \$0.00 | Billed at Cost + shipping + 15% |

| | | | | | | |
|----|---------------------|--|--|--|--|--|
| D. | Buried Construction | | | | | |
|----|---------------------|--|--|--|--|--|

| | | | | | | |
|---|-----------------------------------------|-----|------|---------|--------|--|
| 1 | Directional Bore - up to 2 x 1.25" HDPE | ft. | 0.00 | \$10.00 | \$0.00 | |
|---|-----------------------------------------|-----|------|---------|--------|--|

| | | | | | | |
|---|---------------------------------------------------------|-----|------|------------|--------|------------------------------------|
| 2 | Plow - up to 2 x 1.25" HDPE Trench - up to 2 x 1.25" | ft. | 0.00 | \$3.25 | \$0.00 | |
| 3 | HDPE | ft. | 0.00 | \$6.00 | \$0.00 | |
| 4 | Pull Fiber | ft. | 0.00 | \$1.00 | \$0.00 | |
| 5 | Install - 36" x 48" Handhole Daily Buried Combo Crew | ea. | 0.00 | \$700.00 | \$0.00 | |
| 6 | Rate | day | 0.00 | \$1,850.00 | \$0.00 | |
| 7 | Materials | ea. | 0.00 | \$0.00 | \$0.00 | Billed at Cost + shipping + 15% |

| | | | | | | |
|-----------|----------------------------------------------------------------------|--|--|--|--|--|
| G. | Rate Schedule - Routine, Scheduled, and Emergency Maintenance | | | | | |
|-----------|----------------------------------------------------------------------|--|--|--|--|--|

| | | | | | | |
|---|-----------------------------------|---------------------|--|--|--|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1 | Routine and Scheduled Maintenance | Normal rates apply | | | | Monday thru Friday - 8:00AM to 5:00PM |
| 2 | Scheduled Maintenance | Normal rates x 1.15 | | | | Saturday, Sunday, and Holidays, M-F after 5:00PM Apply to any emergency call-out, hours commence upon crews leaving TKNS facility. Monday thru Friday - 8:00am to 5:00PM |
| 3 | Emergency Maintenance | Normal rates x 1.25 | | | | Apply to any emergency call-out, hours commence upon crews leaving TKNS facility. Monday thru Friday - 8:00am to 5:00PM |
| 4 | Emergency Maintenance | Normal rates x 1.4 | | | | Apply to any emergency call-out, hours commence upon crews leaving TKNS facility. Saturday, Sunday, and Holidays, M-F after 5:00PM |

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

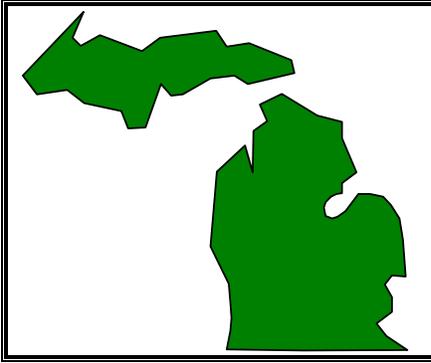
September 23, 2004

NOTICE
TO
CONTRACT NO. 071B4200392
between
THE STATE OF MICHIGAN
and

| | |
|----------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------|
| NAME & ADDRESS OF VENDOR Waypoint Telecommunications, LLC 1111 Michigan Avenue, Suite 301 East Lansing, MI 48823 | TELEPHONE (517) 351-1027 Jim Bullock |
| | VENDOR NUMBER/MAIL CODE |
| | BUYER/CA (517) 335-0462 Christine Mitchell |
| Contract Compliance Inspector: Jack Harris Fiber Ring Connections – DIT Telecom | |
| CONTRACT PERIOD: From: September 9, 2004 To: September 8, 2007 | |
| TERMS | SHIPMENT <p style="text-align: center;">N/A</p> |
| F.O.B. <p style="text-align: center;">N/A</p> | SHIPPED FROM <p style="text-align: center;">N/A</p> |
| MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;">N/A</p> | |

The terms and conditions of this Contract are those of this Contract Agreement and the vendor's quote dated 04/28/2004. In the event of any conflicts between the specifications, terms and conditions indicated by the State and those indicated by the vendor, those of the State take precedence.

Estimated Contract Value: **\$841,246.00**



**STATE OF MICHIGAN
Department of Management and Budget
Acquisition Services**

Contract Number: 071B4200392
Dark Fiber for Lansing Central Office & Secondary Complex

Buyer Name: Christine Mitchell
Telephone Number: (517) 335-0462
E-Mail Address: michelc@michigan.gov



Waypoint Dark Fiber

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Article 1 – Statement of Work (SOW)

1.0 Project Identification

1.001 PROJECT REQUEST

The purpose of this Contract is to provide dark fiber connections to State of Michigan Lansing Central Office Locations, both downtown Lansing, and at Secondary Complex.

1.002 BACKGROUND

The State of Michigan has been leasing bandwidth from SBC to provide building connections to several State office locations downtown Lansing, and at Secondary Complex. With the implementation of the new Wide Area Network called CBDS III, which is part of the LINK MI telecommunications contract, the plan was to replace all FDDI sites with GigaMAN circuits. Although from a technology standpoint, this solution would meet the bandwidth requirements, it is also a somewhat financially intensive solution. This Contract provides a dark fiber IRU solution, which allows the State to utilize existing State-owned equipment to make the necessary connections in lieu of leasing GigaMAN circuits.

1.1 Scope of Work and Deliverables

1.101 IN SCOPE

The Contractor shall provide four fibers from the East Lansing Central Office location, to the intersection of Waverly and Willow Roads. At these crossroads, Contractor will tie these fibers into the State of Michigan Fiber Loop, making the final connection to the State of Michigan Secondary Complex. Contractor will also provide four fibers on the Contractor-owned (Waypoint) Lansing Ring, and an additional eight fibers to each of the 17 additional State locations listed below:

| Address | Distance |
|----------------------------|----------|
| 735 Hazel St. | .8 mi |
| 5015 S. Cedar St. | .3mi |
| 940 Long Blvd | .8mi |
| 5656 S. Cedar St. | .7mi |
| 5341 S. Pennsylvania | .5mi |
| 1500 Abbott | .3mi |
| 4000 Collins E. Lansing | .9mi |
| 2860 Eyde Pkwy | .5mi |
| 1615 Harrison | 1mi |
| 714 Harrison | .4mi |
| 2501 Woodlake Circle | .6mi |
| 1808 W. Saginaw | .7mi |
| 7109 W. Saginaw | 2.4mi |
| 735 E. Michigan | 2mi |
| 1375 S. Washington | .2mi |
| 1048 Pierpont | .95mi |
| 3222 S. Martin Luther King | 1.1mi |
| 1033 S. Washington | .3mi |

1.102 OUT OF SCOPE

Any locations not listed above and any services not listed herein.



1.103 TECHNICAL ENVIRONMENT

See Background listed above.

1.104 WORK AND DELIVERABLE

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

Identified in Section 1.101 above.

1.2 Roles and Responsibilities

1.201 CONTRACTOR STAFF, ROLES, AND RESPONSIBILITIES

Reserved

1.202 STATE STAFF, ROLES, AND RESPONSIBILITIES

Reserved

1.203 OTHER ROLES AND RESPONSIBILITIES

Reserved

1.3 Project Plan

1.301 PROJECT PLAN MANAGEMENT

Within five business days of receipt of executed Contract by all signing parties, Contractor shall provide a detailed workplan outlining the schedule for the deliverables listed in Section 1.101 above.

1.302 REPORTS

Reserved

1.4 Project Management

1.401 ISSUE MANAGEMENT

Reserved

1.402 RISK MANAGEMENT

Contractor shall be responsible for obtaining all necessary permits, and shall be responsible for coordinating all construction with Miss Dig and all utility companies to allow for provision of all deliverables in a timely manner.

1.403 CHANGE MANAGEMENT

Any modifications necessary to complete contracted work, must be presented to the Buyer identified herein with a request from the Department of Information designated Contract Compliance Inspector, also identified herein. In the event the requested modification is approved by the Department of Management and Budget and State Administrative Board, as necessary, a formal Contract Change Notice will be issued by DMB Acquisition Services. Products and services outside the scope identified herein are not part of this contract agreement, unless a formal addendum is issued by the DMB Office of Acquisition Services. Vendors who provide such products and services without the prior necessary approval, risk non-payment for those products and/or services.



1.5 Acceptance

1.501 CRITERIA

The following criteria will be used by the State to determine Acceptance of the Services and/or Deliverables provided under this SOW.

When the installation and testing are completed, the State will provide written sign off and acceptance of the fiber provided.

1.502 FINAL ACCEPTANCE

Reserved

1.6 Compensation and Payment

State shall pay Contractor an amount not to exceed \$841,246.00 for the performance of all activities necessary for or incidental to the performance of work as set forth in this SOW. Authorized Services and Price List as follows:

| Address | Distance | Price |
|----------------------------|----------|--------------|
| 735 Hazel St. | .8 mi | \$ 31,680.00 |
| 5015 S. Cedar St. | .3mi | \$ 5,280.00 |
| 940 Long Blvd | .8mi | \$ 31,680.00 |
| 5656 S. Cedar St. | .7mi | \$ 26,400.00 |
| 5341 S. Pennsylvania | .5mi | \$ 15,840.00 |
| 1500 Abbott | .3mi | \$ 5,280.00 |
| 4000 Collins E. Lansing | .9mi | \$ 36,960.00 |
| 2860 Eyde Pkwy | .5mi | \$ 15,840.00 |
| 1615 Harrison | 1mi | \$ 42,240.00 |
| 714 Harrison | .4mi | \$ 10,560.00 |
| 2501 Woodlake Circle | .6mi | \$ 21,120.00 |
| 1808 W. Saginaw | .7mi | \$ 27,456.00 |
| 7109 W. Saginaw | 2.4mi | \$105,600.00 |
| 735 E. Michigan | 2mi | \$ 87,120.00 |
| 1375 S. Washington | .2mi | \$ 5,100.00 |
| 1048 Pierpont | .95mi | \$ 39,600.00 |
| 3222 S. Martin Luther King | 1.1mi | \$ 47,520.00 |
| 1033 S. Washington | .3mi | \$ 7,200.00 |

Additional cost for above locations: **\$200,000.00** for the ring itself.

Four Fibers from the East Lansing Central Office to the intersection of Waverly and Willow Roads, tying into the State of Michigan Fiber Loop going out to the State Secondary Complex: **\$78,770.00**

1.7 Additional Terms and Conditions Specific to this SOW

Reserved



Article 2 – General Terms and Conditions

2.0 Introduction

2.001 GENERAL PURPOSE

The Contract is for Dark Fiber on the Waypoint fiber ring, for the State of Michigan. Orders will be issued directly to the Contractor by various State Agencies on the Purchase Order Contract Release Form. Bids are due and will be publicly identified at the time noted on the Invitation To Bid (ITB) Form.

2.002 ISSUING OFFICE AND CONTRACT ADMINISTRATOR

The Contract is issued by Acquisition Services, State of Michigan, Department of Management and Budget, hereinafter known as Acquisition Services, for the *Department of Information Technology, Telecommunications Services Division*, hereinafter known as *DIT Telecom*. Where actions are a combination of those of Acquisition Services and the State agencies, the authority will be known as the State.

Acquisition Services is the sole point of contact in the State with regard to all procurement and contractual matters relating to the commodities and/or services described herein. Acquisition Services is the only office authorized to negotiate, change, modify, amend, alter, clarify, etc., the specifications, terms, and conditions of the Contract. Acquisition Services will remain the SOLE POINT OF CONTACT throughout the procurement process.

Contractor proceeds at its own risk if it takes negotiation, changes, modification, alterations, amendments, clarification, etc., of the specifications, terms, or conditions of the contract from any individual or office other than Acquisition Services and the listed contract administrator

All communications covering this procurement must be addressed to contract administrator indicated below:

Department of Management and Budget
Acquisition Services
Christine Mitchell, CPPB
Buyer Specialist
2nd Floor, Mason Building
P.O. Box 30026
Lansing, Michigan 48909
(517) 335-0462
michelc@michigan.gov

2.003 NOTICE

Any notice given to a party under this Contract must be written and 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.

2.004 CONTRACT TERM

The term of this Contract will be for three (3) years and will commence with the issuance of a Contract. This will be approximately **9/9/04 through 9/8/07**.



Option. The State reserves the right to exercise 2 one-year options, at the sole option of the State. Contractor performance, quality of products, price, cost savings, and the contractor's ability to deliver on time are some of the criteria that will be used as a basis for any decision by Acquisition Services to exercise an option year.

Extension. At the sole option of the State, the contract may also be extended. Contractor performance, quality of products, price, cost savings, and the contractor's ability to deliver on time are some of the criteria that will be used as a basis for any decision by Acquisition Services to exercise an option year.

2.005 GOVERNING LAW

The Contract shall in all respects be governed by, and construed in accordance with, the laws of the State of Michigan. By signing this agreement, vendor consents to personal jurisdiction in the state of Michigan. Any dispute arising herein shall be resolved in the State of Michigan.

2.006 APPLICABLE STATUTES

The following statutes, rules, and laws are applicable to the performance of this contract; some statutes are reflected in the clauses of this contract. This list is NOT exhaustive.

MI Uniform Commercial Code (MIUCC) MCL 440. (All sections unless otherwise altered by agreement)

MI OSHA MCL §§ 408.1001 – 408.1094

Freedom of Information Act (FIOA) MCL §§ 15.231, et seq.

Natural Resources and Environmental Protection Act MCL §§ 324.101, et seq.

MI Consumer Protection Act MCL §§ 445.901 – 445.922

Laws relating to wages, payments of wages, and fringe benefits on state projects MCL §§ 408.551 – 408.558, 408.471 – 408.490, 1965 PA 390.

Department of Civil Service Rules and regulations

Elliot Larsen Civil Rights Act MCL §§ 37.2201, et seq.

Persons with disabilities Civil Rights Act MCL §§ 37.1101, et seq.

MCL §§ 423.321, et seq.

MCL § 18.1264 (law regarding debarment)

Davis-Bacon Act (DBA) 40 USCU §§ 276(a), et seq.

Contract Work Hours and Safety Standards Act (CWHSSA) 40 USCS § 327, et seq.

Business Opportunity Act for Persons with Disabilities MCL §§ 450.791 – 450.795

Rules and regulations of the Environmental Protection Agency

Internal Revenue Code

Rules and regulations of the Equal Employment Opportunity Commission (EEOC)

The Civil Rights Act of 1964, USCS Chapter 42

Title VII, 42 USCS §§ 2000e et seq.

The Americans with Disabilities Act (ADA), 42 USCS §§ 12101 et seq.

The Age Discrimination in Employment Act of 1967 (ADEA), 29 USCS §§ 621, 623 et seq.

The Old Workers Benefit and Protection Act of 1990 (OWBPA), 29 USCS §§ 626, et seq.

The Family Medical Leave Act of 1993 (FMLA), 29 USC §§ 651 et seq.

The Fair Labor Standards Act (FLSA), 29 USC §§ 201 et seq.

Pollution Prevention Act of 1990 (PPA) 42 U.S.C. §13106

Sherman Act, 15 U.S.C.S. § 1 et seq.

Robinson-Patman Act, 15 U.S.C.S. § 13 et. seq.

Clayton Act, 15 U.S.C.S. § 14 et seq.

2.007 RELATIONSHIP OF THE PARTIES

The relationship between the State and the Contractor is that of client and independent Contractor. No agent, employee, or servant of the 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. The



Contractor will be solely and entirely responsible for its acts and the acts of its agents, employees, servants and subcontractors during the performance of this Contract.

2.008 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 this Contract.

2.009 MERGER

This document constitutes the complete, final, and exclusive agreement between the parties. All other prior writings and negotiations are ineffective.

2.010 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.

2.011 SURVIVORSHIP

Any provisions of the Contract that impose continuing obligations on the parties including, but not limited to the Contractor's indemnity and other obligations shall survive the expiration or cancellation of the Contract for any reason.

2.012 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.

2.013 PURCHASE ORDERS

Orders for delivery of commodities and/or services may be issued directly by the State Departments through the issuance of a Purchase Order Form referencing this Contract (Blanket Purchase Order) agreement and the terms and conditions contained herein. Contractor is asked to reference the Purchase Order Number on all invoices for payment.

2.1 Vendor/Contractor Obligations

2.101 ACCOUNTING RECORDS

The Contractor and all subcontractors shall maintain all pertinent financial and accounting records and evidence pertaining to the Contract in accordance with generally accepted principles of accounting and other procedures specified by the State of Michigan. Financial and accounting records shall be made available, upon request, to the State of Michigan, its designees, or the Michigan Auditor General at any time during the Contract period and any extension thereof, and for three years from expiration date and final payment on the Contract or extension thereof.

2.102 NOTIFICATION OF OWNERSHIP

The Contractor shall make the following notifications in writing:

1. When the Contractor becomes aware that a change in its ownership or officers has occurred, or is certain to occur, that could result in changes in the valuation of its capitalized assets in the accounting records, the Contractor shall notify Acquisition Services within 30 days.



2. The Contractor shall also notify the Acquisition Services within 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.

The Contractor shall:

1. Maintain current, accurate, and complete inventory records of assets and their costs;
2. Provide Acquisition Services or designated representative ready access to the records upon request;
3. Ensure that all individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives are identified accurately before and after each of the Contractor's ownership or officer changes; and
4. Retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each Contractor ownership or officer change.

2.103 SOFTWARE COMPLIANCE

The vendor warrants that all software for which the vendor 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 year 2000 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.

2.104 IT STANDARDS

1. 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://michigan.gov/dit>.
2. PM METHODOLOGY STANDARDS. The State has adopted a standard documented Project Management Methodology (PMM) for use on all Information Technology (IT) based projects. This policy is referenced in the document titled "Project Management Methodology" – DMB Administrative Guide Procedure 1380.02 issued June 2000. Vendors may obtain a copy of this procedure, as well as the State of Michigan Project Management Methodology, from the Department of Information Technology's website at <http://www.michigan.gov/projectmanagement>.

The contractor shall use the State's PPM to manage State of Michigan Information Technology (IT) based projects. The Requesting agency will provide the applicable documentation and internal agency processes for the methodology. If the vendor requires training on the methodology, those costs shall be the responsibility of the vendor, unless otherwise stated.



3. **ADHERENCE TO PORTAL TECHNOLOGY TOOLS.** The State of Michigan, Department of Information Technology, has adopted the following tools as 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

Vendors must use the Portal Technology Tools to implement web content management and deployment efforts for agencies. 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 the Department of Information Technology, Enterprise Application Services Office, e-Michigan Web Development team.

Under special circumstances vendors that are compelled to use alternate tools must submit an exception request to the Department of Information Technology, Enterprise Application Services Office, e-Michigan Web Development team, for evaluation and approval of each alternate tool prior to proposal evaluation by the State.

2.105 PERFORMANCE AND RELIABILITY EVALUATION (PARE)

When the State requires that a performance and reliability evaluation (PARE) is to be performed, the standard of performance for the PARE will be closely monitored during the acceptance period.

In the event that the PARE is for components only, all references to systems (processors) should be changed to components.

The Performance and Reliability Evaluation will consist of two phases.

PHASE I

The first phase shall be comprised of a specification compliance review of the equipment listed on the ordering documents. Such equipment shall be checked for total compliance with all required specifications of the RFQ. In the event that the State determines that any component or feature of the delivered equipment or software does not comply with the mandatory specifications of the RFQ, the State shall so notify the Contractor, allowing 14 calendar days for rectification by the Contractor. Should the Contractor be unable to rectify the deficiency, the State reserves the right to cancel the ordering document. Should the equipment and software pass the specification conformance review, the equipment shall enter Phase II of the PARE.

PHASE II

a. Determination of System Readiness

- 1) Prior to the PARE, a committee of three persons will be formed to evaluate the system's performance on a daily basis. The committee will consist of one Contractor representative and two State personnel.
- 2) The PARE will begin on the installation dates when the Contractor certifies that the equipment is ready for use by the State.

b. During the PARE:

All rerun times resulting from equipment failure and preventive maintenance shall be excluded from the performance hours.



- 1) All reconfiguration and reload time shall be excluded from the performance hours.
- 2) If files are destroyed as a result of a problem with Contractor equipment and must be rebuilt, the time required to rebuild the files will be considered "down-time" for the system.
- 3) If the Contractor requests access to failed equipment and the State refuses, then such maintenance will be deferred to a mutually agreeable time and the intervening time will not count against the PARE.
- 4) A functional benchmark demonstration will be run for the PARE Committee to confirm that the installed system is capable of performing the same functions that were demonstrated. This run must be completed to the satisfaction of the PARE Committee.

STANDARD OF PERFORMANCE

- a. The performance period (a period of thirty consecutive calendar days) shall commence on the installation date, at which time the operational control becomes the responsibility of the State. It is not required that one thirty day period expire in order for another performance period to begin.
- b. If each component operates at an average level of effectiveness of 95 percent or more for a period of 30 consecutive days from the commencement date of the performance period, it shall be deemed to have met the State's standard of performance period. The State shall notify the Contractor in writing of the successful completion of the performance period. The average effectiveness level is a percentage figure determined by dividing the total operational use time by the total operational use time plus associated down-time. In addition, the equipment shall operate in substantial conformance with the Contractor's published specifications applicable to such equipment on the date of this Agreement. Equipment added by amendment to this contract shall operate in conformance with the Contractor's published specifications applicable to such equipment at the time of such amendment.
- c. During the successful performance period, all rerun time resulting from equipment failure and preventive maintenance time shall be excluded from the performance period hours. All reconfigurations and reload time shall be excluded from the performance hours. Equipment failure down-time shall be measured by those intervals during the performance period between the time that the Contractor is notified of equipment failure and the time that the equipment is returned to the State in operating condition.
- d. During the successful performance period, a minimum of 80 hours of operational use time on each component will be required as a basis for computation of the average effectiveness level. However, in computing the effectiveness level, the actual number of operational use hours shall be used when in excess of the minimum stated above.
- e. No more than one hour will accrue to the performance hours during any one wall-clock hour.
- f. Equipment shall not be accepted by the State and no charges will be paid by the State until the standard of performance is met.



- g. When a system involves on-line machines, which are remote to the basic installation, the required effectiveness level shall apply separately to each component in the system.
- h. Promptly upon successful completion of the performance period, the State shall notify the Contractor in writing of acceptance of the equipment and authorize the monthly payments to begin on the first day of the successful performance period.
- i. If successful completion of the performance period is not attained within 90 days of the installation date, the State shall have the option of terminating the Contract, or continuing the performance tests. The State's option to terminate the contract shall remain in effect until such time as a successful completion of the performance period is attained. The Contractor shall be liable for all outbound preparation and shipping costs for contracted items returned under this clause.
- j. The PARE will be complete when the equipment has met the required effectiveness level for the prescribed time period.

2.106 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 Consumer and Industry Service, Bureau of Safety and Regulation, Wage/Hour Division 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 Consumer and Industry Services, 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.

2.107 PAYROLL AND BASIC RECORDS

Payrolls and basic records relating to the performance of this contract shall be maintained by the Contractor during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.



The Contractor shall submit a copy of all payrolls to the Contract Administrator upon request. The payrolls submitted shall set out accurately and completely all of the information required to be maintained as indicated above.

The Prime Contractor is responsible for the submission of copies of payrolls by all subcontractors upon request from the Contract Administrator

The Contractor or subcontractor shall permit the Contract Administrator or representatives of the Contract Administrator or the State of Michigan to interview employees during working hours on the job.

If the Contractor or subcontractor fails to submit required records or to make them available, the Contract Administrator may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment.

2.108 COMPETITION IN SUB-CONTRACTING

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.

2.109 CALL CENTER DISCLOSURE

Vendor and/or all subcontractors involved in the performance of this contract providing call or contact center services to the State of Michigan 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 agreement.

2.2 Contract Performance

2.201 TIME IS OF THE ESSENCE

Contractor/Vendor is on notice that time is of the essence in the performance of this contract. Late performance will be considered a material breach of this contract, giving the State a right to invoke all remedies available to it under this contract.

2.202 CONTRACT PAYMENT SCHEDULE

All invoices should reflect actual work done. Specific details of invoices and payments will be agreed upon between the Contract Administrator and the Contractor after the proposed Contract Agreement has been signed and accepted by both the Contractor and the Director of Acquisition Services, Department of Management & Budget. This activity will occur only upon the specific written direction from Acquisition Services.

2.203 POSSIBLE PROGRESS PAYMENTS

The Government 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.

2.204 POSSIBLE PERFORMANCE-BASED PAYMENTS (Actual performance rendered)

Reserved

2.205 ELECTRONIC PAYMENT AVAILABILITY

Electronic transfer of funds is available to State contractors. Vendors are encouraged to register with the State of Michigan Office of Financial Management so the State can make payments related to this Contract electronically at www.cpexpress.state.mi.us.



2.206 PERFORMANCE OF WORK BY CONTRACTOR

Reserved

2.3 Contract Rights and Obligations

2.301 INCURRING COSTS

The State of Michigan is not liable for any cost incurred by the Contractor prior to signing of the Contract. The State fiscal year is October 1st through September 30th. The Contractor(s) should realize that payments in any given fiscal year are contingent upon enactment of legislative appropriations. Total liability of the State is limited to terms and conditions of the Contract.

2.302 CONTRACTOR RESPONSIBILITIES

The Contractor will be required to assume responsibility for all contractual activities, whether or not that Contractor performs them. Further, the State will consider the Contractor to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the anticipated Contract. If any part of the work is to be subcontracted, the Contract must include a list of subcontractors, including firm name and address, contact person and a complete description of work to be subcontracted.

The State reserves the right to approve subcontractors and to require the Contractor to replace subcontractors found to be unacceptable. The Contractor is totally responsible for adherence by the subcontractor to all provisions of the Contract. Any change in subcontractors must be approved by the State, in writing, prior to such change.

2.303 ASSIGNMENT AND DELEGATION

The Contractor shall not have the right to assign this Contract, to assign its rights under this contract, 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 State. Any purported assignment in violation of this Section shall be null and void. Further, the Contractor may not assign the right to receive money due under the Contract without the prior written consent of the Director of Acquisition Services.

The Contractor shall not delegate any duties or obligations under the Contract to a subcontractor other than a subcontractor named and approved in the bid unless the Director of Acquisition Services has given written consent to the delegation.

Bidder must obtain the approval of the Director of Acquisition Services before using a place of performance that is different from the address that bidder provided in the bid.

2.304 TAXES

Sales Tax: For purchases made directly by the State of Michigan, the State is exempt from State and Local Sales Tax. Prices shall not include such taxes. Exemption Certificates for State Sales Tax will be furnished upon request.

Federal Excise Tax: The State of Michigan may be exempt for Federal Excise Tax, or such taxes may be reimbursable, if articles purchased under this Contract are used for the State's exclusive use. Certificates exclusive use for the purposes of substantiating a tax-free, or tax-reimbursable sale will be sent to the Contractor upon request. If a sale is tax exempt or tax reimbursable under the Internal Revenue Code, prices shall not include the Federal Excise Tax.

The State's Tax Exempt Certification is available for vendor viewing upon request to the Contract Administrator.



2.305 INDEMNIFICATION

General Indemnification

To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold harmless the State, its departments, divisions, agencies, sections, commissions, officers, employees and agents, from and against all losses, liabilities, penalties, fines, damages and claims (including taxes), and all related costs and expenses (including reasonable attorneys' fees and disbursements and costs of investigation, litigation, settlement, judgments, interest and penalties), arising from or in connection with any of the following:

1. Any claim, demand, action, citation or legal proceeding against the State, its employees and agents arising out of or resulting from (1) the product provided or (2) performance of the work, duties, responsibilities, actions or omissions of the Contractor or any of its subcontractors under this Contract.
2. Any claim, demand, action, citation or legal proceeding against the State, its employees and agents arising out of or resulting from a breach by the Contractor of any representation or warranty made by the Contractor in the Contract;
3. Any claim, demand, action, citation or legal proceeding against the State, its employees and agents arising out of or related to occurrences that the Contractor is required to insure against as provided for in this Contract;
4. Any claim, demand, action, citation or legal proceeding against the State, its employees and agents arising out of or resulting from the death or bodily injury of any person, or the damage, loss or destruction of any real or tangible personal property, in connection with the performance of services by the Contractor, by any of its subcontractors, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable; provided, however, that this indemnification obligation shall not apply to the extent, if any, that such death, bodily injury or property damage is caused solely by the negligence or reckless or intentional wrongful conduct of the State;
5. Any claim, demand, action, citation or legal proceeding against the State, its employees and agents which results from an act or omission of the Contractor or any of its subcontractors in its or their capacity as an employer of a person.

Patent/Copyright Infringement Indemnification

To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold harmless the State, its employees and agents from and against all losses, liabilities, damages (including taxes), and all related costs and expenses (including reasonable attorneys' fees and disbursements 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 or foreign patent, copyright, trade secret or other proprietary right of any person or entity, which right is enforceable under the laws of the United States. In addition, should the equipment, software, commodity, or service, or the operation thereof, become or in the 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 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.

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.

Indemnification Obligation Not Limited

In any and all claims against the State of Michigan, or any of its agents or employees, 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 benefits acts, or other employee benefits acts. This indemnification clause is intended to be comprehensive. Any overlap in sub clauses, 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 sub clause.

Continuation of Indemnification Obligation

The duty to indemnify will continue in full force and affect notwithstanding the expiration or early termination of the Contract with respect to any claims based on facts or conditions, which occurred prior to termination.

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 so 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.

2.306 LIMITATION OF LIABILITY

The Contractor's liability for damages to the State shall be limited to two times the value of the Contract or \$250,000 which ever is higher. 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; to claims covered by other specific provisions of this Contract calling for liquidated damages; to Contractor's indemnification obligations (2.305); 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.

2.307 CONTRACT DISTRIBUTION

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

2.308 FORM, FUNCTION, AND UTILITY

If the Contract is for use of more than one State agency and if the good or service provided under this Contract do not meet the form, function, and utility required by a State agency, that agency may, subject to State purchasing policies, procure the good or service from another source.

2.309 ASSIGNMENT OF ANTITRUST CAUSE OF ACTION

For and in consideration of the opportunity to submit a quotation and other good and valuable consideration, the bidder hereby assigns, sells and transfers to the State of Michigan all rights, title and interest in and to all causes of action it may have under the antitrust laws of the United States or this State for price fixing, which causes of action have accrued prior to the date of payment and which relate solely to the particular goods, commodities, or services purchased or procured by this State pursuant to this transaction.

2.310 RESERVED

2.311 TRANSITION ASSISTANCE

If this Contract is not renewed at the end of this term, or is canceled prior to its expiration, for any reason, the Contractor must provide for up to 60 days after the expiration or cancellation of this Contract, all reasonable transition assistance requested by the State, to allow for the expired or canceled portion of the Services to continue without interruption or adverse effect, and to facilitate



the orderly transfer of such services to the State or its designees. Such transition assistance will be deemed by the parties to be governed by the terms and conditions of this Contract, (notwithstanding this expiration or cancellation) except for those Contract terms or conditions that do not reasonably apply to such transition assistance. The State shall pay the Contractor for any resources utilized in performing such transition assistance at the most current rates provided by the Contract for Contract performance.

2.312 WORK PRODUCT

Work Products shall be considered works made by the Contractor for hire by the State and shall belong exclusively to the State and its designees, unless specifically provided otherwise by mutual agreement of the Contractor and the State. If by operation of law any of the Work Product, including all related intellectual property rights, is not owned in its entirety by the State automatically upon creation thereof, the Contractor agrees to assign, and hereby assigns to the State and its designees the ownership of such Work Product, including all related intellectual property rights. The Contractor agrees to provide, at no additional charge, any assistance and to execute any action reasonably required for the State to perfect its intellectual property rights with respect to the aforementioned Work Product.

Notwithstanding any provision of this Contract to the contrary, any preexisting work or materials including, but not limited to, any routines, libraries, tools, methodologies, processes or technologies (collectively, the "Development Tools") created, adapted or used by the Contractor in its business generally, including any and all associated intellectual property rights, shall be and remain the sole property of the Contractor, and the State shall have no interest in or claim to such preexisting work, materials or Development Tools, except as necessary to exercise its rights in the Work Product. Such rights belonging to the State shall include, but not be limited to, the right to use, execute, reproduce, display, perform and distribute copies of and prepare derivative works based upon the Work Product, and the right to authorize others to do any of the foregoing, irrespective of the existence therein of preexisting work, materials and Development Tools, except as specifically limited herein.

The Contractor and its subcontractors shall be free to use and employ their general skills, knowledge and expertise, and to use, disclose, and employ any generalized ideas, concepts, knowledge, methods, techniques or skills gained or learned during the course of performing the services under this Contract, so long as the Contractor or its subcontractors acquire and apply such information without disclosure of any confidential or proprietary information of the State, and without any unauthorized use or disclosure of any Work Product resulting from this Contract.

2.313 PROPRIETARY RIGHTS

Reserved

2.314 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.

2.4 Contract Review and Evaluation

2.401 CONTRACT COMPLIANCE INSPECTOR

Upon receipt at Acquisition Services of the properly executed Contract Agreement(s), the person named below will be allowed to oversee the Contract performance on a day-to-day basis during the term of the Contract. However, overseeing the Contract implies **no authority to negotiate, change, modify, clarify, amend, or otherwise alter the terms, conditions, and specifications**



of such Contract(s). That authority is retained by Acquisition Services. The Contract Compliance Inspector for this project is:

Jack Harris, Director
Department of Information Technology
Telecommunications Services
608 West Allegan
Lansing, MI 48909
(517) 241-7565
harrisj@michigan.gov

2.402 PERFORMANCE REVIEWS

Acquisition Services in conjunction with DIT may review with the Contractor their performance under the Contract. Performance reviews shall be conducted quarterly, semi-annually or annually depending on Contractor's past performance with the State. Performance reviews shall include, but not limited to, quality of products/services being delivered and provided, timeliness of delivery, percentage of completion of orders, the amount of back orders, status of such orders, accuracy of billings, customer service, completion and submission of required paperwork, the number of substitutions and the reasons for substitutions, and other requirements of the Contract.

Upon a finding of poor performance, which has been documented by Acquisition Services, the Contractor shall be given an opportunity to respond and take corrective action. If corrective action is not taken in a reasonable amount of time as determined by Acquisition Services, the Contract may be canceled for default. Delivery by the Contractor of unsafe and/or adulterated or off-condition products to any State agency is considered a material breach of Contract subject to the cancellation provisions contained herein.

2.403 AUDIT OF CONTRACT COMPLIANCE/ RECORDS AND INSPECTIONS

The Contractor agrees that the State may, upon 24-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.

2.5 Quality and Warranties

2.501 PROHIBITED PRODUCTS

The State will not accept salvage, distressed, outdated or discontinued merchandise. Shipping of such merchandise to any State agency, as a result of an order placed against the Contract, shall be considered default by the Contractor of the terms and conditions of the Contract and may result in cancellation of the Contract by the State. The brand and product number offered for all items shall remain consistent for the term of the Contract, unless Acquisition Services has approved a change.

2.502 RESERVED

2.503 RESERVED

2.504 GENERAL WARRANTIES (goods)

Warranty of Merchantability – Goods provided by vendor under this agreement shall be merchantable. All goods provided under this contract shall be of good quality within the description given by the State, shall be fit for their ordinary purpose, shall be adequately contained and packaged within the description given by the State, shall conform to the agreed upon specifications, and shall conform to the affirmations of fact made by the vendor or on the container or label.



Warranty of fitness for a particular purpose – When vendor has reason to know or knows any particular purpose for which the goods are required, and the State is relying on the vendor's skill or judgment to select or furnish suitable goods, there is a warranty that the goods are fit for such purpose.

Warranty of title – Vendor shall, in providing goods to the State, convey good title in those goods, whose transfer is right and lawful. All goods provided by vendor shall be delivered free from any security interest, lien, or encumbrance of which the State, at the time of contracting, has no knowledge. Goods provided by vendor, under this agreement, shall be delivered free of any rightful claim of any third person by of infringement or the like.

2.505 CONTRACTOR WARRANTIES

The Contract will contain customary representations and warranties by the Contractor, including, without limitation, the following:

1. The Contractor will perform all services in accordance with high professional standards in the industry; including compliance with EIA/TIA, BICSI, and National Electric Code standards.
2. The Contractor will use adequate numbers of qualified individuals with suitable training, education, experience and skill to perform the services;
3. The Contractor will use its best efforts to use efficiently any resources or services necessary to provide the services that are separately chargeable to the State;
4. The Contractor will use its best efforts to perform the services in the most cost effective manner consistent with the required level of quality and performance;
5. The Contractor will perform the services in a manner that does not infringe the proprietary rights of any third party;
6. The Contractor will perform the services in a manner that complies with all applicable laws and regulations;
7. The Contractor has duly authorized the execution, delivery and performance of the Contract;
8. The Contractor is capable in all respects of fulfilling and shall fulfill all of its obligations under this contract.
9. The contract appendices, attachments, and exhibits identify all equipment and software services necessary for the deliverable(s) to perform and operate in compliance with the contract's requirements.
10. The Contractor 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 license use, as applicable, of any and all Deliverables.
11. 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 as set forth 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.



12. The contract signatory has the power and authority, including any necessary corporate authorizations, necessary to enter this contract, on behalf of Contractor.
13. The Contractor is qualified and registered to transact business in all locations where required.
14. 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.
15. All financial statements, reports, and other information furnished by Contractor to the State as part of its response to the ITB 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 changes in the business, properties, financial condition, or results of operations of Contractor. 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.

2.506 STAFF

The State reserves the right to approve the Contractor's assignment of Key Personnel to this project and to recommend reassignment of personnel deemed unsatisfactory by the State.

The Contractor shall not remove or reassign, without the State's prior written approval any of the Key Personnel until such time as the Key Personnel have completed all of their planned and assigned responsibilities in connection with performance of the Contractor's obligations under this Contract. The Contractor agrees that the continuity of Key Personnel is critical and agrees to the continuity of Key Personnel. Removal of Key Personnel without the written consent of the State may be considered by the State to be a material breach of this Contract. The prohibition against removal or reassignment shall not apply where Key Personnel must be replaced for reasons beyond the reasonable control of the Contractor including but not limited to illness, disability, resignation or termination of the Key Personnel's employment.

2.507 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 in 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.

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.

2.508 EQUIPMENT WARRANTY

To the extent Contractor is responsible under this Contract for maintaining equipment/system(s), Contractor represents and warrants that it will maintain such equipment/system(s) in good operating condition and will undertake all repairs and preventive maintenance in accordance with the applicable manufacturer's recommendations for the period specified in this Contract.

The Contractor represents and warrants that the equipment/system(s) shall be in good operating condition and shall operate and perform to the requirements and other standards of performance contained in this Contract, when installed, at the time of Final Acceptance by the State, and for a period of one (1) year commencing upon the first day following Final Acceptance.



Within one business day of notification from the State, the Contractor shall adjust, repair or replace all equipment that is defective or not performing in compliance with the Contract. The Contractor shall assume all costs for replacing parts or units and their installation including transportation and delivery fees, if any.

The Contractor shall provide a toll-free telephone number to allow the State to report equipment failures and problems to be remedied by the Contractor.

The Contractor agrees that all warranty service it provides under this Contract shall be performed by original equipment manufacturer (OEM) trained, certified and authorized technicians.

The Contractor shall act as the sole point of contact for warranty service. The Contractor warrants that it shall pass through to the State any and all warranties obtained or available from the original equipment manufacturer, including any replacement, upgraded, or additional equipment warranties.

2.509 *PHYSICAL MEDIA WARRANTY*

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).

2.6 **Breach of Contract**

2.601 *BREACH DEFINED*

Failure to comply with articles, sections, or subsections of this agreement, or making any false statement in this agreement will be considered a material breach of this agreement giving the state authority to invoke any and all remedies available to it under this agreement.

In addition to any remedies available in law and by the terms of this contract, if the Contractor breaches Sections 2.508, 2.509, or 2.510, such a breach may be considered as a default in the performance of a material obligation of this contract.

2.602 *NOTICE AND THE RIGHT TO CURE*

In the event of a curable breach by the Contractor, the State shall provide the Contractor written notice of the breach and a time period to cure said breach described in the notice. This section requiring notice and an opportunity to cure shall not be applicable in the event of successive or repeated breaches of the same nature or if the State determines in its sole discretion that the breach poses a serious and imminent threat to the health or safety of any person or the imminent loss, damage or destruction of any real or tangible personal property.

2.603 *EXCUSABLE FAILURE*

1. Neither party shall be liable for any default or delay in the performance of its obligations under the Contract if and to the extent such default or delay is caused, directly or indirectly, by: fire, flood, earthquake, elements of nature or acts of God; riots, civil disorders, rebellions or revolutions in any country; the failure of the other party to perform its material responsibilities under the Contract (either itself or through another contractor); 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 best efforts to recommence performance or observance whenever and to whatever extent possible without delay provided such party promptly notifies the other party in writing of the inception of the excusable failure occurrence, and also of its abatement or cessation.

2. If any of the above enumerated circumstances substantially prevent, hinder, or delay performance of the services necessary for the performance of the State's functions for more than 14 consecutive 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 from an alternate source, and the State shall not be liable for payments for the unperformed services under the Contract for so long as the delay in performance shall continue; (b) the State may cancel any portions of the Contract so affected and the charges payable hereunder shall be equitably adjusted to reflect those services canceled; or (c) the Contract will be canceled without liability of the State to the Contractor as of the date specified by the State in a written notice of cancellation to the Contractor. The 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 as a result of the excusable failure condition. Defaults or delays in performance by the Contractor which are caused by acts or omissions of its subcontractors will not relieve the Contractor of its obligations under the Contract except to the extent that a subcontractor is itself subject to any excusable failure condition described above and the 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.

2.7 Remedies

2.701 CANCELLATION

The State may cancel 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:

1. Material Breach by the Contractor. In the event that the Contractor breaches any of its material duties or obligations under the Contract, 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, 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 cancellation to the Contractor, cancel this Contract in whole or in part, for cause, as of the date specified in the notice of cancellation.

In the event that this Contract is cancelled for cause, in addition to any legal remedies otherwise available to the State by law or equity, the Contractor shall be responsible for all costs incurred by the State in canceling the Contract, including but not limited to, State administrative costs, attorneys fees and court costs, and any additional costs the State may incur to procure the services required by this Contract from other sources. All excess re-procurement costs and damages shall not be considered by the parties to be consequential, indirect or incidental, and shall not be excluded by any other terms otherwise included in the Contract.



In the event the State chooses to partially cancel this Contract for cause charges payable under this Contract will be equitably adjusted to reflect those services that are cancelled.

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

2. Cancellation For Convenience By the State. The State may cancel this Contract for its convenience, in whole or part, if the State determines that such a cancellation is in the State's best interest. Reasons for such cancellation shall be left to the sole discretion of the State and may include, but not 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 Contract services no longer practical or feasible, and (c) unacceptable prices for additional services requested by the State. The State may cancel the Contract for its convenience, in whole or in part, by giving the Contractor written notice 30 days prior to the date of cancellation. If the State chooses to cancel this Contract in part, the charges payable under this Contract shall be equitably adjusted to reflect those services that are cancelled.
3. Non-Appropriation. In the event that funds to enable the State to effect continued payment under this Contract are not appropriated or otherwise made available. The 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 project. If funds are not appropriated or otherwise made available, the State shall have the right to cancel this Contract at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of cancellation to the Contractor. The State shall give the Contractor written notice of such non-appropriation or unavailability within 30 days after it receives notice of such non-appropriation or unavailability.
4. Criminal Conviction. In the event the Contractor, an officer of the Contractor, or an owner of a 25% or greater share of the Contractor, is convicted of a criminal offense incident to the application for or performance of a State, public or private Contract or subcontract; or convicted of a criminal offense including but not limited to 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 the Contractor's business integrity.
5. 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, section 5, and Civil Service Rule 7. 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.

2.702 RIGHTS UPON CANCELLATION

Termination Assistance. If this Contract (or any Statement of Work issued under it) is terminated for any reason prior to completion, Contractor agrees to provide for up to six (6) months after the termination all reasonable termination assistance requested by the State to facilitate the orderly transfer of such Services to the State or its designees in a manner designed to minimize interruption and adverse effect. Such termination assistance will be deemed by the



parties to be governed by the terms and conditions of this Contract (notwithstanding its termination) other than any terms or conditions that do not reasonably apply to such termination assistance. Such termination assistance shall be at no additional charge to the State if the termination is for Contractor's Default pursuant to Section 2.602; otherwise the State shall compensate Contractor for such termination assistance on a time and materials basis in accordance with the Amendment Labor Rates identified within this Contract agreement.

2.703 LIQUIDATED DAMAGES

Reserved

2.704 STOP WORK

1. The State may, at any time, by written stop work order to the Contractor, require that the Contractor stop all, or any part, of the work called for by this Contract for a period of up to 90 days after the stop work order is delivered to the 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. Upon receipt of the stop work order, the 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) Cancel the work covered by the stop work order as provided in the cancellation section of this Contract.
2. If a stop work order issued under this section is canceled or the period of the stop work order or any extension thereof expires, the Contractor shall resume work. The State shall make 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 the Contractor's costs properly allocable to the performance of any part of this Contract; and
 - b) The Contractor asserts its right to an equitable adjustment within 30 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 proposal submitted at any time before final payment under this Contract.
3. If the stop work order is not canceled and the work covered by the stop work order is canceled for reasons other than material breach, the State shall allow reasonable costs resulting from the stop work order in arriving at the cancellation settlement.
4. If a stop work order is not canceled and the work covered by the stop work order is canceled for material breach, the State shall not allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop work order.

An appropriate equitable adjustment may be made in any related contract of the Contractor that provides for adjustment and is affected by any stop work order under this section. The State shall not be liable to the Contractor for loss of profits because of a stop work order issued under this section.



2.705 *SUSPENSION OF WORK*

The Contract Administrator may order the Contractor, in writing, to suspend, delay, or interrupt all or any part of the work of this contract for the period of time that the Contract Administrator determines appropriate for the convenience of the Government.

If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted (1) by an act of the Contract Administrator in the administration of this contract, or (2) by the Contract Administrator's failure to act within the time specified in this contract (or within a reasonable time if not specified), an adjustment shall be made for any increase in the cost of performance of this contract (excluding profit) necessarily caused by the unreasonable suspension, delay, or interruption, and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor, or for which an equitable adjustment is provided for or excluded under any other term or condition of this contract.

A claim under this clause shall not be allowed:

- (1) For any costs incurred more than 20 days before the Contractor shall have notified the Contract Administrator in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order); and
- (2) Unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the contract.

2.8 **Changes, Modifications, and Amendments**

2.801 *APPROVALS*

The Contract may not be modified, amended, extended, or augmented except by a writing executed by the parties hereto, and any breach or default by a party shall not be waived or released other than in writing signed by the other party.

2.802 *TIME EXTENTIONS*

Time extensions for contract changes will depend upon the extent, if any, by which the changes cause delay in the completion of the various elements of performance as described in the statement of work. The change order granting the time extension may provide that the contract completion date will be extended only for those specific elements related to the changed work and that the remaining contract completion dates for all other portions of the work will not be altered. The change order also may provide an equitable readjustment of liquidated damages under the new completion schedule.

2.803 *MODIFICATION*

Acquisition Services reserves the right to modify this contract at any time during the contract term. Such modification may include changing the locations to be serviced, additional locations to be serviced, method or manner of performance of the work, number of days service is to be performed, addition or deletion of tasks to be performed, addition or deletion of items, and/or any other modifications deemed necessary. Any changes in pricing proposed by the Contractor resulting from the proposed changes are subject to acceptance by the State. Changes may be increases or decreases. **IN THE EVENT PRICES ARE NOT ACCEPTABLE TO THE STATE, THE CONTRACT SHALL BE SUBJECT TO COMPETITIVE BIDDING BASED UPON THE NEW SPECIFICATION.**



The State reserves the right to add an item(s) that is not described on the item listing and is available from the Contract vendor. The item(s) may be included on the Contract, only if prior written approval has been granted by Acquisition Services.

2.804 AUDIT AND RECORDS UPON MODIFICATION

DEFINITION: records includes books, documents, accounting procedures and practices, and other data, regardless of whether such items are in written form, electronic form, or in any other form

Contractor shall be required to submit cost or pricing data with the pricing of any modification of this contract to the Contract Administrator in Acquisition Services. Data may include accounting records, payroll records, employee time sheets, and other information the state deems necessary to perform a fair evaluation of the modification proposal. Contract Administrator or authorized representative of the state shall have the right to examine and audit all of the contractor's records, including computations and projections, related to:

1. The proposal for modification;
2. The discussions conducted on the proposal, including those related to negotiation;
3. Pricing of the modification; or
4. Performance of the modification.

Contractor shall make available at its office at all reasonable times the materials described in the paragraphs above.

If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement.

2.805 CHANGES

(a) The Contract Administrator may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a change order, make changes in the work within the general scope of the contract, including changes:

- (1) In the specifications (including drawings and designs);
- (2) In the method or manner of performance of the work;
- (3) In the Government-furnished facilities, equipment, materials, services, or site; or
- (4) Directing acceleration in the performance of the work.

(a) Any other written or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from the Contract Administrator that causes a change shall be treated as a change order under this clause; Provided, that the Contractor gives the Contract Administrator written notice stating:

- (1) The date, circumstances, and source of the order; and
- (2) That the Contractor regards the order as a change order.

(b) Except as provided in this clause, no order, statement, or conduct of the Contract Administrator shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment.