

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

CONTRACT NO. 071B5500030
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
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STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
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BUYER:	DTMB	Mike Breen	517-284-7002	breenm@michigan.gov

CONTRACT SUMMARY:			
DESCRIPTION:			
Enterprise Internet Service Provider			
INITIAL TERM	EFFECTIVE DATE	INITIAL EXPIRATION DATE	AVAILABLE OPTIONS
5 years	October 14, 2014	October 13, 2019	5, one year
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
N/A	N/A	N/A	N/A
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MiDEAL PARTICIPANTS
☐ P-card	☐ Direct Voucher (DV)	☐ Other	☒ YES ☐ NO
MINIMUM DELIVERY REQUIREMENTS:			
N/A			
MISCELLANEOUS INFORMATION:			
N/A			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION:		\$1,093,095.00	

THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the solicitation #084R4300003. Orders for delivery will be issued directly by the Department of Technology, Management & Budget through the issuance of a Purchase Order Form.

Notice of Contract #: 071B5500030

FOR THE CONTRACTOR:	FOR THE STATE:
Comcast Corporation	Signature
Firm Name	Bill Pemble, IT Division Director
Authorized Agent Signature	Name/Title
Authorized Agent (Print or Type)	DTMB Procurement
Date	Enter Name of Agency
	Date



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Attachments:

- Attachment 6 - WAN Services Requirements Worksheet
- Attachment 7 - Service Provider Coverage Areas
- Attachment 8 - WAN Services Pricing Tables



Article 1 – Statement of Work (SOW)

1.000 Project Identification

1.001 Project Request

This contract will have a base term of five (5) years with five (5), one (1) year option. Renewal of the contract(s) must be at the sole discretion of the State of Michigan and must be based upon the acceptable performance of the selected Contractor as determined by the SOM. New Work and Additional Services will be added to the SOW, subject to the Contract Change Management process.

1.002 Background

The objective of this Contract is to provide increased bandwidth, provide network diversity to State Remote Sites, transition to current transport service technologies, reduce recurring costs, and increase agility in providing network services to the State in accordance with this SOW and the Enterprise ISP Design.

1.100 Scope of Work and Deliverables

1.101 In Scope

This Contract is for the provision of all deliverables, services, resources and feature(s) that will be utilized to comprise the SOM Enterprise ISP and any optimization of the Enterprise ISP in accordance with this SOW, the Enterprise ISP Design. Subject to Contract Change Management, the SOM reserves the right to select and approve any Equipment, for conformity to SOM standards, which will be used at SOM Remote Sites (at the SOM LAN Demarcation Point) in support of the Enterprise ISP.

- The Enterprise ISP will support bandwidth in increments from 1.544 Mb (Megabits) to 40 Gb (Gigabits) to the Equipment at the State Remote Sites. The key elements of the Enterprise ISP capability will be defined by the SOM.

This Contract consists of the following scope:

1. Enterprise Internet Service Providers
 - A. Procurement of Services
 - B. Invoicing
 - C. Enterprise Internet Service Provider Services
 - D. Service Level Agreements
 - E. Reports
 - F. Continuity of Service/Disaster Recovery
 - G. Optional Services

This contract includes Enterprise Internet Service Provider (ISP) Services

A more detailed description of the Equipment, telecommunication Services and Deliverables required in the contract are provided in Article 1, Section 1.104, Work and Deliverables.

1.102 Out Of Scope

The following topics are out of scope:

- Management of State's metropolitan area networks
- Management of State's hosting center network
- Management of State's local area networks

1.103 Environment

The links below provide information on the SOM's Enterprise IT policies, standards and procedures which include security policy and procedures, eMichigan web development, and the State Unified Information Technology Environment (SUITE).

Enterprise IT Policies, Standards and Procedures:

<http://www.michigan.gov/dmb/0,1607,7-150-56355---,00.html> and <http://www.michigan.gov/dmb/0,1607,7-150-56355-107739---,00.html>



All Equipment at the Demarcation Point provided by Contractor will be compatible with the Design. The State's Contract Administrator and DTMB must approve any tools, in writing, before use on any information technology project for New Work.

It is recognized that technology changes rapidly. Either party may, subject to Contract Change Management request, in writing, a change in the standard environment Equipment or Transport Services, providing justification for the requested change and all costs associated with any change. The SOM Contract Compliance Inspector must approve any changes, in writing, before work may proceed based on the changed environment.

The State's security environment includes:

- DTMB Single Login
- DTMB provided SQL security database
- Secured Socket Layers
- SecurID (State Security Standard for external network access and high risk Web systems)



1.104 Work and Deliverables – Enterprise Internet Service Provider(s)

The Enterprise Internet Service Provider(s) shall provide the Services required for the State of Michigan, in accordance with the requirements as set forth below and in **Attachment 6 – WAN Services Requirements Worksheet**.

For a complete list of Enterprise ISP requirements please see **Attachment 6 – WAN Services Requirements Worksheet**.

I. Services (work) To Be Provided and Deliverables

Acceptance Criteria

High-level acceptance criteria for Document Deliverables are listed in Section 1.501. Any additional or more specific criteria are identified here.

A. Procurement of Services

The Contractor will provide a complete list of all services offered that may be utilized as part of the Enterprise Internet Services. The SOM reserves the right to procure services, products and software necessary for Enterprise Internet Services through other SOM contracts. The SOM requires any Enterprise ISP to coordinate services through a single Service Integrator.

- Consulting in regards to the Contractor's Enterprise Internet Services will be available at no additional charge. The Contractor will provide an on-line secure portal or electronic method for tracking order status.
- The State or SI will provide accurate and complete order documentation. The State will provide an LOA for SI to place orders. The State will arrange and provide accurate local contact (LCON) information and site access. The State will provide adequate space and power to install circuit demarcation and associated circuit termination equipment. The State will obtain any approval necessary for ISP Circuit installation from property owners.

B. Invoicing

The Contractor will invoice the State directly. The Contractor will submit properly itemized invoices to "Bill To" Address on Purchase Order. Invoices must provide and itemize, as applicable:

- Contract number.
- Purchase Order number.
- Contractor name, address, phone 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 Service Integrator's list price for each item and applicable discounts.
- Net invoice price for each item.
- Shipping costs.
- Other applicable charges.
- Total invoice price.
- Payment terms, including any available prompt payment discount.

Billing for service components or features begins on the day the service component or feature is made available for use by SOM (which shall be considered the Service Activation Date). Billing shall commence at a Site as of the Service Activation Date regardless of the function of the Site in a SOM network (e.g., remote, spoke, hub, or head-end sites) or the provisioning status of other Sites in the SOM network.

Payment of maintenance service/support of less than one (1) month's duration shall be prorated at 1/30th of the basic monthly maintenance charges for each calendar day.

The Contractor invoices will be paid via Electronic Funds Transfer (EFT).



The SOM has the right to withhold payment of a disputed amount on an invoice until the dispute is settled or resolved. If the investigation of the disputed amount is found to be settled in the SOM's favor, this disputed amount will appear as an adjustment credit on the next billing invoice, following dispute resolution. If the disputed amount is determined to be billed correctly, the disputed amount will carry forward to the next billing invoice, following dispute resolution, as a pending balance due.

Billing will commence at a Site as of the Service Activation Date regardless of the function of the Site in a SOM network (e.g., remote, spoke, hub, or head-end sites) or the provisioning status of other Sites in the SOM network. Billing for service components or features begins on the day the service component or feature is made available for use by SOM.

Contractor must submit properly itemized invoices to:

DTMB – Financial Services
Accounts Payable
P.O. Box 30026
Lansing, MI 48909

Or

DTMB-Accounts-Payable@michigan.gov

The Contractor invoices will be paid via Electronic Funds Transfer (EFT). Contractor will accept ACH transactions from the State or Service Integrator in either CCD+ or CTX format. These formats include both remittance information and addenda records.

For EFT payments, the NACHA standard file will be received by Contractor's bank. Any errors will be corrected the next business day. If the error cannot be corrected, Contractor will contact the State/Service Integrator for verification of the payment.

C. Enterprise Internet Service Provider Services

1. Service Features

The service features below are requirements for the Contractor's Services to the SOM. The preferred method of connection between the Contractor and the SOM is Ethernet.

- a. The Contractor will use standards-based routing protocol(s) to announce routes from the SOM site router.
- b. The Contractor dedicated ISP connection service must provide IPv4 and IPv6 support.
- c. The Contractor dedicated ISP connection service must provide near real-time online network utilization statistics.
- d. Dedicated Internet connections must be available from speeds of 1.5 Mbps and above for transmit and receive.
- e. The Contractor will provide a Network Operations Center that is available 24x7x365.
- f. The Contractor will provide contact information for its Network Operations Center (NOC).
- g. The Network Operations Center provided by The Contractor will be able to accept trouble tickets electronically or via phone.
- h. The Contractor will describe the architecture, features and capabilities of its enterprise Internet access service offering, to include:
 - i. Ability to provide dedicated Internet access at all access speeds.
 - ii. Primary and Secondary DNS services.
 - iii. Border Gateway Protocol (BGP) routing services.
 - iv. The Service Integrator's capability to route the SOM's IP addresses, the capability to provide IP addresses, and the smallest address space the Vendor shall route on its backbone.
 - v. Web caching service (New Work)
 - vi. Content Distribution Network services (New Work)
 - vii. Network time protocol (NTP) (New Work) –



- viii. Security services available to mitigate interruptions and mechanisms for detecting and eliminating fraudulent and/or unauthorized use of the services provided to the SOM. Examples of known, unauthorized activity include, but are not limited to, Distributed Denial of Service (DDoS) and DNS spoofing (New Work).
- ix. Ability to provide Internet2 access (New Work)

a. Service Management

All Service work will be scheduled by the Contractor when least disruptive to the SOM. The Contractor will have documented permission from the State for any service order. The Contractor will submit to the State for approval the procedures that the Contractor will use for the dispatch of a technician during and outside of SOM business hours.

If the State believes that any installation work or repair work performed by Contractor does not meet the State's standards, Contractor will work with the State to understand what was not performed adequately and work to resolve the issue. If Contractor is in agreement that the work was not performed adequately, Contractor will correct the issue at no additional cost to the State.

The State will provide adequate space and power to install circuit demarcation and associated circuit termination equipment. The State will obtain any approval necessary for ISP circuit installation from property owners.

b. Problem Management

Problem Management includes activities related to restoring Services after an outage and reporting the cause of failure. The Contractor will collaborate and coordinate Fault Management Services with the SOM/SI, including remote alarm monitoring, problem report receipt, problem identification and isolation, remote and on-site resolution, and dispatch management.

Upon receipt of a problem or alarm notification, the Contractor will initiate problem resolution efforts in coordination with the SOM/SI. The Contractor will prioritize the support ticket in accordance with mutually agreed-upon metrics, as provided by the SOM.

The Contractor will coordinate with the SOM/SI to troubleshoot, isolate and resolve problem conditions related to the Services. Upon determining the source of the fault, the Contractor will perform the following activities:

- Resolve the problem remotely, where possible
- Change the software feature, reroute past or replace the defective equipment, hardware component, and/or
- Dispatch technicians for on-site repair or replacement

The Contractor will escalate issues per the mutually agreed-upon escalation procedures and provide the SOM/SI with status at escalation thresholds throughout trouble resolution efforts.

The Contractor will provide appropriate technical support (e.g., manufacturer technical support) to resolve SOM outage conditions and performance issues in accordance with performance standards detailed in the **Section D. Service Level Agreements**

The State will provide adequate space and power to install circuit demarcation and associated circuit termination equipment. The State will obtain any approval necessary for Internet circuit installation from property owners.

c. Monitoring and Management



The Contractor will proactively manage, maintain and operate the Contractor network used by the SOM on a 24x7x365 basis and will discover any Incidents that are outside the metrics performance standards detailed in the Section D. Service Level Agreements.

D. Service Level Agreements (SLA)

The following is the Service Group Description and the applicable availability % targeted by the State for Enterprise Internet Service Provider Services.

Service Group #	Service Group Description
Group 4 (99%)	A SOM Remote Site connected to a commercial Internet Service Provider (ISP) or any downstream edge/shared services-connected sites.

1. **Monthly Enterprise ISP Service Group Availability (SGA).** Site availability must enable the State to determine where outages occur and allow the State to better provide for greater stability of the State of Michigan's Internet Services. This SLA measures unscheduled outage(s) or service interruption(s) affecting Internet services availability at State site(s) by service Group.
 - a. The Formula used to measure performance must be as follows:
 Service Group Downtime (SGD) = the total number of out-of-service hours for a given Service Group divided by the total number of site service hours, within service Group multiplied by 100. Agreed-upon, pre-scheduled maintenance windows are excluded from out-of-service hours. The Service Integrator must report the percentage (%) of time the network was down and the percentage (%) of time the network was available in total Per Site/Service Group. This data may be audited by the State or a designated third-party. The Performance Objective is for the Enterprise ISP to provide the following Service Group Availability to the State as a percentage of time by Service Group as stated below:

SGA by Service Group Table

Service Group #	Performance Objective
Group 4	99.00%

2. **Monthly Enterprise ISP Time to Repair (TTR) metric.** The time must be measured from the time a trouble ticket is established at the Enterprise ISP's NOC through any means until the Enterprise ISP's trouble ticket is changed to resolved status after approval by the SOM site contact.

Service Integrator must not exceed the objective as stated by Group as stated below.

TTR by Service Group Table

Service Group #	Performance Objective
Group 4	8.0 hours

3. **Monthly Enterprise ISP Software MAC (Move/Add/Change) Request metric.** Each Software MAC request must meet a mutually agreed-upon due date between the Enterprise ISP and the SOM.



- a. The Formula used to measure MAC requests on a per-site basis must be as follows:
 - A. Number of MAC requests completed on, or prior to, the due date during the reporting period.
 - B. Total number of MAC requests completed during the reporting period.

Compliance = $A/B \times 100$ (The result is a percentage).
Performance Objective = 100%

The Enterprise ISP must include the number of tickets closed during the reporting period, the average successful MAC Request completion time, the number of tickets whose resolution time was greater than the average and the number of tickets whose resolution time was less than the average. This data may be audited by the SOM or a designated third-party.

4. Monthly Enterprise ISP Hardware MAC (Move/Add/Change) Request metric. Each Hardware MAC request must meet a mutually agreed upon due date between the Enterprise ISP and the SOM.

- b. The Formula used to MAC requests on a per-site basis must be as follows:
 - C. Number of MAC requests completed on or prior to the due date during the reporting period.
 - D. Total number of MAC requests completed during the reporting period.

Compliance = $A/B \times 100$ (The result is a percentage)
Performance Objective = 100%

Enterprise ISP must include the number of tickets closed during the reporting period, the average successful MAC Request completion time, the number of tickets whose resolution time was greater than the average and the number of tickets whose resolution time was less than the average. This data may be audited by the SOM or a designated third-party.

E. Reports

The Enterprise ISP must provide the following SLA reports on a monthly basis per site:

- Enterprise ISP Service Group Availability (SGA).
- Enterprise ISP Time to Repair (TTR) metric.
- Enterprise ISP Software MAC (Move/Add/Change) Request metric.
- Enterprise ISP Hardware MAC (Move/Add/Change) Request metric.

The Enterprise ISP must provide near real-time online network statistics for utilization. Dedicated Internet connections must be available from speeds of 1.5 Mbps and above for transmit and receive.

F. Continuity of Service/Disaster Recovery

The Contractor will adhere to the Telecommunications Service Priority (TSP) program and provide for the rapid provisioning and restoration of services to SOMs having a national security and emergency preparedness function. Reference the requirements set forth in Telecommunication Service Priority (TSP) Service Exhibit – Title 47 Part 64. Specifically, Contractor will work with the State to prioritize circuits with TSP markings.

G. Optional Services

The Contractor has provided its list of Optional Services to be considered in scope. Any Optional Services that the SOM requires will be considered New Work.



II. Overall Service Requirements

A. Detailed Requirements

The detailed Service requirements for the Contract are listed in this SOW and **Attachment 6 – WAN Services Requirements Worksheet**.

1.200 Roles and Responsibilities

1.201 Contractor Staff, Roles, and Responsibilities

A. Staff

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

1. Key Personnel

All Key Personnel may be subject to the States' interview and approval process. Any Key Personnel staff substitution must have the prior approval of the State in accordance with the Contract. The State has identified the following as Key Personnel for this SOW:

- **Account Manager/Single Point of Contact (SPOC)**

Contractor must provide an **Account Manager/SPOC** to interact with the designated personnel from the State to ensure a smooth transition to the new contract. The Account Manager must coordinate all of the activities of the Contractor personnel assigned to the project and create all reports required by the SOM. The Account Manager responsibilities must include, at a minimum:

- The Account Manager must act as the Single Point of Contact (SPOC) for any issue related to the issued contract.
- Escalation point for contract issues, risks, and other concerns.
- Utilize Contract Change Management
- Communicate on order and delivery status and issues.
- Route calls or requests to the appropriate resource.
- Manage resolution of order and delivery issues.
- Provide information on business processes for using the contract.
- Manage all defined Contractor responsibilities in this Scope of Services.
- Manage and report on the project's budget.
- Process all submitted SOW and SI (via an LOA) requests and deliver detailed service and price proposals.
- Deliver all contract required reports on product and service delivery, and SLA compliance.
- Facilitate dispute resolution.
- Advise the State of performance under the terms and conditions of the Contract.

B. On Site Work Requirements

1. Location of Work

For work that must be executed on-Site, it must be performed, completed and managed at State-owned or leased facilities.

2. Hours of Operation

- a. Normal State working hours, depending on the site, are 8:00 a.m. to 5:00 p.m. EST, Monday through Friday, with work performed as necessary after those hours to meet project deadlines.
- b The State holidays and the days they are observed are:



- New Year's Day, January 1, or closest weekday.
- Martin Luther King, Jr. Day, Third Monday in January.
- Presidents Day, Third Monday in February.
- Memorial Day, Last Monday in May.
- Independence Day, July 4, or closest weekday.
- Labor Day, First Monday in September.
- General Election Day, First Tuesday in November, even numbered years.
- Veterans Day, November 11.
- Thanksgiving Day and the day after, the fourth Thursday and Friday in November.
- New Year's Eve, December 31.
- Christmas Day December 25 and the day before/after depending on how the holiday falls

1.202 State Staff, Roles, and Responsibilities

The State project team will consist of Executive Sponsors, project support, and a DTMB project manager.

Executive Sponsors

The Executive Sponsors represent the DTMB executive team by providing the vision for the contract, securing departmental support for the contract, and providing high level direction to the team.

The State's Executive Sponsors will provide the following services:

- Act as a vocal and visible champion within the State.
- Provide high level direction to the team.
- Keep abreast of major contract activities and performance.
- Make important decisions related to scope and direction.
- Solicit the State resources necessary for the contract.

Name	Agency/Division	Title	Phone/e-mail
Greg Faremouth	DTMB Network and Telecommunications Services	Director	(517) 241-1646 faremouthg@michigan.gov

Contract Compliance Inspector

DTMB will assign a Contract Compliance Manager who will be responsible for the State's infrastructure and coordinate with the Service Integrator in determining the system configuration.

The State's Contract Compliance Manager will provide the following services:

- Collect information necessary to monitor each Contractor's performance against SLA requirements.
- Attend periodic meetings to review each Contractor's deliverables and metrics.
- Facilitate communication between each Contractor and State departments/divisions.
- Conduct regular and ongoing reviews of each Contractor's performance.
- Make key implementation decisions, as identified by each Contractor's Bills of Materials and Project Plans.

Name	Agency/Division	Title	Phone/e-mail
Scott Hall	DTMB Network and Telecommunications Services	Contract Compliance Manager	(517) 241-4255 Halls9@michigan.gov

State Project Manager – for the Transition and other projects, as needed

The State's Project Manager must provide the following services:

- Coordinate the State resources necessary for the project.
- Provide acceptance and sign-off of deliverable/milestone and invoices.



- Collect information necessary to monitor the Service Integrator's performance against SLA requirements.
- Attend periodic meetings to review the Contractors' deliverables and metrics.
- Escalate outstanding/high priority issues.
- Utilize Contract Change Management procedures and resolve Transition project-related issues.
- Conduct regular and ongoing reviews of the transition project.
- Document and archive all important project decisions.
- Provide status updates to compliance manager and executive sponsors.

Name	Agency/Division	Title	Phone/e-mail
TBD	DTMB	State Project Manager	TBD

DTMB Contract Administrator

DTMB will assign a Contract Administrator who will manage post contractual activities which include but are not limited to:

- Negotiating or clarifying contractual provisions.
- Approving amendments to or extensions of the Contract.
- Participating in scheduled reviews of Contract milestones and deliverables.
- Resolving Contract issues between the State and the Service Integrator, WAN Service Providers and Enterprise ISPs.
- Verifying that all contractual activities are complete prior to contract close out.
- Document and archive all important contract decisions.

Name	Agency/Division	Title	Phone/e-mail
Michael Breen	DTMB Purchasing	State Buyer	517-241-7720 BreenM@michigan.gov

1.203 Other Roles and Responsibilities

1.300 Contract Management

1.301 Contract Management

A. Orientation Meeting

Within 10 business days after contract signing, each Contractor may be required to attend an orientation meeting to discuss the content and procedures of the Contract. The meeting must be held in Lansing, Michigan, at a date and time mutually acceptable to the State and the Contractor. The State shall bear no cost for the time and travel of the Contractor for attendance at the meeting.

B. Performance Review Meetings

The State requires the Service Integrator, WAN Service Providers and Enterprise ISPs to attend monthly meetings, at a minimum, to review performance under the Contract and monthly monitoring reports. The meetings must be held in Lansing, Michigan, or by teleconference, as mutually agreed by the State and the Contractors.



C. Contract Control

1. The Contractor must carry out this project under the direction and control of the DTMB Network and Telecommunications Services Division.
2. Within 20 business days of Contract execution, the Contractor must submit the project plan to the State project manager(s) for final approval. This project plan must be in agreement with Article 1, Section 1.104 Work and Deliverables.

The State is responsible for providing a point-of-contact who will assume responsibility for managing the rollout of the transition/transformation project. The State is also responsible for cooperating in the completion of all activities related to this project.

1.302 Reports

Reports (formats to be created by the State) must be submitted to the State's Contract Compliance Manager for approval within 45 business days after the execution of the Contract. Once both parties have agreed to the format of the reports, it shall become the standard to follow for the duration of the Contract.

- Enterprise ISP – Section 1.104

1.400 Project Management

In the event the State desires Contractor to provide support for a Service requiring project management and/or project engineering beyond those called out in the definitions of a Soft MACD or a Hard MACD ("Project"), the Contractor must assign a Project Manager to oversee major Project implementations. The Project Manager's contact information must be provided to the State when any Project is initiated.

The Contractor's Project Statement of Work must include:

- Project Objective
- Scope of Work
- Design, if required by the State
- Deliverables
- Acceptance Criteria
- Payment by accepted milestone
- Agency Responsibilities and Assumptions
- Escalation Plan
- Work Breakdown Structure

Note: Before a Project can commence, the State must approve the Project Plan, which must include the Contractor's project SOW, to-be built design and a price quote based on deliverables.

1.401 RESERVED

1.402 RESERVED

1.500 Acceptance

1.501 Criteria

The following is standard acceptance criteria for Document Deliverables. Any other specific criteria are identified in Section 1.104 Work and Deliverables.

Document Deliverables Process

1. Documents are dated and in electronic format.
2. Draft documents are not accepted as final Document Deliverables.
3. The Document Deliverables must be reviewed and accepted in accordance with the requirements of the Contract and Appendices.



4. DTMB must review Document Deliverables within a mutually agreed upon timeframe.
 - a. Approvals must be written and signed by DTMB Project Manager.
 - b. Issues must be documented and submitted to the Contractor.
 - c. After issues are resolved or waived, the Contractor must resubmit documents for approval within 30 days of receipt.

1.502 Final Acceptance

Final acceptance is expressly conditioned upon completion of ALL deliverables/milestones, completion of ALL tasks in the project plan as approved, completion of ALL applicable inspection and/or testing procedures, and the certification by the State that the Contractor has met the defined requirements.

1.600 Compensation and Payment

1.601 Compensation and Payment

1. Firm, fixed price.
 - Contractor will submit monthly invoices for Services delivered with sufficient documentation to explain the billing.
2. Time and Materials (T&M)
 - Contractor will provide a process for acquiring New Work on a time and materials basis.
 - Firm, fixed unit rates for T&M work to be provided with Project proposal.
 - Contractor will submit monthly invoices for time and material services.
3. The parties agree that the Services/Deliverables to be rendered by Contractor pursuant to the Contract (and any future amendments of it) must be defined and described in detail in an Attachment or Purchase Orders (PO) executed under the Contract. Contractor shall not be obliged or authorized to commence any work to implement a Statement of Work until authorized via a PO issued against the Contract. Contractor shall perform in accordance with the Contract, including the Statements of Work/Purchase Orders executed under it.
4. Payment Terms: As per the Contract.

Method of Payment

The Contractors will be paid by the methods listed in the SOW.

Travel

The State will not pay for any travel expenses, including hotel, mileage, meals, parking, etc. Travel time must not be reimbursed.

1.602 Reserved



Article 2. Terms and Conditions

2.000 Contract Structure and Term

2.001 Contract Term

This Contract is for a period of five years beginning December 9, 2011 through December 8, 2016). All outstanding Purchase Orders must also expire upon the termination for any of the reasons listed in Section 2.150 of the Contract, unless otherwise extended under the Contract. Absent an early termination for any reason, Purchase Orders issued but not expired, by the end of the Contract's stated term, shall remain in effect for the balance of the fiscal year for which they were issued.

2.002 Options To Renew

This Contract may be renewed in writing by mutual agreement of the parties not less than 30 days before its expiration. The Contract may be renewed for up to four additional one-year periods.

2.003 Legal Effect

Contractor accepts this Contract by signing two copies of the Contract and returning them to the Procurement. The Contractor shall not proceed with the performance of the work to be done under the Contract, including the purchase of necessary materials, until both parties have signed the Contract to show acceptance of its terms, and the Contractor receives a contract release/purchase order that authorizes and defines specific performance requirements.

Except as otherwise agreed in writing by the parties, the State shall not be liable for costs incurred by Contractor or payment under this Contract, until Contractor is notified in writing that this Contract or Change Order has been approved by the State Administrative Board (if required), signed by all the parties and a Purchase Order against the Contract has been issued.

2.004 Attachments & Exhibits

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

2.005 Ordering

The State must issue an approved written Purchase Order, Blanket Purchase Order, Direct Voucher or Procurement Card Order to order any Services/Deliverables under this Contract. All orders are subject to the terms and conditions of this Contract. No additional terms and conditions contained on either a Purchase Order or Blanket Purchase Order apply unless they are specifically contained in that Purchase Order or Blanket Purchase Order's accompanying Statement of Work. Exact quantities to be purchased are unknown; however, the Contractor will be required to furnish all such materials and services as may be ordered during the Contract period. Quantities specified, if any, are estimates based on prior purchases, and the State is not obligated to purchase in these or any other quantities.

2.006 Order of Precedence

The Contract, including any Statements of Work and Exhibits, to the extent not contrary to the Contract, each of which is incorporated for all purposes, constitutes the entire agreement between the parties with respect to the subject matter and supersedes all prior agreements, whether written or oral, with respect to the subject matter and as additional terms and conditions on the purchase order must apply as limited by Section 2.005.



In the event of any inconsistency between the terms of the Contract and a Statement of Work, the terms of the Statement of Work shall take precedence (as to that Statement of Work only); provided, however, that a Statement of Work may not modify or amend the terms of the Contract. The Contract may be modified or amended only by a formal Contract amendment.

2.007 Headings

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

2.008 Form, Function & Utility

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

2.009 Reformation and Severability

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

2.010 Consents and Approvals

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

2.011 No Waiver of Default

If a party fails to insist upon strict adherence to any term of the Contract then the party has not waived the right to later insist upon strict adherence to that term, or any other term, of the Contract.

2.012 Survival

Any provisions of the Contract that impose continuing obligations on the parties, including without limitation the parties' respective warranty, indemnity and confidentiality obligations, survive the expiration or termination of the Contract for any reason. Specific references to survival in the Contract are solely for identification purposes and not meant to limit or prevent the survival of any other section.

2.020 Contract Administration

2.021 Issuing Office

This Contract is issued by the Department of Technology, Management and Budget, Procurement for the Telecommunications Division (collectively, including all other relevant State of Michigan departments and agencies, the "State"). Procurement is the sole point of contact in the State with regard to all procurement and contractual matters relating to the Contract. The Procurement Contract Administrator for this Contract is:

Christine Mitchell, CPPB Buyer Specialist
Procurement

Department of Technology, Management and Budget Mason Bldg, 2nd
Floor

PO Box 30026

Lansing, MI 48909

Email: mitchellc4@michigan.gov Phone: (517) 335-0462

2.022 Contract Compliance Inspector

The Director of Procurement directs the person named below, or his or her designee, to monitor and coordinate the activities for the Contract on a day-to-day basis during its term. **Monitoring Contract activities does not imply the authority to change, modify, clarify, amend, or otherwise alter the prices, terms, conditions and specifications of the Contract. Procurement is the only State office authorized to change, modify, amend, alter or clarify the prices, specifications, terms and conditions of this Contract.** The Contract Compliance Inspector for this Contract is:

Jim Bowen

Wide Area Network Transmission Planning Specialist DTMB
Telecommunications Planning

608 W. Allegan

Lansing, MI 48933

Email: bowenj@michigan.gov Phone: (517) 241-9076

Fax: 513 373-0303

2.023 Project Manager

Reserved

2.024 Change Requests

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

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

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

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

(1) Change Request at State Request

If the State requires Contractor to perform New Work, Additional Services or make changes to the Services that would affect the Contract completion schedule or the amount of compensation due Contractor (a "Change"), the

State shall submit a written request for Contractor to furnish a proposal for carrying out the requested Change (a "Change Request").

- (2) Contractor Recommendation for Change Requests:
Contractor shall be entitled to propose a Change to the State, on its own initiative, should Contractor believe the proposed Change would benefit the Contract.
- (3) Upon receipt of a Change Request or on its own initiative, Contractor shall examine the implications of the requested Change on the technical specifications, Contract schedule and price of the Deliverables and Services and shall submit to the State without undue delay a written proposal for carrying out the Change. Contractor's proposal shall include any associated changes in the technical specifications, Contract schedule and price and method of pricing of the Services. If the Change is to be performed on a time and materials basis, the Amendment Labor Rates shall apply to the provision of such Services. If Contractor provides a written proposal and should Contractor be of the opinion that a requested Change is not to be recommended, it shall communicate its opinion to the State but shall nevertheless carry out the Change as specified in the written proposal if the State directs it to do so.
- (4) By giving Contractor written notice within a reasonable time, the State shall be entitled to accept a Contractor proposal for Change, to reject it, or to reach another agreement with Contractor. Should the parties agree on carrying out a Change, a written Contract Change Notice must be prepared and issued under this Contract, describing the Change and its effects on the Services and any affected components of this Contract (a "Contract Change Notice").
- (5) No proposed Change shall be performed until the proposed Change has been specified in a duly executed Contract Change Notice issued by the Department of Technology, Management and Budget, Procurement.
- (6) If the State requests or directs the Contractor to perform any activities that Contractor believes constitute a Change, the Contractor must notify the State that it believes the requested activities are a Change before beginning to work on the requested activities. If the Contractor fails to notify the State before beginning to work on the requested activities, then the Contractor waives any right to assert any claim for additional compensation or time for performing the requested activities. If the Contractor commences performing work outside the scope of this Contract and then ceases performing that work, the Contractor must, at the request of the State, retract any out-of-scope work that would adversely affect the Contract.

2.025 Notices

Any notice given to a party under the Contract must be deemed effective, if addressed to the 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 Business Day after being sent by U.S. mail, postage pre-paid, return receipt requested; or (iv) the next Business Day after being sent by a nationally recognized overnight express courier with a reliable tracking system.

State:

State of Michigan Procurement

Attention: Christine Mitchell PO Box
30026

530 West Allegan

Lansing, Michigan 48909

Contractor: Terrence J.
Connell

Senior Vice President

Comcast Business Communications, LLC. 1701 JFK
Boulevard

Philadelphia, PA 19103

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

2.026 Binding Commitments

Representatives of Contractor must have the authority to make binding commitments on Contractor's behalf within the bounds set forth in the Contract. Contractor may change the representatives from time to time upon giving written notice.

2.077 Relationship of The Parties

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

2.028 Covenant of Good Faith

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

2.029 Assignments

Neither party may assign the Contract, or assign or delegate any of its duties or obligations under the Contract, to any other party (whether by operation of law or otherwise), without the prior written consent of the other party; provided, however, that the State may assign the Contract to any other State agency, department, division or department without the prior consent of Contractor and Contractor may assign the Contract to an affiliate so long as the affiliate is adequately capitalized and can provide adequate assurances that the affiliate can perform the Contract. The State may withhold consent from proposed assignments, subcontracts, or novations when the transfer of responsibility would operate to decrease the State's likelihood of receiving performance on the Contract or the State's ability to recover damages.

Contractor may not, without the prior written approval of the State, assign its right to receive payments due under the Contract. If the State permits an assignment, the Contractor is not relieved of its responsibility to perform any of its contractual duties and the requirement under the Contract that all payments must be made to one entity continues.

If the Contractor intends to assign the contract or any of the Contractor's rights or duties under the Contract, the Contractor must notify the State in writing at least 90 days before the assignment. The Contractor also must provide the State with adequate information about the assignee within a reasonable amount of time before the assignment for the State to determine whether to approve the assignment.

2.030 General Provisions

2.031 Administrative Fee and Reporting

The Contractor must remit an administrative fee of 1 % on all payments remitted to Contractor under the Contract including transactions with the State (including its departments, divisions, agencies, offices, and commissions), MiDEAL members, and other states (including governmental subdivisions and authorized entities). Contractor must submit an itemized purchasing activity report, which includes at a minimum, the name of the purchasing entity and the total dollar volume in sales.

Itemized purchasing activity reports should be mailed to DTMB-Procurement and the administrative fee payments shall be made by check payable to the State of Michigan and mailed to:

The Department of Technology, Management and Budget
Financial Services – Cashier Unit
Lewis Cass Building
320 South Walnut St.
P.O. Box 30681
Lansing, MI 48909

The administrative fee and purchasing activity report are due within 30 calendar days from the last day of each quarter.

2.032 Media Releases

News releases (including promotional literature and commercial advertisements) pertaining to the RFP and Contract or project to which it relates shall not be made without prior written State approval, and then only in accordance with the

explicit written instructions from the State. No results of the activities associated with the RFP and Contract are to be released without prior written approval of the State and then only to persons designated.

2.033 Contract Distribution

Procurement retains the sole right of Contract distribution to all State agencies and local units of government unless other arrangements are authorized by Procurement.

2.034 Permits

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

2.035 Website Incorporation

The State is not 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 the content and has expressly agreed to be bound by it in a writing that has been manually signed by an authorized representative of the State.

2.036 Future Bidding Preclusion

Contractor acknowledges that, to the extent this Contract involves the creation, research, investigation or generation of a future RFP; it may be precluded from bidding on the subsequent RFP. The State reserves the right to disqualify any Bidder if the State determines that the Bidder has used its position (whether as an incumbent Contractor, or as a Contractor hired to assist with the RFP development, or as a Contractor offering free assistance) to gain a competitive advantage on the RFP.

2.037 Freedom Of Information

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

2.038 Disaster Recovery

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

2.040 Financial Provisions

2.041 Fixed Prices For Services/Deliverables

Each Statement of Work or Purchase Order issued under this Contract shall specify (or indicate by reference to the appropriate Contract Exhibit) the firm, fixed prices for all Services/Deliverables, and the associated payment milestones and payment amounts. The State may make progress payments to the Contractor when requested as work progresses, but not more frequently than monthly, in amounts approved by the Contract Administrator, after negotiation. Contractor shall show verification of measurable progress at the time of requesting progress payments.

2.042 Adjustments For Reductions In Scope Of Services/Deliverables

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

2.043 Services/Deliverables Covered

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

2.044 Invoicing And Payment – In General

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

payment milestones and payment amounts.

(b) Each Contractor invoice shall show details as to charges by Service/Deliverable component and location at a level of detail reasonably necessary to satisfy the State's accounting and charge-back requirements. Invoices for Services performed on a time and materials basis shall show, for each individual, the number of hours of Services performed during the billing period, the billable skill/labor category for such person and the applicable hourly billing rate. Prompt payment by the State is contingent on the Contractor's invoices showing the amount owed by the State minus any holdback amount to be retained by the State in accordance with Section 1.600.

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

(d) All invoices should reflect actual work done. The statement should show payment amount and should reflect actual work done by the payment dates, less any penalty cost charges accrued by those dates. As a general policy, statements shall be forwarded to the designated representative by the 15th day of the following month.

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.

2.045 Pro-Ration

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

2.046 Antitrust Assignment

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

2.047 Final Payment

The making of final payment by the State to Contractor does not constitute a waiver by either party of any rights or other claims as to the other party's continuing obligations under the Contract, nor shall it constitute a waiver of any claims by one party against the other arising from unsettled claims or failure by a party to comply with this Contract, including claims for Services and Deliverables not reasonably known until after acceptance to be defective or substandard. Contractor's acceptance of final payment by the State under this Contract shall constitute a waiver of all claims by Contractor against the State for payment under this Contract, other than those claims previously filed in writing on a timely basis and still unsettled.

2.048 Electronic Payment Requirement

Electronic transfer of funds is required for payments on State Contracts. Contractors are required to register with the State electronically at <http://www.cpexpress.state.mi.us>. As stated in Public Act 431 of 1984, all contracts that the State enters into for the purchase of goods and services shall provide that payment shall be made by electronic fund transfer (EFT).

2.050 Taxes

2.051 Employment Taxes

Contractor shall collect and pay all applicable federal, state, and local employment taxes, including the taxes.

2.052 Sales And Use Taxes

Contractor shall register and remit sales and use taxes on taxable sales of tangible personal property or services delivered into the State. Contractors that lack sufficient presence in Michigan to be required to register and pay tax must do so as a volunteer. This requirement extends to: (1) all members of any controlled group as defined in § 1563(a) of the Internal Revenue Code and applicable regulations of which the company is a member, and (2) all organizations under common control as defined in § 414(c) of the Internal Revenue Code and applicable regulations of which the company is a member that make sales at retail for delivery into the State are registered with the State for the collection and remittance of sales and use taxes. In applying treasury regulations defining "two or more trades or businesses under

common control" the term "organization" means sole proprietorship, a partnership (as defined in § 701(a) (2) of the Internal Revenue Code), a trust, an estate, a corporation, or a limited liability company.

2.060 Contract Management

2.061 Contractor Personnel Qualifications

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

2.062 Contractor Key Personnel

- (a) The Contractor must provide the Contract Compliance Inspector with the names of the Key Personnel.
- (b) Key Personnel must be dedicated as defined in the Statement of Work to the Project for its duration in the applicable Statement of Work with respect to other individuals designated as Key Personnel for that Statement of Work.
- (c) The State shall have the right to recommend and approve in writing the initial assignment, as well as any proposed reassignment or replacement, of any Key Personnel. Before assigning an individual to any Key Personnel position, Contractor shall notify the State of the proposed assignment, shall introduce the individual to the appropriate State representatives, and shall provide the State with a resume and any other information about the individual reasonably requested by the State. The State reserves the right to interview the individual before granting written approval. In the event the State finds a proposed individual unacceptable, the State shall provide a written explanation including reasonable detail outlining the reasons for the rejection.
- (d) Contractor must not remove any Key Personnel from their assigned roles on the Contract without the prior written consent of the State. The Contractor's removal of Key Personnel without the prior written consent of the State is an unauthorized removal ("Unauthorized Removal"). Unauthorized Removals does not include replacing Key Personnel for reasons beyond the reasonable control of Contractor, including illness, disability, leave of absence, personal emergency circumstances, and resignation or for cause termination of the Key Personnel's employment. Unauthorized Removals does not include replacing Key Personnel because of promotions or other job movements allowed by Contractor personnel policies or Collective Bargaining Agreement(s) as long as the State receives prior written notice before shadowing occurs and Contractor provides 30 days of shadowing unless parties agree to a different time period. The Contractor with the State must review any Key Personnel replacements, and appropriate transition planning will be established. Any Unauthorized Removal may be considered by the State to be a material breach of the Contract, in respect of which the State may elect to exercise its termination and cancellation rights.
- (e) The Contractor must notify the Contract Compliance Inspector and the Contract Administrator at least 10 business days before redeploying non-Key Personnel, who are dedicated to primarily to the Project, to other projects. If the State does not object to the redeployment by its scheduled date, the Contractor may then redeploy the non-Key Personnel.

2.063 Re-Assignment of Personnel At The State's Request

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

2.064 Contractor Personnel Location

All staff assigned by Contractor to work on the Contract shall perform their duties either primarily at Contractor's offices and facilities or at State facilities. Without limiting the generality of the foregoing, Key Personnel shall, at a minimum, spend at

least the amount of time on-site at State facilities as indicated in the applicable Statement of Work. Subject to availability, selected Contractor personnel may be assigned office space to be shared with State personnel.

2.065 Contractor Identification

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

2.066 Cooperation with Third Parties

Contractor agrees to cause its personnel and the personnel of any Subcontractors to cooperate with the State and its agents and other contractors including the State's Quality Assurance personnel. As reasonably requested by the State in writing, the Contractor shall provide to the State's agents and other contractors reasonable access to Contractor's Project personnel, systems and facilities to the extent the access relates to activities specifically associated with this Contract and shall not interfere or jeopardize the safety or operation of the systems or facilities. The State acknowledges that Contractor's time schedule for the Contract is very specific and agrees not to unnecessarily or unreasonably interfere with, delay or otherwise impeded Contractor's performance under this Contract with the requests for access.

2.067 Contract Management Responsibilities

Contractor shall be responsible for all acts and omissions of its employees, as well as the acts and omissions of any other personnel furnished by Contractor to perform the Services. Contractor shall have overall responsibility for managing and successfully performing and completing the Services/Deliverables, subject to the overall direction and supervision of the State and with the participation and support of the State as specified in this Contract. Contractor's duties shall include monitoring and reporting the State's performance of its participation and support responsibilities (as well as Contractor's own responsibilities) and providing timely notice to the State in Contractor's reasonable opinion if the State's failure to perform its responsibilities in accordance with the Project Plan is likely to delay the timely achievement of any Contract tasks.

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

2.068 Contractor Return Of State Equipment/Resources

The Contractor shall return to the State any State-furnished equipment, facilities and other resources when no longer required for the Contract in the same condition as when provided by the State, reasonable wear and tear excepted.

2.070 Subcontracting by Contractor

2.071 Contractor Full Responsibility

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

2.072 State Consent To Delegation

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

attributable to the State, the applicable SLA for the affected Work shall not be counted for a time agreed upon by the parties.

2.073 Subcontractor Bound To Contract

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

2.074 Flow Down

Except where specifically approved in writing by the State on a case-by-case basis, Contractor shall flow down the obligations in Sections 2.031, 2.060, 2.100, 2.110, 2.120, 2.130, and 2.200 in all of its agreements with any Subcontractors.

2.075 Competitive Selection

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.

2.080 State Responsibilities

2.081 Equipment

The State shall provide only the equipment and resources identified in the Statement of Work and other Contract Exhibits.

2.082 Facilities

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

2.090 Security

2.091 Background Checks

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

All Contractor personnel shall also be expected to comply with the State's security and acceptable use policies for State IT equipment and resources. See <http://www.michigan.gov/dit>. Furthermore, Contractor personnel shall be expected to agree to the State's security and acceptable use policies before the Contractor personnel shall be accepted as a resource to perform work for the State. It is expected the Contractor shall present these documents to the prospective employee before the Contractor presents the individual to the State as a proposed resource. Contractor staff shall be expected to comply with all Physical Security procedures in place within the facilities where they are working.

2.092 Security Breach Notification

If the Contractor breaches this Section, the Contractor must (i) promptly cure any deficiencies and (ii) comply with any applicable federal and state laws and regulations pertaining to unauthorized disclosures. Contractor and the State shall cooperate to mitigate, to the extent practicable, the effects of any breach, intrusion, or unauthorized use or disclosure. Contractor must report to the State in writing any use or disclosure of Confidential Information, whether suspected or actual, other than as provided for by the Contract within 10 days of becoming aware of the use or disclosure or the shorter time period as is reasonable under the circumstances.

2.093 PCI Data Security Requirements

Contractors with access to credit/debit card cardholder data must adhere to the Payment Card Industry (PCI) Data Security requirements. Contractor agrees that they are responsible for security of cardholder data in their possession. Contractor agrees that data can ONLY be used for assisting the State in completing a transaction, supporting a loyalty program, supporting the State, providing fraud control services, or for other uses specifically required by law.

Contractor agrees to provide business continuity in the event of a major disruption, disaster or failure. The Contractor shall contact the Department of Technology, Management and Budget, Financial Services immediately to advise them of any breaches in security where card data has been compromised. In the event of a security intrusion, the Contractor agrees the Payment Card Industry representative, or a Payment Card Industry approved third party, shall be provided with full cooperation and access to conduct a thorough security review. The review will validate compliance with the Payment Card Industry Data Security Standard for protecting cardholder data. Contractor agrees to properly dispose sensitive cardholder data when no longer needed. The Contractor shall continue to treat cardholder data as confidential upon contract termination.

The Contractor shall provide the Department of Technology, Management and Budget, Financial Services documentation showing PCI Data Security certification has been achieved. The Contractor shall advise the Department of Technology, Management and Budget, Financial Services of all failures to comply with the PCI Data Security Requirements. Failures include, but are not limited to system scans and self-assessment questionnaires. The Contractor shall provide a time line for corrective action.

2.100 Confidentiality

2.101 Confidentiality

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

2.102 Protection and Destruction of Confidential Information

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

Subcontractor's scope of responsibility, and (C) Contractor obligates the Subcontractor in a written Contract to maintain the State's Confidential Information in confidence. At the State's request, any employee of Contractor and of any Subcontractor having access or continued access to the State's Confidential Information may be required to execute an acknowledgment that the employee has been advised of Contractor's and the Subcontractor's obligations under this Section and of the employee's obligation to Contractor or Subcontractor, as the case may be, to protect the Confidential Information from unauthorized use or disclosure.

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

2.103 Exclusions

Notwithstanding the foregoing, the provisions in this Section shall not apply to any particular information which the State or Contractor can demonstrate (i) was, at the time of disclosure to it, in the public domain; (ii) after disclosure to it, is published or otherwise becomes part of the public domain through no fault of the receiving party; (iii) was in the possession of the receiving party at the time of disclosure to it without an obligation of confidentiality; (iv) was received after disclosure to it from a third party who had a lawful right to disclose the information to it without any obligation to restrict its further disclosure; or (v) was independently developed by the receiving party without reference to Confidential Information of the furnishing party. Further, the provisions of this Section shall not apply to any particular Confidential Information to the extent the receiving party is required by law to disclose the Confidential Information, provided that the receiving party (i) promptly provides the furnishing party with notice of the legal request, and (ii) assists the furnishing party in resisting or limiting the scope of the disclosure as reasonably requested by the furnishing party.

2.104 No Implied Rights

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

2.106 Respective Obligations

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

2.110 Records and Inspections

2.111 Inspection of Work Performed

The State's authorized representatives shall at all reasonable times and with 10 days prior written request, have the right to enter Contractor's premises, or any other places, where the Services are being performed, and shall have access, upon reasonable request, to interim drafts of Deliverables or work-in-progress. Upon 10 Days prior written notice and at all reasonable times, the State's representatives shall be allowed to inspect, monitor, or otherwise evaluate the work being performed and to the extent that the access will not reasonably interfere or jeopardize the safety or operation of the systems or facilities. Contractor shall provide all reasonable facilities and assistance for the State's representatives.

2.112 Examination of Records

For seven years after the Contractor provides any work under this Contract (the "Audit Period"), the State may examine and copy any of Contractor's books, records, documents and papers pertinent to establishing Contractor's compliance with the Contract and with applicable laws and rules. The State shall notify the Contractor 20 days before examining the Contractor's books and records. The State does not have the right to review any information deemed confidential by the Contractor to the extent access would require the confidential information to become publicly available. This provision also applies to the books, records, accounts, documents and papers, in print or electronic form, of any parent, affiliated or subsidiary organization of Contractor, or any Subcontractor of Contractor performing services in connection with the Contract.

2.113 Retention of Records

Contractor shall maintain at least until the end of the Audit Period all pertinent financial and accounting records (including time sheets and payroll records, and information pertaining to the Contract and to the Services, equipment, and commodities provided under the Contract) pertaining to the Contract according to generally accepted accounting principles and other procedures specified in this Section. Financial and accounting records shall be made available,

upon request, to the State at any time during the Audit Period. If an audit, litigation, or other action involving Contractor's records is initiated before the end of the Audit Period, the records shall be retained until all issues arising out of the audit, litigation, or other action are resolved or until the end of the Audit Period, whichever is later.

2.114 Audit Resolution

If necessary, the Contractor and the State shall meet to review each audit report promptly after issuance. The Contractor shall respond to each audit report in writing within 30 days from receipt of the report, unless a shorter response time is specified in the report. The Contractor and the State shall develop, agree upon and monitor an action plan to promptly address and resolve any deficiencies, concerns, and/or recommendations in the audit report.

2.115 Errors

If the audit demonstrates any errors in the documents provided to the State, then the amount in error shall be reflected as a credit or debit on the next invoice and in subsequent invoices until the amount is paid or refunded in full. However, a credit or debit may not be carried for more than four invoices. If a balance remains after four invoices, then the remaining amount shall be due as a payment or refund within 45 days of the last quarterly invoice that the balance appeared on or termination of the contract, whichever is earlier.

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

2.120 Warranties

2.121 Warranties and Representations

The Contractor represents and warrants:

- (a) It is capable in all respects of fulfilling and must fulfill all of its obligations under this Contract. The performance of all obligations under this Contract must be provided in a timely, professional, and workman-like manner and must meet the performance and operational standards required under this Contract.
- (b) The Contract Appendices, Attachments and Exhibits identify the equipment and software and services necessary for the Deliverable(s) to perform and Services to operate in compliance with the Contract's requirements and other standards of performance.
- (c) It is the lawful owner or licensee of any Deliverable licensed or sold to the State by Contractor or developed by Contractor under this Contract, and Contractor has all of the rights necessary to convey to the State the ownership rights or licensed use, as applicable, of any and all Deliverables. None of the Deliverables provided by Contractor to the State under neither this Contract, nor their use by the State shall infringe the patent, copyright, trade secret, or other proprietary rights of any third party.
- (d) If, under this Contract, Contractor procures any equipment, software or other Deliverable for the State (including equipment, software and other Deliverables manufactured, re-marketed or otherwise sold by Contractor under Contractor's name), then in addition to Contractor's other responsibilities with respect to the items in this Contract, Contractor must assign or otherwise transfer to the State or its designees, or afford the State the benefits of, any manufacturer's warranty for the Deliverable.
- (e) The contract signatory has the power and authority, including any necessary corporate authorizations, necessary to enter into this Contract, on behalf of Contractor.
- (f) It is qualified and registered to transact business in all locations where required.
- (g) Neither the Contractor nor any Affiliates, nor any employee of either, has, must have, or must 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 must notify the State about the nature of the conflict or appearance of impropriety within two days of learning about it.
- (h) Neither Contractor nor any Affiliates, nor any employee of either has accepted or must accept anything of value based on an understanding that the actions of the Contractor or Affiliates or employee on behalf of the State would be influenced. Contractor must not attempt to influence any State employee by the direct or indirect offer of anything of value.
- (i) Neither Contractor nor any Affiliates, nor any employee of either has paid or agreed to pay any person, other than

bona fide employees and consultants working solely for Contractor or the Affiliate, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract.

- (j) The prices proposed by Contractor were arrived at independently, without consultation, communication, or agreement with any other Bidder for the purpose of restricting competition; the prices quoted were not knowingly disclosed by Contractor to any other Bidder; and no attempt was made by Contractor to induce any other person to submit or not submit a proposal for the purpose of restricting competition.
- (k) All financial statements, reports, and other information furnished by Contractor to the State as part of its response to the RFP or otherwise in connection with the award of this Contract fairly and accurately represent the business, properties, financial condition, and results of operations of Contractor as of the respective dates, or for the respective periods, covered by the financial statements, reports, other information. Since the respective dates or periods covered by the 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.
- (l) All written information furnished to the State by or for the Contractor in connection with this Contract, including its bid, is true, accurate, and complete, and contains no untrue statement of material fact or omits any material fact necessary to make the information not misleading.
- (m) It is not in material default or breach of any other contract or agreement that it may have with the State or any of its departments, commissions, boards, or agencies. Contractor further represents and warrants that it has not been a party to any contract with the State or any of its departments that was terminated by the State or the department within the previous five years for the reason that Contractor failed to perform or otherwise breached an obligation of the contract.
- (n) If any of the certifications, representations, or disclosures made in the Contractor's original bid response change after contract award, the Contractor is required to report those changes immediately to the Department of Technology, Management and Budget, Procurement.

2.122 Warranty of Merchantability

Goods provided by Contractor 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 Contractor or on the container or label.

2.123 Warranty of Fitness for a Particular Purpose

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

2.124 Warranty of Title

Contractor shall, in providing goods to the State, convey good title in those goods, whose transfer is right and lawful. All goods provided by Contractor 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 Contractor, under this Contract, shall be delivered free of any rightful claim of any third person by or infringement or the like.

2.125 Equipment Warranty

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

The Contractor represents and warrants that the equipment/system(s) are in good operating condition and operates and performs 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 (1) one year commencing upon the first day following Final Acceptance.

Within two (2) business days of notification from the State, the Contractor must adjust, repair or replace all equipment that is defective or not performing in compliance with the Contract. The Contractor must assume all costs for replacing parts or units and their installation including transportation and delivery fees, if any.

The Contractor must 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 must be performed by Original Equipment Manufacturer (OEM) trained, certified and authorized technicians.

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

2.126 Equipment To Be New

If applicable, all equipment provided under this Contract by Contractor shall be new where Contractor has knowledge regarding whether the equipment is new or assembled from new or serviceable used parts that are like new in performance or has the option of selecting one or the other. Equipment that is assembled from new or serviceable used parts that are like new in performance is acceptable where Contractor does not have knowledge or the ability to select one or other, unless specifically agreed otherwise in writing by the State.

2.127 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 Procurement has approved a change order pursuant to Section 2.024.

2.128 Consequences for Breach

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

2.130 Insurance

2.131 Liability Insurance

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

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

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

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

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

See www.michigan.gov/dleg.

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

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

below:

- ☐ 1. Commercial General Liability with the following minimum coverage:

\$2,000,000 General Aggregate Limit other than Products/Completed Operations
 \$2,000,000 Products/Completed Operations Aggregate Limit
 \$1,000,000 Personal & Advertising Injury Limit

\$1,000,000 Each Occurrence Limit

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

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

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

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

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

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

- ☐ 4. Employers liability insurance with the following minimum limits:
 \$100,000 each accident
 \$100,000 each employee by disease
 \$500,000 aggregate disease
- ☐ 5. Employee Fidelity, including Computer Crimes, insurance naming the State as a loss payee, providing coverage for direct loss to the State and any legal liability of the State arising out of or related to fraudulent or dishonest acts committed by the employees of Contractor or its Subcontractors, acting alone or in collusion with others, in a minimum amount of one million dollars (\$1,000,000.00) with a maximum deductible of fifty thousand dollars (\$50,000.00).
- ☐ 6. Umbrella or Excess Liability Insurance in a minimum amount of ten million dollars (\$10,000,000.00), which must apply, at a minimum, to the insurance required in Subsection 1 (Commercial General Liability) above.
- ☐ 7. Professional Liability (Errors and Omissions) Insurance with the following minimum coverage: three million dollars (\$3,000,000.00) each occurrence and three million dollars (\$3,000,000.00) annual aggregate.
- ☐ 8. Fire and Personal Property Insurance covering against any loss or damage to the office space used by Contractor for any reason under this Contract, and the equipment, software and other contents of the office space, including without limitation, those contents used by Contractor to provide the Services to the State, up to its replacement value, where the office space and its contents are under the care, custody and control of Contractor. The policy must cover all risks of direct physical loss or damage, including without limitation, flood and earthquake coverage and coverage for computer hardware and software. The State must be endorsed on the policy as a loss payee as its interests appear.

2.132 Subcontractor Insurance Coverage

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

2.133 Certificates of Insurance and Other Requirements

Contractor must furnish to MDOT Procurement, certificate(s) of insurance verifying insurance coverage or providing satisfactory evidence of self-insurance as required in this Section (the "Certificates"). The Certificate must be on the standard "accord" form or equivalent. The Contract Number or the Purchase Order Number must be shown on the Certificate of Insurance to Assure Correct Filing. All Certificate(s) are to be prepared and submitted by the

Insurance Provider. All Certificate(s) must contain a provision indicating that coverage afforded under the policies SHALL NOT BE CANCELLED, MATERIALLY CHANGED, OR NOT RENEWED without 30

days prior written notice, except for 10 days for non-payment of premium, having been given to the Director of Procurement, Department of Technology, Management and Budget. The notice must include the Contract or Purchase Order number affected. Before the Contract is signed, and not less than 20 days before the insurance expiration date every year thereafter, the Contractor must provide evidence that the State and its agents, officers and employees are listed as additional insured under each commercial general liability and commercial automobile liability policy. In the event the State approves the representation of the State by the insurer's attorney, the attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.

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

2.140 Indemnification

2.141 General Indemnification

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

2.142 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.

2.143 Employee Indemnification

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

2.144 Patent/Copyright Infringement Indemnification

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

In addition, should the equipment, software, commodity, or service, or its operation, become or in the State's or Contractor's opinion be likely to become the subject of a claim of infringement, the Contractor must at the Contractor's sole expense (i) procure for the State the right to continue using the equipment, software, commodity or service or, if the option is not reasonably available to the Contractor, (ii) replace or modify to the State's satisfaction the same with

equipment, software, commodity or service of equivalent function and performance so that it becomes non-infringing, or, if the 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.

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

2.145 Continuation of Indemnification Obligations

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

2.146 Indemnification Procedures

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

- (a) After the State receives notice of the action or proceeding involving a claim for which it shall seek indemnification, the State must promptly notify Contractor of the claim in writing and take or assist Contractor in taking, as the case may be, any reasonable action to avoid the imposition of a default judgment against Contractor. No failure to notify the Contractor relieves the Contractor of its indemnification obligations except to the extent that the Contractor can prove damages attributable to the failure. Within 10 days following receipt of written notice from the State relating to any claim, the Contractor must 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 before the State receiving Contractor's Notice of Election, the State is entitled to defend against the claim, at the Contractor's expense, and the Contractor will be responsible for any reasonable costs incurred by the State in defending against the claim during that period.
- (b) If Contractor delivers a Notice of Election relating to any claim: (i) the State is entitled to participate in the defense of the claim and to employ counsel at its own expense to assist in the handling of the claim and to monitor and advise the State about the status and progress of the defense; (ii) the Contractor must, at the request of the State, demonstrate to the reasonable satisfaction of the State, the Contractor's financial ability to carry out its defense and indemnity obligations under this Contract; (iii) the Contractor must periodically advise the State about the status and progress of the defense and must obtain the prior written approval of the State before entering into any settlement of the claim or ceasing to defend against the claim and (iv) to the extent that any principles of Michigan governmental or public law may be involved or challenged, the State has the right, at its own expense, to control the defense of that portion of the claim involving the principles of Michigan governmental or public law. But the State may retain control of the defense and settlement of a claim by notifying the Contractor in writing within 10 days after the State's receipt of Contractor's information requested by the State under clause (ii) of this paragraph if the State determines that the Contractor has failed to demonstrate to the reasonable satisfaction of the State the Contractor's financial ability to carry out its defense and indemnity obligations under this Section. Any litigation activity on behalf of the State, or any of its subdivisions under this Section, must be coordinated with the Department of Attorney General. In the event the insurer's attorney represents the State under 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 may defend the claim in the 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 must promptly reimburse the State for all the reasonable costs and expenses.

2.150 Termination/Cancellation

2.151 Notice and Right To Cure

If the Contractor breaches the contract, and the State in its sole discretion determines that the breach is curable, then the State shall provide the Contractor with written notice of the breach and a time period (not less than 30 days) to cure the

Breach. The notice of breach and opportunity to cure is inapplicable for successive or repeated breaches 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.

2.152 Termination for Cause

- (a) The State may terminate this contract, for cause, by notifying the Contractor in writing, if the Contractor (i) breaches any of its material duties or obligations under this Contract (including a Chronic Failure to meet any particular SLA), or (ii) fails to cure a breach within the time period specified in the written notice of breach provided by the State
- (b) If this Contract is terminated for cause, the Contractor must pay all costs incurred by the State in terminating this Contract, including but not limited to, State administrative costs, reasonable attorneys' fees and court costs, and any reasonable additional costs the State may incur to procure the Services/Deliverables required by this Contract from other sources. Re-procurement costs are not consequential, indirect or incidental damages, and cannot be excluded by any other terms otherwise included in this Contract, provided the costs are not in excess of 50% more than the prices for the Service/Deliverables provided under this Contract.
- (c) If the State chooses to partially terminate this Contract for cause, charges payable under this Contract shall be equitably adjusted to reflect those Services/Deliverables that are terminated and the State must pay for all Services/Deliverables for which Final Acceptance has been granted provided up to the termination date. Services and related provisions of this Contract that are terminated for cause must cease on the effective date of the termination.
- (d) If the State terminates this Contract for cause under this Section, and it is determined, for any reason, that Contractor was not in breach of contract under the provisions of this section, that termination for cause must be deemed to have been a termination for convenience, effective as of the same date, and the rights and obligations of the parties must be limited to that otherwise provided in this Contract for a termination for convenience.

2.153 Termination for Convenience

The State may terminate this Contract for its convenience, in whole or part, if the State determines that a termination is in the State's best interest. Reasons for the termination must be left to the sole discretion of the State and may include, but not necessarily be limited to (a) the State no longer needs the Services or products specified in the Contract, (b) relocation of office, program changes, changes in laws, rules, or regulations make implementation of the Services no longer practical or feasible, (c) unacceptable prices for Additional Services or New Work requested by the State, or (d) falsification or misrepresentation, by inclusion or non-inclusion, of information material to a response to any RFP issued by the State. The State may terminate this Contract for its convenience, in whole or in part, by giving Contractor written notice at least 30 days before the date of termination. If the State chooses to terminate this Contract in part, the charges payable under this Contract must be equitably adjusted to reflect those Services/Deliverables that are terminated. Services and related provisions of this Contract that are terminated for convenience must cease on the effective date of the termination.

2.154 Termination for Non-Appropriation

- (a) Contractor acknowledges that, if this Contract extends for several fiscal years, continuation of this Contract is subject to appropriation or availability of funds for this Contract. If funds to enable the State to effect continued payment under this Contract are not appropriated or otherwise made available, the State must terminate this Contract and all affected Statements of Work, in whole or in part, at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of termination to Contractor. The State must give Contractor at least 30 days advance written notice of termination for non-appropriation or unavailability (or the time as is available if the State receives notice of the final decision less than 30 days before the funding cutoff).
- (b) If funding for the Contract is reduced by law, or funds to pay Contractor for the agreed-to level of the Services or production of Deliverables to be provided by Contractor are not appropriated or otherwise unavailable, the State may, upon 30 days written notice to Contractor, reduce the level of the Services or change the production of Deliverables in the manner and for the periods of time as the State may elect. The charges payable under this Contract shall be equitably adjusted to reflect any equipment, services or commodities not provided by reason of the reduction.
- (c) If the State terminates this Contract, eliminates certain Deliverables, or reduces the level of Services to be provided by Contractor under this Section, the State must pay Contractor for all Work- in-Process performed through the effective date of the termination or reduction in level, as the case may be and as determined by the State, to the extent funds are available. This Section shall not preclude Contractor from reducing or stopping

Services/Deliverables or raising against the State in a court of competent jurisdiction, any claim for a shortfall in payment for Services performed or Deliverables finally accepted before the effective date of termination.

2.155 Termination for Criminal Conviction

The State may terminate this Contract immediately and without further liability or penalty in the event Contractor, an officer of Contractor, or an owner of a 25% or greater share of Contractor is convicted of a criminal offense related to a State, public or private Contract or subcontract.

2.156 Termination for Approvals Rescinded

The State may terminate this Contract if any final administrative or judicial decision or adjudication disapproves a previously approved request for purchase of personal services under Constitution 1963, Article 11, § 5, and Civil Service Rule 7-1. In that case, the State shall pay the Contractor for only the work completed to that point under the Contract. 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 the written notice.

2.157 Rights and Obligations Upon Termination

- (a) If the State terminates this Contract for any reason, the Contractor must (a) stop all work as specified in the notice of termination, (b) take any action that may be necessary, or that the State may direct, for preservation and protection of Deliverables or other property derived or resulting from this Contract that may be in Contractor's possession, (c) return all materials and property provided directly or indirectly to Contractor by any entity, agent or employee of the State, (d) transfer title in, and deliver to, the State, unless otherwise directed, all Deliverables intended to be transferred to the State at the termination of the Contract and which are resulting from the Contract (which must be provided to the State on an "As-Is" basis except to the extent the amounts paid by the State in respect of the items included compensation to Contractor for the provision of warranty services in respect of the materials), and (e) take any action to mitigate and limit any potential damages, or requests for Contractor adjustment or termination settlement costs, to the maximum practical extent, including terminating or limiting as otherwise applicable those subcontracts and outstanding orders for material and supplies resulting from the terminated Contract.
- (b) If the State terminates this Contract before its expiration for its own convenience, the State must pay Contractor for all charges due for Services provided before the date of termination and, if applicable, as a separate item of payment under this Contract, for Work In Process, on a percentage of completion basis at the level of completion determined by the State. All completed or partially completed Deliverables prepared by Contractor under this Contract, at the option of the State, becomes the State's property, and Contractor is entitled to receive equitable fair compensation for the Deliverables. Regardless of the basis for the termination, the State is not obligated to pay, or otherwise compensate, Contractor for any lost expected future profits, costs or expenses incurred with respect to Services not actually performed for the State.
- (c) Upon a good faith termination, the State may assume, at its option, any subcontracts and agreements for services and deliverables provided under this Contract, and may further pursue completion of the Services/Deliverables under this Contract by replacement contract or otherwise as the State may in its sole judgment deem expedient.

2.158 Reservation of Rights

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

2.160 Termination by Contractor

2.161 Termination by Contractor

If the State breaches the Contract, and the Contractor in its sole discretion determines that the breach is curable, then the Contractor will provide the State with written notice of the breach and a time period (not less than 30 days) to cure the breach. The Notice of Breach and opportunity to cure is inapplicable for successive and repeated breaches.

The Contractor may terminate this Contract if the State (i) materially breaches its obligation to pay the Contractor undisputed amounts due and owing under this Contract, (ii) breaches its other obligations under this Contract to an extent that makes it impossible or commercially impractical for the Contractor to perform the Services, or (iii) does not cure the breach within the time period specified in a written notice of breach. But the Contractor must discharge its obligations under Section 2.160 before it terminates the Contract.

2.170 Transition Responsibilities

2.171 Contractor Transition Responsibilities

If the State terminates this contract, for convenience or cause, or if the Contract is otherwise dissolved, voided, rescinded, nullified, expires or rendered unenforceable, the Contractor shall comply with direction provided by the State to assist in the orderly transition of equipment, services, software, leases, etc. to the State or a third party designated by the State. If this Contract expires or terminates, the Contractor agrees to make all reasonable efforts to effect an orderly transition of services within a reasonable period of time that in no event will exceed 60 business days. These efforts must include, but are not limited to, those listed in Section 2.150.

2.172 Contractor Personnel Transition

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

2.173 Contractor Information Transition

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

2.174 Contractor Software Transition

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

2.175 Transition Payments

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

2.176 State Transition Responsibilities

In the event that this Contract is terminated, dissolved, voided, rescinded, nullified, or otherwise rendered unenforceable, the State agrees to reconcile all accounts between the State and the Contractor, complete any pending post-project reviews and perform any others obligations upon which the State and the Contractor agree.

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

2.180 Stop Work

2.181 Stop Work Orders

The State may, at any time, by written Stop Work Order to Contractor, require that Contractor stop all, or any part, of the work called for by the Contract for a period of up to 90 calendar days after the Stop Work Order is delivered to Contractor, and for any further period to which the parties may agree. The Stop Work Order must be identified as a Stop Work Order and must indicate that it is issued under this Section. Upon receipt of the stop work order, Contractor must immediately

comply with its terms and take all reasonable steps to minimize incurring 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 must either: (a) cancel the stop work order; or (b) terminate the work covered by the Stop Work Order as provided in Section 2.182.

2.182 Cancellation or Expiration of Stop Work Order

The Contractor shall resume work if the State cancels a Stop Work Order or if it expires. The parties shall agree upon an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract shall be modified, in writing, accordingly, if: (a) the Stop Work Order results in an increase in the time required for, or in Contractor's costs properly allocable to, the performance of any part of the Contract; and (b) Contractor asserts its right to an equitable adjustment within 30 calendar days after the end of the period of work stoppage; provided that, if the State decides the facts justify the action, the State may receive and act upon a Contractor proposal submitted at any time before final payment under the Contract. Any adjustment will conform to the requirements of Section 2.024.

2.183 Allowance of Contractor Costs

If the Stop Work Order is not canceled and the work covered by the Stop Work Order is terminated for reasons other than material breach, the termination shall be deemed to be a termination for convenience under Section 2.153, and the State shall pay reasonable costs resulting from the Stop Work Order in arriving at the termination settlement. For the avoidance of doubt, the State shall not be liable to Contractor for loss of profits because of a Stop Work Order issued under this Section.

2.190 Dispute Resolution

2.191 In General

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

2.192 Informal Dispute Resolution

(a) All disputes between the parties shall be resolved under the Contract Management procedures in this Contract. If the parties are unable to resolve any dispute after compliance with the processes, the parties must meet with the Director of Procurement, DTMB, or designee, to resolve the dispute without the need for formal legal proceedings, as follows:

- (1) The representatives of Contractor and the State must meet as often as the parties reasonably deem necessary to gather and furnish to each other all information with respect to the matter at issue which the parties believe to be appropriate and germane in connection with its resolution. The representatives shall discuss the problem and negotiate in good faith in an effort to resolve the dispute without the necessity of any formal proceeding.
- (2) During the course of negotiations, all reasonable requests made by one party to another for non-privileged information reasonably related to the Contract shall be honored in order that each of the parties may be fully advised of the other's position.
- (3) The specific format for the discussions shall be left to the discretion of the designated State and Contractor representatives, but may include the preparation of agreed upon statements of fact or written statements of position.
- (4) Following the completion of this process within 60 calendar days, the Director of Procurement, DTMB, or designee, shall issue a written opinion regarding the issue(s) in dispute within 30 calendar days. The opinion regarding the dispute must be considered the State's final action and the exhaustion of administrative remedies.

(b) This Section shall not be construed to prevent either party from instituting, and a party is authorized to institute, formal proceedings earlier to avoid the expiration of any applicable limitations period, to preserve a superior position with respect to other creditors, or under Section 2.193.

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

2.193 Injunctive Relief

The only circumstance in which disputes between the State and Contractor shall not be subject to the provisions of Section 2.192 is where a party makes a good faith determination that a breach of the terms of the Contract by the other party is that the damages to the party resulting from the breach shall be so immediate, so large or severe and so incapable of adequate redress after the fact that a temporary restraining order or other immediate injunctive relief is the only adequate remedy.

2.194 Continued Performance

Each party agrees to continue performing its obligations under the Contract while a dispute is being resolved except to the extent the issue in dispute precludes performance (dispute over payment must not be deemed to preclude performance) and without limiting either party's right to terminate the Contract as provided in Section 2.150, as the case may be.

2.200 Federal and State Contract Requirements

2.201 Nondiscrimination

In the performance of the Contract, Contractor agrees not to discriminate against any employee or applicant for employment, with respect to his or her hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, ancestry, age, sex, height, weight, and marital status, physical or mental disability. Contractor further agrees that every subcontract entered into for the performance of this Contract or any purchase order resulting from this Contract will contain a provision requiring non-discrimination in employment, as specified here, binding upon each Subcontractor. This covenant is required under the Elliot Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, et seq., and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, et seq., and any breach of this provision may be regarded as a material breach of the Contract.

2.202 Unfair Labor Practices

Under 1980 PA 278, MCL 423.321, et seq., the State shall not award a Contract or subcontract to an employer whose name appears in the current register of employers failing to correct an unfair labor practice compiled under section 2 of the Act. This information is compiled by the United States National Labor Relations Board. A Contractor of the State, in relation to the Contract, shall not enter into a contract with a Subcontractor, manufacturer, or supplier whose name appears in this register. Under section 4 of 1980 PA 278, MCL 423.324, the State may void any Contract if, after award of the Contract, the name of Contractor as an employer or the name of the Subcontractor, manufacturer or supplier of Contractor appears in the register.

2.203 Workplace Safety and Discriminatory Harassment

In performing Services for the State, the Contractor shall comply with the Department of Civil Services Rule 2-20 regarding Workplace Safety and Rule 1-8.3 regarding Discriminatory Harassment. In addition, the Contractor shall comply with Civil Service regulations and any applicable agency rules provided to the Contractor. For Civil Service Rules, see <http://www.mi.gov/mdcs/0.1607.7-147-6877---00.html>.

2.204 Prevailing Wage

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

The Contractor, its subcontractors, their subcontractors and all persons involved with the performance of this contract in privity of contract with the Contractor shall keep posted on the work site, in a conspicuous place, a copy of all wage rates and fringe benefits as prescribed in the Contract. Contractor shall also post, in a conspicuous place, the address and telephone number of the Michigan Department of Labor and Economic Development, the agency responsible for enforcement of the wage rates and fringe benefits. Contractor 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.

2.210 Governing Law

2.211 Governing Law

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

2.212 Compliance with Laws

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

2.213 Jurisdiction

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

2.220 Limitation of Liability

2.221 Limitation of Liability

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

The State's liability for damages to the Contractor is limited to the value of the work performed by the Contractor up to the point the damages occurred.

2.230 Disclosure Responsibilities

2.231 Disclosure of Litigation

Contractor shall disclose any material criminal litigation, investigations or proceedings involving the Contractor (and each Subcontractor) or any of its officers or directors or any litigation, investigations or proceedings under the Sarbanes-Oxley Act. In addition, each Contractor (and each Subcontractor) shall notify the State of any material civil litigation, arbitration or proceeding which arises during the term of the Contract and extensions, to which Contractor (or, to the extent Contractor is aware, any Subcontractor) is a party, and which involves: (i) disputes that might reasonably be expected to adversely affect the viability or financial stability of Contractor or any Subcontractor; or (ii) a claim or written allegation of fraud against Contractor or, to the extent Contractor is aware, any Subcontractor by a governmental or public entity arising out of their business dealings with governmental or public entities. The Contractor shall disclose in writing to the Contract Administrator any litigation, investigation, arbitration or other proceeding (collectively, "Proceeding") within 30 days of its occurrence. Details of settlements that are prevented from disclosure by the terms of the settlement may be annotated. Information provided to the State from Contractor's publicly filed documents referencing its material litigation shall be deemed to satisfy the requirements of this Section.

If any Proceeding disclosed to the State under this Section, or of which the State otherwise becomes aware, during the term of this Contract would cause a reasonable party to be concerned about:

- (a) The ability of Contractor (or a Subcontractor) to continue to perform this Contract according to its terms and

conditions, or

(b) Whether Contractor (or a Subcontractor) in performing Services for the State is engaged in conduct which is similar in nature to conduct alleged in the Proceeding, which conduct would constitute a breach of this Contract or a violation of Michigan law, regulations or public policy, then the Contractor must provide the State all reasonable assurances requested by the State to demonstrate that:

- (1) Contractor and its Subcontractors will be able to continue to perform this Contract and any Statements of Work according to its terms and conditions, and
 - (2) Contractor and its Subcontractors have not and will not engage in conduct in performing the Services which is similar in nature to the conduct alleged in the Proceeding.
- (c) Contractor shall make the following notifications in writing:
- (1) Within 30 days of Contractor becoming aware that a change in its ownership or officers has occurred, or is certain to occur, or a change that could result in changes in the valuation of its capitalized assets in the accounting records, Contractor must notify MDTMB Procurement.
 - (2) Contractor shall also notify MDTMB Procurement 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.
 - (3) Contractor shall also notify MDTMB Purchase Operations within 30 days whenever changes to company affiliations occur.

2.232 Call Center Disclosure

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

2.233 Bankruptcy

The State may, without prejudice to any other right or remedy, terminate this Contract, in whole or in part, and, at its option, may take possession of the "Work in Process" and finish the Works in Process by whatever appropriate method the State may deem expedient if:

- (a) The Contractor files for protection under the bankruptcy laws;
- (b) An involuntary petition is filed against the Contractor and not removed within 30 days;
- (c) The Contractor becomes insolvent or if a receiver is appointed due to the Contractor's insolvency;
- (d) The Contractor makes a general assignment for the benefit of creditors; or
- (e) The Contractor or its affiliates are unable to provide reasonable assurances that the Contractor or its affiliates can deliver the services under this Contract.

Contractor will fix appropriate notices or labels on the Work in Process to indicate ownership by the State. To the extent reasonably possible, materials and Work in Process shall be stored separately from other stock and marked conspicuously with labels indicating ownership by the State.

2.240 Performance

2.241 Time of Performance

- (a) Contractor shall use commercially reasonable efforts to provide the resources necessary to complete all Services and Deliverables according to the time schedules contained in the Statements of Work and other Exhibits governing the work, and with professional quality.
- (b) Without limiting the generality of **Section 2.241**, Contractor shall notify the State in a timely manner upon becoming aware of any circumstances that may reasonably be expected to jeopardize the timely and successful completion of any Deliverables/Services on the scheduled due dates in the latest State-approved delivery schedule and must inform the State of the projected actual delivery date.
- (c) If the Contractor believes that a delay in performance by the State has caused or will cause the Contractor to be unable to perform its obligations according to specified Contract time periods, the Contractor must notify the State in a timely manner and must use commercially reasonable efforts to perform its obligations according to the Contract time periods notwithstanding the State's failure. Contractor will not be in default for a delay in performance to the extent the delay is caused by the State.

2.242 Service Level Agreement (SLA)

(a) SLAs will be completed with the following operational considerations:

- (1) SLAs will not be calculated for individual Incidents where any event of Excusable Failure has been determined; Incident means any interruption in Services.
- (2) SLAs will not be calculated for individual Incidents where loss of service is planned and where the State has received prior notification or coordination.
- (3) SLAs will not apply if the applicable Incident could have been prevented through planning proposed by Contractor and not implemented at the request of the State. To invoke this consideration, complete documentation relevant to the denied planning proposal must be presented to substantiate the proposal.
- (4) Time period measurements will be based on the time Incidents are received by the Contractor and the time that the State receives notification of resolution based on 24x7x365 time period, except that the time period measurement will be suspended based on the following:
 - (i) Time period(s) will not apply where Contractor does not have access to a physical State Location and where access to the State Location is necessary for problem identification and resolution.
 - (ii) Time period(s) will not apply where Contractor needs to obtain timely and accurate information or appropriate feedback and is unable to obtain timely and accurate information or appropriate feedback from the State.

- (b) Chronic Failure for any Service(s) will be defined as three unscheduled outage(s) or interruption(s) on any individual Service for the same reason or cause or if the same reason or cause was reasonably discoverable in the first instance over a rolling 30 day period. Chronic Failure will result in the State's option to terminate the effected individual Service(s) and procure them from a different Contractor for the chronic location(s) with Contractor to pay the difference in charges for up to three additional months. The termination of the Service will not affect any tiered pricing levels.
- (c) Root Cause Analysis will be performed on any Business Critical outage(s) or outage(s) on Services when requested by the Contract Administrator. Contractor will provide its analysis within two weeks of outage(s) and provide a recommendation for resolution.
- (d) All decimals must be rounded to two decimal places with five and greater rounding up and four and less rounding down unless otherwise specified.

2.243 Liquidated Damages

The parties acknowledge that late or improper completion of the Work will cause loss and damage to the State, and that it would be impracticable and extremely difficult to fix the actual damage sustained by the State as a result. Therefore, Contractor and the State agree that if there is late or improper completion of the Work and the State does not elect to exercise its rights under Section 2.152, the State is entitled to collect liquidated damages in the amount of \$5,000.00 and an additional \$100.00 per day for each day Contractor fails to remedy the late or improper completion of the Work.

2.244 Excusable Failure

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

If a party does not perform its contractual obligations for any of the reasons listed above, the non-performing party will be excused from any further performance of its affected obligation(s) for as long as the circumstances prevail. But the party must use commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay. A party must promptly notify the other party in writing immediately after the excusable failure occurs, and also when it abates or ends.

If any of the above-enumerated circumstances substantially prevent, hinder, or delay the Contractor's performance of the Services/provision of Deliverables for more than 10 Business Days, and the State determines that performance is not likely to be resumed within a period of time that is satisfactory to the State in its reasonable discretion, then at the State's option: (a) the State may procure the affected Services/Deliverables from an alternate source, and the State is not be

liable for payment for the unperformed Services/ Deliverables not provided under the Contract for so long as the delay in performance continues; (b) the State may terminate any portion of the Contract so affected and the charges payable will be equitably adjusted to reflect those Services/Deliverables terminated; or (c) the State may terminate the affected Statement of Work without liability to Contractor as of a date specified by the State in a written notice of termination to the Contractor, except to the extent that the State must pay for Services/Deliverables provided through the date of termination.

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

2.250 Approval of Deliverables

2.251 Delivery of Deliverables

A list of the Deliverables to be prepared and delivered by Contractor including, for each Deliverable, the scheduled delivery date and a designation of whether the Deliverable is a document ("Written Deliverable") or a Custom Software Deliverable is attached, if applicable. All Deliverables shall be completed and delivered for State review and written approval and, where applicable, installed in accordance with the State-approved delivery schedule and any other applicable terms and conditions of this Contract.

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

In discharging its obligations under this Section, Contractor shall be at all times (except where the parties agree otherwise in writing) in compliance with Level 3 of the Software Engineering Institute's Capability Maturity Model for Software ("CMM Level 3") or its equivalent.

2.252 Contractor System Testing

Contractor will be responsible for System Testing each Custom Software Deliverable in Contractor's development environment prior to turning over the Custom Software Deliverable to the State for User Acceptance Testing and approval. Contractor's System Testing shall include the following, at a minimum, plus any other testing required by CMM Level 3 or Contractor's system development methodology:

Contractor will be responsible for performing Unit Testing and incremental Integration Testing of the components of each Custom Software Deliverable.

Contractor's System Testing will also include Integration Testing of each Custom Software Deliverable to ensure proper inter-operation with all prior software Deliverables, interfaces and other components that are intended to inter-operate with such Custom Software Deliverable, and will include Regression Testing, volume and stress testing to ensure that the Custom Software Deliverables are able to meet the State's projected growth in the number and size of transactions to be processed by the Application and number of users, as such projections are set forth in the applicable Statement of Work.

Contractor's System Testing will also include Business Function Testing and Technical Testing of each Application in a simulated production environment. Business Function Testing will include testing of full work streams that flow through the Application as the Application will be incorporated within the State's computing environment. The State shall participate in and provide support for the Business Function Testing to the extent reasonably requested by Contractor. Within ten (10) days before the commencement of Business Function Testing pursuant to this Section, Contractor shall provide the State for State review and written approval Contractor's test plan for Business Function Testing.

Within five (5) Business Days following the completion of System Testing pursuant to this Section, Contractor shall provide to the State a testing matrix establishing that testing for each condition identified in the System Testing plans has been conducted and successfully concluded. To the extent that testing occurs on State premises, the State shall be entitled to observe or otherwise participate in testing under this Section as the State may elect.

2.253 Approval of Deliverables, In General

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

The State's obligation to comply with any State Review Period is conditioned on the timely delivery of Deliverables being reviewed. If Contractor fails to provide a Deliverable to the State in a timely manner, the State will nevertheless use commercially reasonable efforts to complete its review or testing within the applicable State Review Period.

Before commencement of its review or testing of a Deliverable, the State may inspect the Deliverable to confirm that all components of the Deliverable (e.g., software, associated documentation, and other materials) have been delivered. If the State determines that the Deliverable is incomplete, the State may refuse delivery of the Deliverable without performing any further inspection or testing of the Deliverable. Otherwise, the review period will be deemed to have started on the day the State receives the Deliverable and the applicable certification by Contractor in accordance with this Section.

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

If, after three (3) opportunities (the original and two repeat efforts), Contractor is unable to correct all deficiencies preventing State approval of a Deliverable, the State may: (i) demand that Contractor cure the failure and give Contractor additional time to cure the failure at the sole expense of Contractor; or (ii) keep this Contract in force and do, either itself or through other parties, whatever Contractor has failed to do, in which event Contractor shall bear any excess expenditure incurred by the State in so doing beyond the contract price for such Deliverable and will pay the State an additional sum equal to ten percent (10%) of such excess expenditure to cover the State's general expenses without the need to furnish proof in substantiation of such general expenses; or (iii) terminate this Contract for default, either in whole or in part by notice to Contractor (and without the need to afford Contractor any further opportunity to cure). Notwithstanding the foregoing, the State shall not use, as a basis for exercising its termination rights under this Section, deficiencies discovered in a repeat State Review Period that could reasonably have been discovered during a prior State Review Period.

The State, at any time and in its own discretion, may halt the UAT or approval process if such process reveals deficiencies in or problems with a Deliverable in a sufficient quantity or of a sufficient severity as to make the continuation of such process unproductive or unworkable. In such case, the State may return the applicable Deliverable to Contractor for correction and re-delivery prior to resuming the review or UAT process and, in that event, Contractor will correct the deficiencies in such Deliverable in accordance with the Contract, as the case may be.

Approval in writing of a Deliverable by the State shall be provisional; that is, such approval shall not preclude the State from later identifying deficiencies in, and declining to accept, a subsequent Deliverable based on or which incorporates or inter-operates with an approved Deliverable, to the extent that the results of subsequent review or testing indicate the existence of deficiencies in the subsequent Deliverable, or if the Application of which the subsequent Deliverable is a component otherwise fails to be accepted pursuant to Section 2.080.

2.254 Process for Approval of Written Deliverables

The State Review Period for Written Deliverables will be the number of days set forth in the applicable Statement of Work following delivery of the final version of the Written Deliverable (failing which the State Review Period, by default, shall be five (5) Business Days for Written Deliverables of one hundred (100) pages or less and ten (10) Business Days for Written Deliverables of more than one hundred (100) pages). The duration of the State Review Periods will be doubled if the State has not had an opportunity to review an interim draft of the Written Deliverable prior to its submission to the State. The State agrees to notify Contractor in writing by the end of the State Review Period either stating that the Written Deliverable is approved in the form delivered by Contractor or describing any deficiencies that shall be corrected prior to approval of the Written Deliverable (or at the State's election, subsequent to approval of the Written Deliverable). If the State delivers to Contractor a notice of deficiencies, Contractor will correct the described deficiencies and within five

(5) Business Days resubmit the Deliverable in a form that shows all revisions made to the original version delivered to the State. Contractor's correction efforts will be made at no additional charge. Upon receipt of a corrected Written Deliverable from Contractor, the State will have a reasonable additional period of time, not to exceed the length of the

original State Review Period, to review the corrected Written Deliverable to confirm that the identified deficiencies have been corrected.

2.255 Process for Approval of Custom Software Deliverables

The State will conduct UAT of each Custom Software Deliverable in accordance with the following procedures to determine whether it meets the criteria for State approval – i.e., whether it conforms to and performs in accordance with its specifications without material deficiencies.

Within thirty (30) days (or such other number of days as the parties may agree to in writing) prior to Contractor's delivery of any Custom Software Deliverable to the State for approval, Contractor shall provide to the State a set of proposed test plans, including test cases, scripts, data and expected outcomes, for the State's use (which the State may supplement in its own discretion) in conducting UAT of the Custom Software Deliverable. Contractor, upon request by the State, shall provide the State with reasonable assistance and support during the UAT process.

For the Custom Software Deliverables listed in an attachment, the State Review Period for conducting UAT will be as indicated in the attachment. For any other Custom Software Deliverables not listed in an attachment, the State Review Period shall be the number of days agreed in writing by the parties (failing which it shall be forty-five (45) days by default). The State Review Period for each Custom Software Deliverable will begin when Contractor has delivered the Custom Software Deliverable to the State accompanied by the certification required by this Section and the State's inspection of the Deliverable has confirmed that all components of it have been delivered.

The State's UAT will consist of executing test scripts from the proposed testing submitted by Contractor, but may also include any additional testing deemed appropriate by the State. If the State determines during the UAT that the Custom Software Deliverable contains any deficiencies, the State will notify Contractor of the deficiency by making an entry in an incident reporting system available to both Contractor and the State. Contractor will modify promptly the Custom Software Deliverable to correct the reported deficiencies, conduct appropriate System Testing (including, where applicable, Regression Testing) to confirm the proper correction of the deficiencies and re-deliver the corrected version to the State for re-testing in UAT. Contractor will coordinate the re-delivery of corrected versions of Custom Software Deliverables with the State so as not to disrupt the State's UAT process. The State will promptly re-test the corrected version of the Software Deliverable after receiving it from Contractor.

Within two (2) business days (unless faulty gear causing an "emergency" situation) after the end of the State Review Period, the State will give Contractor a written notice indicating the State's approval or rejection of the Custom Software Deliverable according to the criteria and process set out in this Section.

2.255 Final Acceptance

"Final Acceptance" shall be considered to occur when the Custom Software Deliverable to be delivered has been approved by the State and has been operating in production without any material deficiency for fourteen (14) consecutive days. If the State elects to defer putting a Custom Software Deliverable into live production for its own reasons, not based on concerns about outstanding material deficiencies in the Deliverable, the State shall nevertheless grant Final Acceptance of the Project.

2.260 Ownership

2.261 Ownership of Work Product by State

The State owns all Deliverables, as they are work made for hire by the Contractor for the State. The State owns all United States and international copyrights, trademarks, patents or other proprietary rights in the Deliverables.

2.262 Vesting of Rights

With the sole exception of any preexisting licensed works identified in the SOW, the Contractor assigns, and upon creation of each Deliverable automatically assigns, to the State, ownership of all United States and international copyrights, trademarks, patents, or other proprietary rights in each and every Deliverable, whether or not registered by the Contractor, insofar as any the Deliverable, by operation of law, may not be considered work made for hire by the Contractor for the State. From time to time upon the State's request, the Contractor must confirm the assignment by execution and delivery of the assignments, confirmations of assignment, or other written instruments as the State may request. The State may obtain and hold in its own name all copyright, trademark, and patent registrations and other evidence of rights that may be available for Deliverables.

2.263 Rights in Data

The State is the owner of all data made available by the State to the Contractor or its agents, Subcontractors or representatives under the Contract. The Contractor will not use the State's data for any purpose other than providing the Services, nor will any part of the State's data be disclosed, sold, assigned, leased or otherwise disposed of to the general public or to specific third parties or commercially exploited by or on behalf of the Contractor. No employees of the Contractor, other than those on a strictly need-to-know basis, have access to the State's data. Contractor will not possess or assert any lien or other right against the State's data. Without limiting the generality of this Section, the Contractor must only use personally identifiable information as strictly necessary to provide the Services and must disclose the information only to its employees who have a strict need-to-know the information. The Contractor must comply at all times with all laws and regulations applicable to the personally identifiable information.

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

2.264 Ownership of Materials

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

2.270 State Standards

2.271 Existing Technology Standards

The Contractor will adhere to all existing standards as described within the comprehensive listing of the State's existing technology standards at <http://www.michigan.gov/dit>.

2.272 Acceptable Use Policy

To the extent that Contractor has access to the State computer system, Contractor must comply with the State's Acceptable Use Policy, see <http://www.michigan.gov/dit/service>. All Contractor employees must be required, in writing, to agree to the State's Acceptable Use Policy before accessing the State system. The State reserves the right to terminate Contractor's access to the State system if a violation occurs.

2.273 Systems Changes

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

2.280 Extended Purchasing

2.281 MIDEAL (Michigan Delivery Extended Agreements Locally)

Public Act 431 of 1984 permits MDTMB to provide purchasing services to any city, village, county, township, school district, intermediate school district, non-profit hospital, institution of higher education, community, or junior college. A current listing of approved program members is available at: www.michigan.gov/buyinmichiganfirst. Unless otherwise stated, the Contractor must ensure that the non-state agency is an authorized purchaser before extending the Contract pricing.

The Contractor will supply Contract Services and equipment to these local governmental agencies at the established State of Michigan contract prices and terms to the extent applicable and where available. The Contractor must send its invoices to, and pay the local unit of government, on a direct and individual basis.

To the extent that authorized local units of government purchase quantities of Services and/or equipment under this Contract, the quantities of Services and/or equipment purchased will be included in determining the appropriate rate wherever tiered pricing based on quantity is provided.

State Employee Purchases

The State allows State employees to purchase from this Contract. Unless otherwise stated, it is the responsibility of the Contractor to ensure that the State employee is an authorized purchaser before extending the Contract pricing.

The Contractor will supply Contract Services and Deliverables at the established State of Michigan contract prices and terms to the extent applicable and where available. The Contractor shall send its invoices to and pay the State employee on a direct and individual basis.

To the extent that authorized State employees purchase quantities of Services or Deliverables under this Contract, the quantities of Services and/or Deliverables purchased will be included in determining the appropriate rate wherever tiered pricing based on quantity is provided.

2.290 Environmental Provision

2.291 Environmental Provision

Energy Efficiency Purchasing Policy: The State seeks wherever possible to purchase energy efficient products. This includes giving preference to U.S. Environmental Protection Agency (EPA) certified 'Energy Star' products for any category of products for which EPA has established Energy Star certification. For other purchases, the State may include energy efficiency as one of the priority factors to consider when choosing among comparable products.

Environmental Purchasing Policy: The State of Michigan is committed to encouraging the use of products and services that impact the environment less than competing products. The State is accomplishing this by including environmental considerations in purchasing decisions, while remaining fiscally responsible, to promote practices that improve worker health, conserve natural resources, and prevent pollution. Environmental components that are to be considered include: recycled content and recyclables; energy efficiency; and the presence of undesirable materials in the products, especially those toxic chemicals which are persistent and bio accumulative. The Contractor should be able to supply products containing recycled and environmentally preferable materials that meet performance requirements and is encouraged to offer such products throughout the duration of this Contract. Information on any relevant third party certification (such as Green Seal, Energy Star, etc.) should also be provided.

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

- (a) The Contractor shall use, handle, store, dispose of, process, transport and transfer any material considered a Hazardous Material according to all federal, State and local laws. The State shall provide a safe and suitable environment for performance of Contractor's Work. Before the commencement of Work, the State shall advise the Contractor of the presence at the work site of any Hazardous Material to the extent that the State is aware of the Hazardous Material. If the Contractor encounters material reasonably believed to be a Hazardous Material and which may present a substantial danger, the Contractor shall immediately stop all affected Work, notify the State in writing about the conditions encountered, and take appropriate health and safety precautions.
- (b) Upon receipt of a written notice, the State will investigate the conditions. If (a) the material is a Hazardous Material that may present a substantial danger, and (b) the Hazardous Material was not brought to the site by the Contractor, or does not result in whole or in part from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Materials, the State shall order a suspension of Work in writing. The State shall proceed to have the Hazardous Material removed or rendered harmless. In the alternative, the State shall terminate the affected Work for the State's convenience.
- (c) Once the Hazardous Material has been removed or rendered harmless by the State, the Contractor shall resume Work as directed in writing by the State. Any determination by the Michigan Department of Community Health or

the Michigan Department of Environmental Quality that the Hazardous Material has either been removed or rendered harmless is binding upon the State and Contractor for the purposes of resuming the Work. If any incident with Hazardous Material results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Work will not be counted in a time as mutually agreed by the parties.

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

Labeling: Michigan has a Consumer Products Rule pertaining to labeling of certain products containing volatile organic compounds. For specific details visit http://www.michigan.gov/deq/0,1607,7-135-3310_4108-173523--,00.html

Refrigeration and Air Conditioning: The Contractor shall comply with the applicable requirements of Sections 608 and 609 of the Clean Air Act (42 U.S.C. 7671g and 7671h) as each or both apply to this contract.

Environmental Performance: Waste Reduction Program - Contractor shall establish a program to promote cost-effective waste reduction in all operations and facilities covered by this contract. The Contractor's programs shall comply with applicable Federal, State, and local requirements, specifically including Section 6002 of the Resource Conservation and Recovery Act (42 U.S.C. 6962, et seq.).

2.300 Deliverables

2.301 Software

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

2.302 Hardware

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

2.310 Software Warranties

2.311 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 (90) ninety days. In the event of a breach of this warranty, Contractor will promptly correct the affected Deliverable(s) at no charge to the State.

2.312 No Surreptitious Code Warranty

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

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

access to a licensee's computer system(s) (e.g. remote access via modem) for purposes of maintenance or technical support.

As used in this Contract, "Unauthorized Code" means any virus, Trojan horse, spyware, worm or other Software routines or components designed to permit unauthorized access to disable, erase, or otherwise harm software, equipment, or data; or to perform any other such actions. The term Unauthorized Code does not include Self-Help Code.

Unauthorized Code does not include Software routines in a computer program, if any, designed to permit an owner of the computer program (or other person acting by authority of the owner) to obtain access to a licensee's computer system(s) (e.g. remote access via modem) for purposes of maintenance or technical support.

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

2.313 Calendar Warranty

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 leap years shall be correctly treated within all calculation and calendar logic.

2.314 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.

2.315 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 (30) thirty 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).

2.320 Software Licensing

2.321 Reserved

2.322 Reserved

2.323 Reserved

2.324 License Retained By Contractor

Contractor grants to the State a non-exclusive, royalty-free, site-wide, irrevocable, transferable license to use the Software and related documentation according to the terms and conditions of this Contract. For the purposes of this license, "site-wide" includes any State of Michigan office regardless of its physical location.

The State may modify the Software and may combine such with other programs or materials to form a derivative work. The State will own and hold all copyright, trademarks, patent and other intellectual property rights in any derivative work, excluding any rights or interest in Software other than those granted in this Contract.

The State may copy each item of Software to multiple hard drives or networks unless otherwise agreed by the parties.

The State will make and maintain no more than one archival copy of each item of Software, and each copy will contain all legends and notices and will be subject to the same conditions and restrictions as the original. The State may also make copies of the Software in the course of routine backups of hard drive(s) for the purpose of recovery of hard drive contents.

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

2.325 Pre-Existing Materials for Custom Software Deliverables

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

2.330 Source Code Escrow

2.331 Reserved

2.332 Reserved

2.333 Reserved

2.334 Reserved

2.335 Reserved

2.336 Reserved

2.337 Reserved

2.338 Reserved

2.339 Reserved

Glossary

24x7x365	24 hours per day, seven days per week, and 365 days per year (including the 366th day in a leap year).
Additional Service	Any Services/Deliverables within the scope of the Contract, but not specifically provided under any Statement of Work, that once added must result in the need to provide the Contractor with additional consideration.
Affiliate	"Affiliate" of a party means any entity that controls, is controlled by or is under common control with such party
Audit Period	See Section 2.112
Blanket Purchase Order	An alternate term for Contract as used in the State's computer system.
Business Critical	Any function identified in any Statement of Work as Business Critical.
Contract Change Management	Means the written procedures to effect any changes to the Contract, including, but not limited to, adding any Additional Services, New Work or pricing as set forth in Section 2.004 of Article 2.
Chronic Failure	Defined in Section 2.242(b)
Days	Calendar days unless otherwise specified.
Deleted – Not Applicable	Section is not applicable or included in this contract. This is used as a placeholder to maintain consistent numbering.
Deliverable	Physical goods and/or commodities as required or identified by a Statement of Work.
DTMB	Michigan Department of Technology, Management & Budget
Environmentally preferable products	A product or service that has a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. Such products or services may include, but are not limited to, those that contain recycled content, minimize waste, conserve energy or water, and reduce the amount of toxics either disposed of or consumed.
Equipment or CPE	Means any third party edge devices (and the associated software required to operate such edge devices) used by Contractor to provide the Services to the SOM.
Excusable Failure	See Section 2.244.
Hazardous material	Any material defined as hazardous under the latest version of federal Emergency Planning and Community Right-to-Know Act of 1986 (including revisions adopted during the term of the Contract).
Incident	Any interruption in Services.
ISP Services	Companies that provide Internet services, including personal and business access to the Internet. For a monthly fee, the service provider usually provides a software package, username, password and access phone number. For broadband access you typically receive the broadband modem hardware or pay a monthly fee for this equipment that is added to your ISP account billing. In addition to serving individuals and small businesses, ISPs also serve large companies and governments, providing a direct connection from the company's networks to the Internet. ISPs themselves are connected to one another through <i>Network Access Points (NAPs)</i> . ISPs may also be called <i>IAPs (Internet Access Providers)</i> .
ITB	A generic term used to describe an Invitation to Bid. The ITB serves as the document for transmitting the RFP to potential Contractors
Key Personnel	Any Personnel designated in Article 1 as Key Personnel.
Managed Third Party	Means a third party provider under contract to the SOM that, subject to a Letter of Agency, Contractor will manage as part of the Services.
New Work	Any Services/Deliverables outside the scope of the Contract and not specifically provided under any Statement of Work, that once added must result in the need to provide the Contractor with additional consideration.
RFP	Request for Proposal designed to solicit proposals for services.
Services	Any function performed for the benefit of the State.
Source reduction	Any practice that reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment prior to recycling, energy recovery, treatment, or disposal.
State Location	Any physical location where the State performs work. State Location may include

	state-owned, leased, or rented space.
Subcontractor	A company Contractor delegates performance of a portion of the Services to, but does not include independent contractors engaged by Contractor solely in a staff augmentation role.
Unauthorized Removal	Service Integrator's removal of Key Personnel without the prior written consent of the State.
Work in Progress	A Deliverable that has been partially prepared, but has not been presented to the State for Approval.

WAN PROJECT GLOSSARY AND DEFINITIONS

Alarm	A real-time indication or a signal that indicates an error condition or predefined threshold has been exceeded. Usually includes a Priority or Severity Code.
Alert	A sound or message that indicates a predefined threshold is about to be exceeded or a selected operation is about to be performed. The terms "alert" and "alarm" are sometimes used synonymously; however, an alert is more of a warning in advance, whereas an alarm signals that the event or error has occurred.
Amendment	Means a written change to this Contract.
American National Standards Institute (ANSI)	Entity that coordinates the development and use of voluntary consensus standards in the United States and represents the needs and views of U.S. stakeholders in standardization forums around the globe.
Appendices	An appendix is attached to supplement the document, usually for reference.
Attachments	A separate document that is attached, as a standalone form added to a document.
Authorized Requestors	A designated State of Michigan contact with whom the Service Integrator must communicate as defined in the Operations Plan.
Border Gateway Protocol (BGP)	Protocol used to make core routing decisions on the Internet; it involves a table of IP networks or "prefixes" which designate network reachability among Autonomous Systems (AS).
Bridge	A packet-forwarding device used in local area networks that floods the LAN with messages until locating the destination address of an unknown device; it then examines the source addresses in the headers of received messages and stores the right address in a table for future use.
Building Industry Consulting Services, International (BICSI)	The organization responsible for publishing standards and guidelines for use in the design, installation and integration of information transportation systems (ITS). These standards address pathways, spaces, fiber- and copper-based distribution systems, wireless-based systems and the infrastructure that supports the transportation of information and signaling between communications and information gathering devices.
Group Based Weighted Fair Queuing	A network router queuing method that allows traffic to share bandwidth equally, after being grouped by groups. The groups can be based upon a variety of parameters, such as priority, interface, or originating program.
Group of Service (CoS)	A way of managing traffic in a network by grouping similar types of traffic (for example, e-mail, streaming video, voice, large document file transfer) together and treating each type as a Group with its own level of service priority. Group of Service does not guarantee a level of service in terms of bandwidth and delivery time.
Competitive Local Exchange Carrier (CLEC)	A telecommunications provider company (United States) (sometimes called a "carrier" or "Carrier") competing with other, already established carriers (generally the incumbent local exchange carrier (ILEC)).
Contiguous IP Address Allocation	To mitigate duplication or inconsistencies in the allocation of IP addresses, an independent organization takes the allocation of IP addresses. Each registry allocates addresses for a different area and makes sure it is contiguous.
Contract	Means CONTRACT NO. 071B5500011 and any Amendments or Attachments to this contract.
CPU utilization	The workload of a given physical processor for real machines or virtual processors for virtual machines. CPU utilization that passes acceptable thresholds should trigger alerts so that an administrator can solve the problem before an outage happens. CPU utilization tools automatically track CPU data and store the data in a central location.
SOM Edge/Premise Edge device	Routers, routing switches, Integrated Access Devices (IADs), multiplexers, and a variety of Metropolitan Area Network (MAN) and WAN access devices that provide entry points into the core networks of enterprise or service providers.

Cyclic redundancy Checking (CRC)	A method of checking for errors in data that has been transmitted on a communications link: CRC checking involves making a calculation based on data contents and including the answer to that calculation with the data. The receiving end makes the same calculation. If the two calculations agree, the data was received successfully. If not, the receiver notifies the sender to resend that data.
Dedicated Internet connections	High-speed connectivity and reliable Internet access that supports business-critical Internet applications with dedicated Internet connections that allow a business to send and receive large amounts of data, conduct video conferences, run web-based applications, stream video, etc. Dedicated Internet connections are not shared with others so there is no competition for bandwidth when it's needed.
Demarcation Point	A demarc (an abbreviation for demarcation point) is the point where communications facilities owned by one organization interface with that of another organization. This is the interface between the Equipment and Network Service Provider Infrastructure.
Differentiated Services	Referred to as DiffServ. Offerings that can be grouped by type, or quality, of service. For example, a differentiated services network could prioritize real-time traffic for a higher fee.
Distributed Denial of Service (DDoS)	An attempt to make a machine or network resource unavailable to its intended users. It generally consists of the efforts of one or more people to temporarily or indefinitely interrupt or suspend services of a host connected to the Internet.
Distribution Layer	This layer includes LAN-based routers and layer 3 switches, and ensures that packets are properly routed between subnets and VLANs in an enterprise. This layer is also called the Workgroup layer.
DNS spoofing	DNS spoofing is a computer hacking attack, whereby data is introduced into a Domain Name System (DNS) name server's cache database, rerouting a request for a web page, causing the name server to return an incorrect IP address, diverting traffic to another computer (often the attacker's).
Dropped Packets	Dropped packets or packet loss occurs when one or more packets of data travelling across a computer network fail to reach their destination. Packet loss is distinguished as one of the three main error types encountered in digital communications; the other two being bit error and spurious packets caused due to noise.
Dynamic Routing Protocols	Dynamic routing performs the same function as static routing except it is more robust. Static routing allows routing tables in specific routers to be set up in a static manner so network routes for packets are set. Dynamic routing allows routing tables in routers to change as the possible routes change. Dynamic routing protocols do not change how routing is done.
Edge Router Latency	When data packets arrive with large and variable delays between packets, which causes degraded latency and overall throughput. Edge router latency is dominated by two factors. The length of the route that the packets have to take between sender and receiver and the interaction between the Transmission Control Protocol (TCP) reliability and congestion control protocols.
Electronic Industries Association (EIA)	The Electronic Industries Alliance (EIA, until 1997 Electronic Industries Association) was a standards and trade organization composed as an alliance of trade associations for electronics manufacturers in the United States. They developed standards to ensure the equipment of different manufacturers was compatible and interchangeable.
Encryption	Encryption is the process of transforming information (referred to as plaintext) using an algorithm (called a cipher) to make it unreadable to anyone except those possessing special knowledge, usually referred to as a key. The result of the process is encrypted information (in cryptography, referred to as ciphertext).
Enterprise Internet Service Provider (ISP)	The EISP provides centralized ISP services for State networks.
Ethernet	A physical and data link layer technology for Local Area Networks (LANs). The Ethernet standards comprise several wiring and signaling variants of the OSI physical layer in use with Ethernet. The original 10BASE5 Ethernet used coaxial cable as a shared medium. Later the coaxial cables were replaced by twisted pair and fiber optic links in conjunction with hubs or switches. Data rates were periodically increased from the original 10 megabits per second to 100 gigabits per second.

Fault Management Services	A component of network management concerned with detecting, isolating and resolving problems. Properly implemented, fault management services can keep a network running at an optimum level, provide a measure of fault tolerance and minimize downtime. A set of functions or applications designed specifically for this purpose is called a fault-management platform. Important functions of fault management include: definition of thresholds for potential failure conditions, constant monitoring of system status and usage levels, continuous scanning for threats such as viruses and Trojans, alarms that notify administrators and users of impending and actual malfunctions, automatic correction of potential problem-causing conditions, automatic resolution of actual malfunctions and detailed logging of system status and actions taken.
Fire wall	A combination of hardware and software that separates parts of a network for security purposes and requires an authentication method to gain access from one part of the network to another.
Gateway	A hardware or software set-up that translates between two dissimilar protocols.
Gigabits	Equivalent of one billion bits, or 1,000,000,000 (that is, 10^9) bits. It's commonly used for measuring the amount of data that is transferred in a second between two telecommunication points. For example, Gigabit Ethernet is a high-speed form of Ethernet (a local area network technology) that can provide data transfer rates of about 1 gigabit per second. Gigabits per second is usually shortened to Gbps.
Guidebooks	Documents containing the descriptions, pricing and other terms and conditions for a Service that were, but no longer are, filed with regulatory authorities.
IGA	Inter-Governmental Agreement - A formal contract for services between two jurisdictions under which one government agrees to provide a service to another government for an agreed price.
Hard MAC	Means a single hardware MAC performed at a SOM Remote Site by a single Contractor Employee to Equipment except where MNOC resources are used, in which case, a Hard MAC means a single hardware MAC performed at a SOM Remote Site by MNOC personnel to the Equipment.
Incident	An unplanned interruption to the Service or a reduction in the Quality of the. Failure of a Configuration Item that has not yet impacted Service is also an Incident. For example, failure of one disk from a mirror set.
Incident Management	Includes the following steps taken to address and Incident: Incident detection and recording; Incident classification and initial support; investigations and diagnosis; resolution and recovery; Incident closure and Incident ownership, monitoring, tracking and communication
Incumbent Local Exchange Carrier (ILEC)	A local telephone company in the United States that was in existence at the time of the breakup of AT&T into the Regional Bell Operating Companies. The ILEC is the former Bell System or Independent Telephone Company responsible for providing local telephone exchange services in a specified geographic area. GTE was the second largest ILEC after the Bells, but it has since been absorbed into Verizon, an RBOC. ILECs compete with competitive local exchange carriers (CLEC). When referring to the technical communities, ILEC is often used just to mean a telephone provider.
Interconnection Security Agreement (ISA)	An agreement between parties, usually arms of government, which defines, for data moving across a connection between the networks of the two parties, how security is addressed and how data is kept confidential, unchanged, and available.
Interface	A hardware device that handles an interface to a computer network and allows a network-capable device to access that network.
Inter-Local Access and Transport Authority (LATA) Private Line services	Provides a reliable point-to-point bandwidth solution that helps you deliver important, time-sensitive content reliably and securely. Connectivity is usually supported with 24x7 network monitoring.
Internet Control Message Protocol (ICMP)	One of the core protocols of the Internet Protocol suite. It is chiefly used by the operating systems of networked computers to send error messages - indicating, for instance, that a requested service is unavailable or that a host or router could not be reached.

Internet Protocol Flow Information Export (IPFIX)	A standard of export for Internet Protocol flow information from routers, probes, and other devices.
Internet Service Provider (ISP)	A firm that offers subscribers access to the internet. This internet service provider maintains large runs of cabling and maintains network services in order to transfer and deliver web content to those paying the subscription fee. Typically, these internet service providers focus on DSL, Cable modem, wireless, and more recently, dedicated high-speed interconnects such as fiber optic service (typically abbreviated Fios). An Internet Service Provider is a complete package of services, which should be researched and considered before an Internet Service Provider is selected. Also known as IAP.
Internet2 Access	Internet2 is an advanced not-for-profit United States networking consortium led by members from the research and education communities, industry, and government. Internet2 operates the Internet2 Network, a next-generation Internet Protocol and optical network that delivers production network services to meet the high-performance demands of research and education, and provides a secure network testing and research environment.
Inventory Template	Means the document that SOM will send to each Managed Third Party for it to complete during Transition which will be used by Contractor to assist it in the management of such third parties. A copy of the Inventory Template will be included in the Transition Plan.
IPsec	Internet Protocol Security (IPSec) is a framework of open standards for helping to ensure private, secure communications over Internet Protocol (IP) networks through the use of cryptographic security services. IPSec supports network-level data integrity, data confidentiality, data origin authentication, and replay protection. Because IPSec is integrated at the Internet layer (layer 3), it provides security for almost all protocols in the TCP/IP suite, and because IPSec is applied transparently to applications, there is no need to configure separate security for each application that uses TCP/IP. IPSec helps provide defense-in-depth against Network-based attacks from untrusted computers, attacks that can result in the denial-of-service of applications, services, or the network, data corruption and data theft.
IPv4	Internet Protocol Version 4 (IPv4) is the fourth revision of the IP and a widely used protocol in data communication over different kinds of networks. IPv4 is a connectionless protocol used in packet-switched layer networks, such as Ethernet. It provides the logical connection between network devices by providing identification for each device. There are many ways to configure IPv4 with all kinds of devices - including manual and automatic configurations - depending on the network type.
IPv6	Internet Protocol version 6 (IPv6) is the latest revision of the Internet Protocol (IP), the communications protocol that provides an identification and location system for computers on networks and routes traffic across the Internet. IPv6 was developed by the Internet Engineering Task Force (IETF) to deal with the long-anticipated problem of IPv4 address exhaustion.
Issue	An identified event that if not addressed may affect schedule, scope, quality, or budget.
Lansing Metropolitan Area Network (LMAN)	A network that interconnects users with computer resources in the Lansing area and surrounding regions larger than that covered by even a large local area network (LAN) but smaller than the area covered by a wide area network (WAN). The term is applied to the interconnection of networks in a city into a single larger network (which may then also offer efficient connection to a wide area network). It is also used to mean the interconnection of several local area networks by bridging them with backbone lines. The latter usage is also sometimes referred to as a campus network.
Latency	The amount of time it takes for the host server to receive and process a request for a page object. The amount of latency depends largely on how far away the user is from the server.
Layer 3 device	A device in the Network layer of the commonly-referenced multilayered communication model, Open Systems Interconnection (OSI). The Network layer is concerned with knowing the address of the neighboring nodes in the network, selecting routes and quality of service, and recognizing and forwarding to the Transport layer incoming messages.

Local Area Network (LAN)	A computer network limited to the immediate area, usually the same building or floor of a building.
Local Exchange Carrier (LEC)	A regulatory term in telecommunications for the local telephone company.
Local Government Network (LGNet)	An Extranet VPN with a separate head-end in Lansing, secured from the intranet by its own set of firewalls and is used to manage unsecured connections to all units of local government accessing State applications.
Local Public Entity (LPE)	A publicly funded unit of government, including counties, cities, townships, schools and others, that partner with the State to establish shared networking solutions.
Management Information Base (MIB)	Assembles monitoring data into meaningful packages to simplify its analysis. An MIB is a database containing object identifier (OID) information. Depicted as a hierarchical structure, the MIB is the "tree" and each object is a "leaf," identified by an OID. Levels within the MIB are assigned by different organizations. The top-level MIB OIDs belong to various standards organizations, while lower-level OIDs belong to various organizations such as network equipment manufacturers, who assign OIDs that extend the MIB with proprietary values.
Mbps	A measure of data transfer speed (a megabit is equal to one million bits). Network transmissions, for example, are generally measured in Mbps.
Medium alarm	One of a group of alarm conditions that are considered the third most severe of all reportable alarms. Medium alarms affect a single or small number of subscribers who connect to the reporting node.
Megabits	A million binary pulses, or 1,000,000 (that is, 10 ⁶) pulses (or "bits"). It's commonly used for measuring the amount of data that is transferred in a second between two telecommunication points. For example, a U.S. phone company T-carrier system line is said to sustain a data rate of 1.544 megabits per second. Megabits per second is usually shortened to Mbps.
Memorandum of Understanding (MOU)	An agreement between parties that replaces a contract, in this case between the State of Michigan and another LPE with which the State wishes to integrate networks.
Michigan Occupational Safety and Health Administration (MIOSHA)	A state government agency that regulates workplace safety and health in the U.S. state of Michigan. Michigan OSHA is an agency within the Michigan Department of Licensing and Regulatory Affairs (LARA) and operates under a formal state-plan agreement with the Occupational Safety and Health Administration (OSHA).
Move, Add, Change (MAC)	A service that provides moves, adds and changes of network hardware and software: MACs include Hard MACs and Soft MACs.
Multicast services	Provide the ability to broadcast one or more media streams to multiple users simultaneously within a geographical region.
Multiprotocol Label Switching (MPLS)	Multiprotocol Label Switching is a network mechanism for directing and carrying data between network nodes. MPLS simplifies creation of virtual links between nodes. MPLS encapsulates packets of different network protocols. MPLS assigns labels to data packets to help control packet forwarding without having to examine packet contents. This lets end-to-end circuits cross any transport medium, using any protocol, and lets networks carry different types of data. MPLS operates between layer 2 (data link layer) and layer 3 (network layer) of the OSI model.
Near Real Time Monitoring	Near real time monitoring enables a company to record network traffic, check server availability, and monitor a network's performance, customize alarms which can send out notifications of problems or a specified threshold is being crossed.
NetFlow	A network protocol developed by Cisco Systems to run on Cisco IOS-enabled equipment for collecting IP traffic information. It is proprietary but supported by platforms other than IOS, such as Juniper routers, Linux or FreeBSD, and OpenBSD.
Network Address Translation (NAT)	Network Address Translation is the process where a network device, usually a firewall, assigns a public address to a computer (or group of computers) inside a private network. The main use of NAT must limit the number of public IP addresses an organization or company must use, for both economy and security purposes.
Network Assessment	Typically, a thorough network assessment involves a combination of people performing SOM interviews, data collection, data analysis, report generation and recommendations.

Network Backbone	The network backbone is a part of computer network infrastructure that interconnects various pieces of network, providing a path for the exchange of information between different LANs or subnetworks. A backbone can tie together diverse networks in the same building, in different buildings in a campus environment, or over wide areas. Normally, the backbone's capacity is greater than the networks connected to it.
Network interface device (NID)	A device that serves as the demarcation point between the Carrier's local loop and the SOM's premises wiring.
Network Management System (NMS)	Network Management System is a combination of hardware and software used to monitor and administer a network.
Network Node	A physical network node is an active electronic device attached to a network that can send, receive, or forward information over a communications channel, such as a router, switch, workstation, or server.
Network Security Zones	The network security zones are defined to minimize network complexity, to ensure effective and efficient delivery of network services, to promote interoperability and to provide a consistent level of security for services provided within and across Zones. Zones boundaries are well-defined and respect assigned accountabilities for network security.
Network Service Provider Infrastructure	Means the Core, NOCs, NIDs, NMS's, Network Backbone and other Service Integrator, WAN Service Provider, and/or Enterprise Internet Service Provider common infrastructure used to provide the Services and any enhancements made to the same. SOM shall have no right, title or interest in the Network Service Provider Infrastructure.
Network Throughput	Network Throughput refers to the volume of data that can flow through a network. Network Throughput is constrained by factors such as the network protocols used, the capabilities of routers and switches, and the type of cabling, such as Ethernet and fiber optic, used to create a network. Network Throughput in wireless networks is constrained further by the capabilities of network adapters on client systems.
Network transport methods	Network transport methods are technologies that networks may choose to use to permit data streams to simultaneously carry different kinds of data in one stream, to raise efficiency. Different transport methods work on different layers of the OSI model.
Networking Operations Center (NOC)	Network operations center – An NOC typically oversees a network's operation, service quality, and correct data delivery.
Core	New core is the central part of a telecommunication network that provides various services to SOMs who are connected by the access network. Core/backbone network provides paths for the exchange of information between different sub-networks. For enterprise private networks serving one organization, the term backbone is more used, while for service providers, the term core network is more used.
Normal State Business Hours	Normal State working hours, depending on the State Remote Site, are 8:00 a.m. to 5:00 p.m. Daylight Saving Time, Monday through Friday.
Object Identifiers (OID)	Object identifiers uniquely identify managed objects in an MIB hierarchy.
Occupational Safety and Health Administration (OSHA)	Public Act allowing OSHA to issue workplace health and safety regulations. These regulations include limits on chemical exposure, employee access to information, requirements for the use of personal protective equipment, and requirements for safety procedures.
Outage	An occurrence within the Contractor Network, the Contractor-managed Equipment, and/or the Contractor provided access that results in the inability of the State to transmit or receive IP packets for more than one minute.
Physical LAN interface	A device that serves as a common interface for various other devices within a local area network (LAN), or as an interface to allow networked computers to connect to an outside network.

Point of Presence (POP)	An access point from one place to the rest of the Internet. A POP necessarily has a unique Internet Protocol (IP) address. The Internet service provider (ISP) or online service provider has a point-of-presence on the Internet and probably more than one. The number of POPs that an ISP or OSP has is sometimes used as a measure of its size or growth rate. A POP may actually reside in rented space owned by the telecommunications carrier (such as Sprint) to which the ISP is connected. A POP usually includes routers, digital/analog call aggregators, servers, and frequently frame relays or ATM switches.
Port	The physical location where information goes into or out of a computer, or both.
Portal	A Web site that is or is intended to be the first place people see when using the Web. Typically, a "portal site" has a catalog of web sites, a search engine, or both. Many portals let users enter and change content.
Problem	A cause of one or more incidents. The cause is not usually known at the time a Problem Record is created, and the Problem Management Process is responsible for further investigation.
Problem Management Process	Means the process described in Section D.1.b of this SOW.
Problem Record	A record of the details and history of a Problem stored in the Contractors tools.
Purchased Equipment	Any equipment or other tangible products SOM purchases under this Agreement, including any replacements of Purchased Equipment provided to SOM. Purchased Equipment also includes any internal code required to operate such Equipment. Purchased Equipment does not include Software but does include any physical media provided to SOM on which Software is stored.
Quality	The ability of the Service to provide the intended value
Quality of Service (QoS)	Quality of Service is the idea that transmission rates, error rates, and other characteristics can be measured, improved, and, to some extent, guaranteed in advance. QoS is of particular concern for the continuous transmission of high-bandwidth video and multimedia information.
Remote Network Monitoring (RNM)	Provides standard information that a network administrator can use to monitor, analyze, and troubleshoot a group of distributed local area networks (LANs) and interconnecting lines from a central site. RNM specifically defines the information that any network monitoring system must be able to provide. It's specified as part of the Management Information Base (MIB).
Root Cause Analysis (RCA)	A method of problem solving that tries to identify the root causes of faults or problems that cause operating events. RCA practice tries to solve problems by attempting to identify and correct the root causes of events, as opposed to simply addressing their symptoms. By focusing correction on root causes, problem recurrence can be prevented. RCFA (Root Cause Failure Analysis) recognizes that complete prevention of recurrence by one corrective action is not always possible.
Router	A special-purpose computer (or software package) that handles the connection between two or more packet-switched networks: Routers spend all their time looking at the source and destination addresses of the packets passing through them and deciding which route to send them on.
Secure Shell (SSH)	A cryptographic network protocol for secure data communication, remote shell services or command execution and other secure network services between two networked computers that connects, via a secure channel over an insecure network, a server and a client (running SSH server and SSH client programs, respectively).
Services	Shall have the meaning given to it in Section 1.104 WORK DELIVERABLES – SERVICE INTEGRATOR.
Service Activation Date	The date the Service Component or Feature is made available for use by the SOM.
Service Group Availability (SGA)	Used to measure service performance.
Service Group Down Time (SGD)	The total number of out-of-service hours for a given Service Group divided by the total number of site service hours, within service Group x 100.

Service Integrator	The Service Integrator is a single vendor responsible for the smooth provisioning and operation of a multi-sourced provider environment. The Service Integrator facilitates, coordinates, and operates a multi-sourced network on behalf of the State. The State provides governance of the operation and management of the network and the Service Integrator provides best-in-class practices, tools, and design/operation consultation.
Service Level Agreements (SLA)	Contract between a network service provider and a SOM that specifies, usually in measurable terms, what services the network service provider must furnish. Many Internet service providers (ISP)s provide their SOMs with an SLA. More recently, IS departments in major enterprises have adopted the idea of writing a service level agreement so that services for their SOMs (users in other departments within the enterprise) can be measured, justified, and perhaps compared with those of outsourcing network providers.
Service Level Objective (SLO)	Service level objective – one specific area to be measured as an indicator of performance to agreement commitments, often this is one of many in a service level agreement. SLOs do not have any financial penalties if they are not achieved.
Simple Network Management Protocol (SNMP v3)	The protocol developed to manage nodes (servers, workstations, routers, switches and hubs etc.) SNMP Version 3 (SNMPv3) adds security and remote configuration capabilities to the previous versions. The SNMPv3 architecture introduces the User-based Security Model (USM) for message security and the View-based Access Control Model (VACM) for access control. The architecture supports the concurrent use of different security, access control, and message processing models. More specifically: authentication and privacy authorization and access control administrative framework and naming of entities.
Simple Network Management Protocol (SNMP)	Simple Network Management Protocol is a UDP-based network protocol. It is used mostly in network management systems to monitor network-attached devices for conditions that warrant administrative attention.
Soft MAC	Means a single software MAC performed remotely by Contractor to Equipment.
SOM	State of Michigan
State Remote Sites	Means those State owned or occupied physical locations at which Contractor provides WAN Services in accordance with the SOW.
Sub-Interface	Logical interface that uses the "parent" physical interface for actually moving the data.
Switch	Network bridge that processes and routes data at the data link layer (layer 2) of the OSI model. Switches that additionally process data at the network layer (layer 3 and above) are often referred to as Layer 3 switches or multilayer switches. A switch is a bridge with multiple ports.
Switch Uplink Utilization	Bandwidth used between switches within a Local Area Network (LAN).
Synchronous Optical Networking (SONET)	A standard multiplexing protocol based on the ITU-T standard that enables transfer of digital data streams over optical fiber using lasers or light-emitting diodes. SONET lets the network transport many circuits of different origin together in one frame protocol. SONET operates on the physical OSI layer. It is a transport protocol, not a telecommunications protocol.
Syslog	A protocol for logging, monitoring, and security messages from network devices □ as part of network management □ that allows the software generating the messages and the system storing them to remain independent.
Telecommunications Industry Association (TIA)	Accredited by the American National Standards Institute (ANSI) to develop voluntary, consensus-based industry standards for a wide variety of Information and Communication Technologies (ICT) products, and currently represents nearly 400 companies.
The Latency Compliancy Rate (LCR)	Total number of edge router service hours (8,760 per year) where, on a per-site basis, average latency exceeded threshold, divided by the total number of edge router service hours.
Third Party Service	A service provided directly to SOM by a third party under a separate agreement between SOM and the third party.
Time to Repair (TTR)	Measurable time a trouble ticket is established at the Service Integrator's Network Operations Center (NOC) through any means until the Service Integrator's trouble ticket is changed to resolved status after site validation.
Transport Device	Transport devices, usually bridge, gateway, are components used in Transport Layer of a network.

Transport Mechanism	A network device that operates at the Transport Layer of TCP/IP and can be thought of as a vehicle with the responsibility to make sure that its transmitted contents reach their destination safely and soundly.
Transport Services	Means separately contracted for telecommunications interconnection services.
Underwriters Laboratories (UL)	A safety consulting and certification company. UL provides safety-related certification, validation, testing, inspection, auditing, advising and training services to a wide range of clients, including manufacturers, retailers, policymakers, regulators, service companies, and consumers.
Uninterruptible Power Supply (UPS)	An uninterruptible power supply, also uninterruptible power source, UPS or battery/flywheel backup is an electrical apparatus that provides emergency power to a load when the input power source, typically mains power, fails. A UPS differs from an auxiliary or emergency power system or standby generator in that it must provide near-instantaneous protection from input power interruptions, by supplying energy stored in batteries or a flywheel.
Urban Cooperation Act of 1967	A State of Michigan legislative act that provides for inter-local public agency agreements; to provide standards for those agreements and for the filing and status of those agreements; to permit the allocation of certain taxes or money received from tax increment financing plans as revenues; to permit tax sharing; to provide for the imposition of certain surcharges; to provide for additional approval for those agreements; and to prescribe penalties and provide remedies.
Urgent alarm	Alarm condition that may affect most or all subscribers connecting to the reporting node.
User Datagram Protocol (UDP)	One of the core members of the Internet Protocol suite, the set of network protocols used for the Internet. With UDP, computer applications can send messages to other hosts on an Internet Protocol (IP) network without requiring prior communications to set up special transmission channels or data paths.
Virtual interface	Virtual interfaces resemble tunnels for granting and restricting access into a network. They separate the data sent over shared optical and IP networks into different destinations and control access to those destinations. Examples include virtual private networks (VPNs) and virtual LANs (VLANs).
Virtual Local Area Network (VLAN)	A network of computers that behave as if they are connected to the same wire though physically located on different LAN segments. VLANs are configured through software rather than hardware, which make them very flexible.
Virtual Private Network (VPN)	A network in which some of the parts of the network, often a remote user, are connected using the public Internet, but the data sent across the Internet is encrypted, so making the entire network "virtually" private.
Virtual Routing and Forwarding (VRF)	A technology that allows multiple instances of a routing table to co-exist within the same router at the same time. Because the routing instances are independent, the same or overlapping IP addresses can be used without conflicting with each other.
WAN Jitter	A measure of the variability over time of the packet latency across a network. Packet jitter is expressed as an average of the deviation from the network mean latency. Another term is packet delay variation.
WAN Design	Means Exhibit F – Contractor Technical Solutions Document to this SOW
WAN packet loss	Packet loss occurs when one or more packets of data traveling across a computer network fail to reach their destination. Packet loss is distinguished as one of the three main error types encountered in digital communications, the other two being bit error and spurious packets caused due to noise.
Wavelength Division Multiplexing (WDM)	Wavelength-division multiplexing is a technology that multiplexes (combines several into one, for efficiency) multiple optical carrier signals on a single optical fiber by using different colors of laser light to carry different signals. This allows multiplication in capacity and enables bidirectional communications over one fiber strand.
Web caching	Web cache is a mechanism for the temporary storage (caching) of web documents, such as HTML pages and images, to reduce bandwidth usage, server load, and perceived lag. A web cache stores copies of documents passing through it; subsequent requests may be satisfied from the cache if certain conditions are met.
Wide Area Network (WAN)	Means the SOM wide area network that interconnects an area larger than a single building or campus (e.g., between State Remote Sites).

Work Product	Means data compilations, reports and other media, materials, or other objects or works of authorship created or produced by the Contractor as a result of and in furtherance of performing the Services required by the contract that the (i) State has charged Contractor monies to develop, excluding standard license fees or standard support fees for the Service or (ii) created in accordance with specifications not provided by Contractor. Work Product shall exclude any intellectual property, including software, tools, methods, and utilities processes, specifications, designs, schematics, operating instructions, and documentation that Contractor developed prior to the Effective Date of this Agreement or independently developed outside the scope of this Agreement without the use of Confidential Information of the State.
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Attachment F: In the event terms and conditions on the following pages are in conflict with the State of Michigan (SOM) Contract terms and conditions included in Article 2 above, the SOM Contract shall supersede. References made to the term "Sales Order" can be considered interchangeable with "SOM Purchase Order (PO)" whether specifically labeled as such below or not. References to "Agreement" wherever relative to terms and/or conditions included in the SOM Contract, shall be governed by the language within the SOM Contract. Footers claiming "Confidential and Proprietary Information" within this Contract and/or attachments are invalid, as stated in the Request for Proposal (RFP) documenting provisions of the Michigan Freedom of Information Act (FOIA).

COMCAST ENTERPRISE SERVICES GENERAL TERMS AND CONDITIONS

VERSION: 1.2

DEFINITIONS

Affiliate: Any entity that controls, is controlled by or is under common control with Comcast.

Agreement, Enterprise Services Master Services Agreement or MSA: Consists of the State of Michigan Contract #071B5500030 the then current Product-Specific Attachment for each ordered Service ("PSA"), any written amendments executed by both Parties including any supplemental terms and conditions ("Amendment(s)"), and each Sales Order accepted by Comcast under the Agreement.

Amendment(s): Any written amendment to the Agreement, executed by both Parties, including any supplemental terms and conditions.

Comcast: The operating company affiliate or subsidiary of Comcast Cable Communications Management, LLC that provides the Services under the Enterprise Services Master Service Agreement. References to Comcast in the Limitation of Liability, Disclaimer of Warranties and Indemnification Articles shall also include its directors, officers, employees, agents, Affiliates, suppliers, licensors, successors, and assigns, as the case may be.

Comcast Website or Website: The Comcast website where the PSAs and other Comcast security and privacy policies applicable to the Agreement will be posted. The current URL for the Website is <http://business.comcast.com/enterprise-terms-of-service>. Comcast may update the Website documents and/or URL from time to time.

Comcast Equipment: Any and all facilities, equipment or devices provided by Comcast or its authorized contractors at the Service Location(s) that are used to deliver any of the Services including, but not limited to, all terminals, wires, modems, lines, circuits, ports, routers, gateways, switches, channel service units, data service units, cabinets, and racks. Notwithstanding the above, inside telephone wiring within the Service Location, whether or not installed by Comcast, shall not be considered Comcast Equipment.

Confidential Information: All information regarding either Party's business which has been marked or is otherwise communicated as being "proprietary" or "confidential," or which reasonably should be known by the receiving party to be proprietary or confidential information. Without limiting the generality of the foregoing, Confidential Information shall include, even if not marked, all Licensed Software, promotional materials, rate information, discount information, as well as the Parties' communications regarding such items.

Customer: The company, corporation, or other entity named on the Enterprise Services Master Service Agreement Cover Page and a Sales Order and/or Purchase Order.

Customer-Provided Equipment (CE): Any and all facilities, equipment or devices supplied by Customer for use in connection with the Services.

Demarcation Point: The point of interconnection between the Network and Customer's provided equipment located at a Service Location. In some cases the Demarcation Point shall be the User to Network Interface (UNI) port on Comcast Equipment at a Service Location.

General Terms and Conditions: The Terms and Conditions included in the State of Michigan Contract.

Licensed Software: Computer software or code provided by Comcast or required to use the Services, including without limitation, associated documentation, and all updates thereto.

Network: Consists of the Comcast Equipment, facilities, fiber optic cable associated with electronics and other equipment used to provide the Services.

Party: A reference to Comcast or the Customer; and in the plural, a reference to both companies.

Product Specific Attachment(s) (PSA): The additional terms and conditions applicable to Services ordered by Customer under the Agreement.

Sales Order: A request for Comcast to provide the Services to a Service Location(s) submitted by Customer to Comcast (a) on a then-current Comcast form designated for that purpose or (b) if available, through a Comcast electronic order processing system designated for that purpose.

Service(s): A service provided by Comcast pursuant to a Sales Order. All Services provided under the Agreement are for commercial use only. Services available under this Agreement are identified on the Website.

Service Commencement Date: The date(s) on which Comcast first makes Service available for use by Customer. A single Sales Order containing multiple Service Locations or Services may have multiple Service Commencement Dates.

Service Location(s): The Customer location(s) where Comcast provides the Services, to the extent the Customer owns, leases, or otherwise controls such location(s).

Service Term: The duration of time (commencing on the Service Commencement Date) for which Services are ordered, as specified in a Sales Order.

Tariff: A federal or state Comcast tariff and the successor documents of general applicability that replace such tariff in the event of detariffing.

Termination Charges: Charges that may be imposed by Comcast if, prior to the end of the applicable Service Term (a) Comcast terminates Services for cause or (b) Customer terminates Services without cause. Termination Charges are as set forth in each PSA, and are in addition to any other rights and remedies under the Agreement.

ARTICLE 1. Changes to the Agreement Terms. See SOM Contract Section 2.024.

ARTICLE 2. DELIVERY OF SERVICE

2.1 Orders. Customer shall submit to Comcast a properly completed Sales Order to initiate Service to a Service Location(s). A Sales Order shall become binding on the Parties when (i) it is specifically accepted by Comcast either electronically or in writing, (ii) Comcast begins providing the Service described in the Sales Order or (iii) Comcast begins Custom Installation (as defined in Article 2.7) for delivery of the Services described in the Sales Order, whichever is earlier. When a Sales Order becomes effective it shall be deemed part of, and shall be subject to, the Agreement.

2.2 Access. In order to deliver certain Services to Customer, Comcast may require access, right-of-way, conduit, and/or common room space ("Access"), both within and/or outside each Service Location. Customer shall provide an adequate environmentally controlled space and such electricity as may be required for installation, operation, and maintenance of the Comcast Equipment used to provide the Services within the Service Location(s). Customer shall be responsible for securing, and maintaining on an initial and ongoing basis during the applicable Service Term and/or Renewal Term, such Access within each Service Location unless Comcast has secured such access prior to this Agreement. In the event that Customer, fails to secure or maintain such Access within a particular Service Location, Comcast may cancel or terminate Service at such particular Service Location, without further liability, upon written notice to Customer. In such event, if Comcast has incurred any costs or expense in installing or preparing to install the Service that it otherwise would not have incurred, a charge equal to those costs and expenses shall apply to Customer's final invoice for that particular Service Location. If Comcast is unable to secure or maintain Access outside a particular Service Location, which Access is needed to provide Services to such Service Location, Customer or Comcast may cancel or terminate Service at such particular Service Location, without further liability beyond the termination date, upon a minimum thirty (30) days' prior written notice to the other party. In such event, if Comcast has incurred any costs or

expense in installing or preparing to install the Service that it otherwise would not have incurred, Comcast shall be responsible for such costs or expenses. Any other failure on the part of Customer to be ready to receive Service, or any refusal on the part of Customer to receive Service, shall not relieve Customer of its obligation to pay charges for any Service that is otherwise available for use.

2.3 Hazardous Materials. If the presence of asbestos or other hazardous materials exists or is detected at a Service Location or within the building where the Service Location is located, Comcast may immediately stop providing Services until such a time as such materials are removed. Alternatively Customer may notify Comcast to install the applicable portion of the Service in areas of any such Service Location not containing such hazardous material. Any additional expense incurred by Comcast as a result of encountering hazardous materials, including but not limited to, any additional equipment shall be borne by Customer. Customer shall use reasonable efforts to maintain its property and Service Locations in a manner that preserves the integrity of the Services.

2.4 Comcast Equipment. During normal business hours and within facility security parameters, Comcast may remove or change Comcast Equipment in its sole discretion in connection with providing the Services. Customer shall not move, rearrange, disconnect, remove, attempt to repair, or otherwise tamper with any Comcast Equipment or permit others to do so, and shall not use the Comcast Equipment for any purpose other than that authorized by the Agreement. Comcast shall maintain Comcast Equipment in good operating condition during the term of this Agreement; provided, however, that such maintenance shall be at Comcast's expense only to the extent that it is related to and/or resulting from the ordinary and proper use of the Comcast Equipment. Customer is responsible for damage to, or loss of, Comcast Equipment caused by its acts or omissions, and its noncompliance with this Article, or by fire, theft or other casualty at the Service Location(s), unless caused by the gross negligence or willful misconduct of Comcast.

2.5 Ownership, Impairment and Removal of Network. The Network is and shall remain the property of Comcast regardless of whether installed within or upon the Service Location(s) and whether installed overhead, above, or underground and shall not be considered a fixture or an addition to the land or the Service Location(s) located thereon. Customer agrees that it shall take no action that directly or indirectly impairs Comcast's title to the Network, or any portion thereof, or exposes Comcast to any claim, lien, encumbrance, or legal process, except as otherwise agreed in writing by the Parties. Nothing in this Agreement shall preclude Comcast from using the Network for services provided to other Comcast customers. For a period of twelve (12) months following Comcast's discontinuance of Service to the Service Location(s), Comcast retains the right to remove the Network including, but not limited to, that portion of the Network that is located in the Service Location. To the extent Comcast removes such portion of the Network it shall be responsible for returning the Service Location(s) to its prior condition, reasonable wear and tear excepted.

2.6 Customer-Provided Equipment ("CE"). Comcast shall have no obligation to install, operate, or maintain CE. Customer shall have sole responsibility for providing maintenance, repair, operation and replacement of all CE, inside telephone wiring and other Customer equipment and facilities on the Customer's side of the Demarcation Point. Neither Comcast nor its employees, Affiliates, agents or contractors will be liable for any damage, loss, or destruction to CE, unless caused by the gross negligence or willful misconduct of Comcast. CE shall at all times be compatible with the Network as determined by Comcast in its sole discretion. In addition to any other service charges that may be imposed from time to time, Customer shall be responsible for the payment of service charges for visits by Comcast's employees or agents to a Service Location when the service difficulty or trouble report results from the use of CE or facilities provided by any party other than Comcast.

2.7 Engineering Review. Each Sales Order submitted by Customer may be subject to an engineering review. The engineering review will determine whether and to what extent the Network must be extended, built or upgraded ("Custom Installation") in order to provide the ordered Services at the requested Service Location(s). Comcast will provide Customer written notification in the event Service installation at any Service Location will require an additional non-recurring installation fee ("Custom Installation Fee"). Custom Installation Fees may also be referred to as Construction Charges on a Sales Order or Invoice. Customer will have five (5) days from receipt of such notice to reject the Custom Installation Fee and terminate, without further liability, the Sales Order with respect to the affected Service Location(s). For certain Services, the Engineering Review will be conducted prior to Sales Order submission. In such case, Customer will have accepted the designated Custom Installation Fee upon submission of the applicable Sales Order.

2.8 Service Acceptance. Except as may otherwise be identified in the applicable PSA, the Service Commencement Date shall be the date Comcast completes installation and connection of the necessary facilities and equipment to provide the Service at a Service Location.

2.9 Administrative Website. Comcast may furnish Customer with one or more user identifications and/or passwords for use on the Administrative Website. Customer shall be responsible for the confidentiality and use of such user identifications and/or passwords and shall immediately notify Comcast if there has been an unauthorized release, use or other compromise of any user identification or password. In addition, Customer agrees that its authorized users shall keep

confidential and not distribute any information or other materials made available by the Administrative Website. Customer shall be solely responsible for all use of the Administrative Website, and Comcast shall be entitled to rely on all Customer uses of and submissions to the Administrative Website as authorized by Customer. Comcast shall not be liable for any loss, cost, expense or other liability arising out of any Customer use of the Administrative Website or any information on the Administrative Website. Comcast may change or discontinue the Administrative Website, or Customer's right to use the Administrative Website, at any time. Additional terms and policies may apply to Customer's use of the Administrative Website. These terms and policies will be posted on the site.

ARTICLE 3. BILLING AND PAYMENT

3.1 Charges. Except as otherwise provided in the applicable PSA, Customer shall pay Comcast one hundred percent (100%) of the Custom Installation Fee. Customer further agrees to pay all charges associated with the Services, as set forth or referenced in the applicable PSA, Sales Order(s) or invoice from Comcast. These charges may include, but are not limited to standard and custom non-recurring installation charges, monthly recurring service charges, usage charges including without limitation charges for the use of Comcast Equipment, per-call charges, pay-per-view charges, charges for service calls, maintenance and repair charges, and applicable federal, state, and local fees, surcharges and recoupments (however designated). Some Services such as measured and per-call charges, pay-per-view movies or events, and interactive television (as explained in the applicable PSA) may be invoiced after the Service has been provided to Customer. Except as otherwise indicated herein or in the applicable PSA(s) monthly recurring charges for Ethernet, Video and Internet Services that are identified on a Sales Order shall not increase during the Service Term. Except as otherwise indicated herein or in the Sales Order(s), Voice Service pricing, charges and fees can be found in the applicable PSA.

3.2 Third-Party Charges. Customer may incur charges from third party service providers that are separate and apart from, or based on the amounts charged by Comcast. These may include, without limitation, charges resulting from wireless services including roaming charges, accessing on-line services, calls to parties who charge for their telephone based services, purchasing or subscribing to other offerings via the Internet or interactive options on certain Video services, or otherwise. Customer agrees that all such charges, including all applicable taxes, are Customer's sole responsibility. In addition, Customer is solely responsible for protecting the security of credit card information provided to others in connection with such transactions.

3.3 Payment of Bills. Except as otherwise indicated herein or in a PSA, Comcast will invoice Customer in advance on a monthly basis for all monthly recurring charges and fees arising under the Agreement. All other charges will be billed monthly in arrears, including without limitation certain usage based charges and third party pass through fees. Payment is due upon presentation of an invoice. Payment will be considered timely made to Comcast if received within thirty (30) days after the invoice date. Any charges not paid to Comcast within such period will be considered past due. If a Service Commencement Date is not the first day of a billing period, Customer's first monthly invoice shall include any pro-rated charges for the Services, from the date of installation to the start of the next billing period. In certain cases, Comcast may agree to provide billing services on behalf of third parties, as the agent of the third party. Any such third-party charges shall be payable pursuant to any contract or other arrangement between the third party and Customer and/or Comcast. Comcast shall not be responsible for any dispute regarding these charges between Customer and such third party. Customer must address all such disputes directly with the third party.

3.4 Partial Payment. Partial payment of any bill will be applied to the Customer's outstanding charges in amounts and proportions solely determined by Comcast. No acceptance of partial payment(s) by Comcast shall constitute a waiver of any rights to collect the full balance owed under the Agreement.

3.5 Credit Approval and Deposits. Initial and ongoing delivery of Services may be subject to credit approval. Customer shall provide Comcast with credit information requested by Comcast. Customer authorizes Comcast to make inquiries and to receive information about Customer's credit history from others and to enter this information in Customer's records. Customer represents and warrants that all credit information that it provides to Comcast will be true and correct. Comcast, in its sole discretion, may deny the Services based upon an unsatisfactory credit history. Additionally, subject to applicable regulations, Comcast may require Customer to make a deposit (in an amount not to exceed an estimated two months charge for the Services) as a condition to Comcast's provision of the Services, or as a condition to Comcast's continuation of the Services. The deposit will not, unless explicitly required by law, bear interest and shall be held by Comcast as security for payment of Customer's charges. Comcast may apply the deposit to any delinquent Customer charges upon written notice to Customer. If Comcast uses any or all of the deposit to pay an account delinquency, Customer will replenish the deposit by that amount within five (5) days of its receipt of written notice from Comcast. If the provision of Service to Customer is terminated, or if Comcast determines in its sole discretion that such deposit is no longer necessary, then the amount of the deposit (plus any required deposit interest) will be credited to Customer's account or will be refunded to Customer, as determined by Comcast.

3.6 Taxes and Fees. Tax Exempt Certificate Provided.

3.7 Other Government-Related Costs and Fees. Comcast reserves the right to invoice Customer for any fees or payment obligations in connection with the Services imposed by governmental or quasi-governmental bodies in connection with the sale, installation, use, or provision of the Services, including, without limitation, applicable franchise fees, right of way fees and Universal Service Fund charges (if any), regardless of whether Comcast or its Affiliates pay the fees directly or are required by an order, rule, or regulation of a taxing jurisdiction to collect them from Customer. Government-related fees and surcharges may be changed with or without notice. In the event that any newly adopted law, rule, regulation or judgment increases Comcast's costs of providing Services, Customer shall pay Comcast's additional costs of providing Services under the new law, rule, regulation or judgment.

3.8 Disputed Invoice. If Customer disputes any portion of an invoice by the due date, Customer must pay the undisputed portion of the invoice and submit a written claim, including all documentation substantiating Customer's claim, to Comcast for the disputed amount of the invoice by the invoice due date. The Parties shall negotiate in good faith to resolve any billing dispute. Comcast will refund/credit all valid disputes resolved in Customer's favor as of the date the disputed charges first appeared on the Customer's invoice.

3.9 Past-Due Amounts. Any payment not made when due will be subject to a late charge of 0.75% per month or the highest rate allowed by law on the unpaid invoice, whichever is lower. If Customer's account is delinquent, Comcast may refer the account to a collection agency or attorney that may pursue collection of the past due amount and/or any Comcast Equipment which Customer fails to return in accordance with the Agreement.

3.10 Rejected Payments. Except to the extent otherwise prohibited by law, Customer will be assessed a service charge up to the full amount permitted under applicable law for any check or other instrument used to pay for the Services that has been rejected by the bank or other financial institution.

3.11 Fraudulent Use of Services. Customer is responsible for all charges attributable to Customer with respect to the Service(s), even if incurred as the result of fraudulent or unauthorized use of the Service. Comcast may, but is not obligated to, detect or report unauthorized or fraudulent use of Services to Customer. Comcast reserves the right to restrict, suspend or discontinue providing any Service in the event of fraudulent use of Customer's Service.

ARTICLE 4. TERM; REVENUE COMMITMENT

4.1 Agreement Term. Upon execution of the Agreement, Customer shall be allowed to submit Sales Orders to Comcast during the term referenced on the SOM Contract. After the expiration of the initial Term, Comcast may continue to accept Purchase Orders from Customer under the Agreement, or require the Parties to execute a new agreement. This Agreement shall continue in effect until the expiration or termination date of the last Purchase Order entered under the Agreement, unless terminated earlier in accordance with the Agreement.

4.2 Sales Order Term. The applicable Service Term shall be set forth in the Purchase Order. Unless otherwise stated in the terms and conditions, if a Sales Order does not specify a term of service, the Service Term shall be one (1) year from the Service Commencement Date.

4.3 Sales Order Renewal. Upon the expiration of the Service Term, and unless otherwise agreed to by the Parties in the Purchase Order, each Purchase Order shall automatically renew for successive periods of one (1) year each ("Renewal Term(s)"), unless otherwise stated in these terms and conditions or prior notice of non-renewal is delivered by either Party to the other at least thirty (30) days before the expiration of the Service Term or the then current Renewal Term. Effective at any time after the end of the Service Term and from time to time thereafter, Comcast may, modify the charges for Ethernet, Internet and/or Video Services subject to thirty (30) days prior written notice to Customer. Customer will have thirty (30) days from receipt of such notice to cancel the applicable Service without further liability. Should Customer fail to cancel within this timeframe, Customer will be deemed to have accepted the modified Service pricing.

ARTICLE 5. TERMINATION WITHOUT FAULT; DEFAULT

5.1 Termination for Convenience. See State of Michigan (SOM) Contract Termination clauses.

5.2 Termination for Cause. See State of Michigan (SOM) Contract Termination clauses.

5.3 Effect of Expiration/Termination of a Sales Order.

Upon the expiration or termination of a Purchase Order for any reason:

- A. Comcast shall disconnect the applicable Service;
- B. Comcast may delete all applicable data, files, electronic messages, or other information stored on Comcast's servers or systems;
- C. If Customer has terminated the Purchase Order prior to the expiration of the Service Term for convenience, or if Comcast has terminated the Purchase Order prior to the expiration of the Service Term as a result of material breach by Customer, Comcast may assess and collect from Customer applicable Charges (if any);
- D. Customer shall, permit Comcast to retrieve from the applicable Service Location any and all Comcast Equipment. If Customer fails to permit such retrieval or if the retrieved Comcast Equipment has been damaged and/or destroyed other than by Comcast or its agents, normal wear and tear excepted, Comcast may invoice Customer for the manufacturer's list price of the relevant Comcast Equipment, or in the event of minor damage to the retrieved Comcast Equipment, the cost of repair, which amounts shall be immediately due and payable; and
- E. Customer's right to use applicable Licensed Software shall automatically terminate, and Customer shall be obligated to return all Licensed Software to Comcast.

5.4 Resumption of Service. If a Service has been discontinued by Comcast for cause and Customer requests that the Service be restored, Comcast shall have the sole and absolute discretion to restore such Service. At Comcast's option, deposits, advanced payments, nonrecurring charges, and/or an extended Service Term may apply to restoration of Service.

5.5 Regulatory and Legal Changes. The Parties acknowledge that the respective rights and obligations of each Party as set forth in this Agreement upon its execution are based on applicable law and regulations as they exist on the date of execution of this Agreement. The Parties agree that in the event of any subsequent decision by a legislative, regulatory or judicial body, including any regulatory or judicial order, rule, regulation, decision in any arbitration or other dispute resolution or other legal or regulatory action that materially affects the provisions or ability to provide Services on economic terms of the Agreement, Comcast may, by providing written notice to the Customer, require that the affected provisions of the Agreement be renegotiated in good faith. If Customer refuses to enter such renegotiations, or the Parties can't reach resolution on new Agreement terms, Comcast may, in its sole discretion, terminate this Agreement, in whole or in part, upon sixty (60) days written notice to Customer.

ARTICLE 6. LIMITATION OF LIABILITY; DISCLAIMER OF WARRANTIES; WARNINGS

6.1 See SOM Contract for Liability language.

B. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INCIDENTAL, INDIRECT, SPECIAL, COVER, PUNITIVE OR CONSEQUENTIAL DAMAGES, WHETHER OR NOT FORESEEABLE, OF ANY KIND INCLUDING BUT NOT LIMITED TO ANY LOSS REVENUE, LOSS OF USE, LOSS OF BUSINESS, OR LOSS OF PROFIT WHETHER SUCH ALLEGED LIABILITY ARISES IN CONTRACT OR TORT HOWEVER, THAT NOTHING HEREIN IS INTENDED TO LIMIT CUSTOMER'S LIABILITY FOR AMOUNTS OWED FOR THE SERVICES, FOR ANY EQUIPMENT OR SOFTWARE PROVIDED BY COMCAST OR FOR TERMINATION CHARGES.

6.2 Disclaimer of Warranties.

A. Services shall be provided pursuant to the terms and conditions in the applicable PSA and Service Level Agreement, and are in lieu of all other Contract and Purchase Order warranties, express, implied or statutory, including, but not limited to, the implied warranties of merchantability, fitness for a particular purpose, title, and non-infringement. **TO THE MAXIMUM EXTENT ALLOWED BY LAW, COMCAST EXPRESSLY DISCLAIMS ALL SUCH EXPRESS, IMPLIED AND STATUTORY WARRANTIES.**

B. Without limiting the generality of the foregoing, and except as otherwise identified in Contract, Purchase Order or Service Level Agreement, Comcast does not warrant that the Services, Comcast Equipment, or Licensed Software will be uninterrupted, error-free, or free of latency or delay, or that the Services, Comcast Equipment, or Licensed Software will

meet customer's requirements, or that the Services, Comcast Equipment, or Licensed Software will prevent unauthorized access by third parties.

C. In no event shall Comcast, be liable for any loss, damage or claim arising out of or related to: (i) stored, transmitted, or recorded data, files, or software; (ii) any act or omission of Customer, its users or third parties; (iii) interoperability, interaction or interconnection of the Services with applications, equipment, services or networks provided by Customer or third parties; or (iv) loss or destruction of any Customer hardware, software, files or data resulting from any virus or other harmful feature or from any attempt to remove it. Customer is advised to back up all data, files and software prior to the installation of Service and at regular intervals thereafter.

6.3 Disruption of Service. Notwithstanding the performance standards identified in a PSA, the Services are not fail-safe and are not designed or intended for use in situations requiring fail-safe performance or in which an error or interruption in the Services could lead to severe injury to business, persons, property or environment ("High Risk Activities"). These High Risk Activities may include, without limitation, vital business or personal communications, or activities where absolutely accurate data or information is required.

6.4 Customer's sole and exclusive remedies are expressly set forth in the Agreement. Certain of the above exclusions may not apply if the state in which a Service is provided does not allow the exclusion or limitation of implied warranties or does not allow the limitation or exclusion of incidental or consequential damages. In those states, the liability of Comcast is limited to the maximum extent permitted by law.

ARTICLE 7. INDEMNIFICATION

7.1 Comcast's Indemnification Obligations. Comcast shall indemnify defend, and hold harmless Customer and its parent company, affiliates, employees, directors, officers, and agents from and against all claims, demands, actions, causes of actions, damages, liabilities, losses, and expenses (including reasonable attorneys' fees) ("Claims") incurred as a result of: infringement of U.S. patent or copyright relating to the Comcast Equipment or Comcast Licensed Software hereunder; damage to tangible personal property or real property, and personal injuries (including death) arising out of the gross negligence or willful misconduct of Comcast while working on the Customer Service Location.

7.2 Customer's Indemnification Obligations. See SOM Contract Indemnification clause.

7.3 Indemnification Procedures. See SOM Contract Indemnification Procedures.

ARTICLE 8. SOFTWARE & SERVICES

8.1 License. If and to the extent that Customer requires the use of Licensed Software in order to use the Service supplied under any Sales Order, Customer shall have a nonexclusive, transferable, and limited license to use such Licensed Software in object code only and solely to the extent necessary to use the applicable Service during the corresponding Service Term. All Licensed Software provided to Customer, and each revised version thereof, is licensed (not sold) to Customer by Comcast only for use in conjunction with the Service. Customer may not claim title to, or an ownership interest in, any Licensed Software (or any derivations or improvements thereto), and Customer shall execute any documentation reasonably required by Comcast, including, without limitation, end-user license agreements for the Licensed Software. Comcast and its suppliers shall retain ownership of the Licensed Software, and no rights are granted to Customer other than a license to use the Licensed Software under the terms expressly set forth in this Agreement.

8.2 Restrictions. Customer agrees that it shall not: (i) copy the Licensed Software (or any upgrades thereto or related written materials) except for emergency back-up purposes or as permitted by the express written consent of Comcast; (ii) reverse engineer, decompile, or disassemble the Licensed Software; (iii) sell, lease, license, or sublicense the Licensed Software; or (iv) create, write, or develop any derivative software or any other software program based on the Licensed Software.

8.3 Updates. Customer acknowledges that the use of Service may periodically require updates and/or changes to certain Licensed Software resident in the Comcast Equipment or CE. If Comcast has agreed to provide updates and changes, such updates and changes may be performed remotely or on-site by Comcast, at Comcast's sole option. Customer hereby consents to, and shall provide free access for, such updates deemed reasonably necessary by Comcast. If Customer fails to agree to such updates, Comcast will be excused from the applicable Service Level Agreement and other performance credits, and any and all liability and indemnification obligations regarding the applicable Service.

8.4 Export Law and Regulation. Customer acknowledges that any products, software, and technical information (including, but not limited to, services and training) provided pursuant to the Agreement may be subject to U.S. export laws and regulations. Customer agrees that it will not use, distribute, transfer, or transmit the products, software, or technical information (even if incorporated into other products) except in compliance with U.S. export regulations. If

requested by Comcast, Customer also agrees to sign written assurances and other export-related documents as may be required for Comcast to comply with U.S. export regulations.

8.5 Ownership of Telephone Numbers and Addresses. Customer acknowledges that use of certain Services does not give it any ownership or other rights in any telephone number or Internet/on-line addresses provided, including but not limited to Internet Protocol ("IP") addresses, e-mail addresses and web addresses.

8.6 Intellectual Property Rights in the Services. Title and intellectual property rights to the Services are owned by Comcast, its agents, suppliers or affiliates or their licensors or otherwise by the owners of such material. The copying, redistribution, bundling or publication of the Services, in whole or in part, without express prior written consent from Comcast or other owner of such material, is prohibited.

ARTICLE 9. CONFIDENTIAL INFORMATION AND PRIVACY

9.1 Disclosure and Use. All Confidential Information disclosed by either Party shall be kept by the receiving party in strict confidence and shall not be disclosed to any third party without the disclosing party's express written consent. Notwithstanding the foregoing, such information may be disclosed (i) to the receiving party's employees, affiliates, and agents who have a need to know for the purpose of performing this Agreement, using the Services, rendering the Services, and marketing related products and services (provided that in all cases the receiving party shall take appropriate measures prior to disclosure to its employees, affiliates, and agents to assure against unauthorized use or disclosure); or (ii) as otherwise authorized by this Agreement. Each Party agrees to treat all Confidential Information of the other in the same manner as it treats its own proprietary information, but in no case using a degree of care less than a reasonable degree of care.

9.2 Exceptions. Notwithstanding the foregoing, each Party's confidentiality obligations hereunder shall not apply to information that: (i) is already known to the receiving party without a pre-existing restriction as to disclosure; (ii) is or becomes publicly available without fault of the receiving party; (iii) is rightfully obtained by the receiving party from a third party without restriction as to disclosure, or is approved for release by written authorization of the disclosing party; (iv) is developed independently by the receiving party without use of the disclosing party's Confidential Information; or (v) is required to be disclosed by law or regulation; or (vi) is subject to disclosure through the Michigan Freedom of Information Act.

9.3 Publicity. The Agreement provides no right to use any Party's or its affiliates' trademarks, service marks, or trade names, or to otherwise refer to the other Party in any marketing, promotional, or advertising materials or activities. Neither Party shall issue any publication or press release relating to, or otherwise disclose the existence of, the terms and conditions of any contractual relationship between Comcast and Customer, except as permitted by the MI FOIA law and MIDEAL Programs provisions.

9.4 Passwords. Comcast may furnish Customer with user identifications and passwords for use in conjunction with certain Services, including, without limitation, for access to certain non-public Comcast website materials. Customer understands and agrees that such information shall be subject to Comcast's access policies and procedures located on Comcast's Web Site.

9.5 Remedies. Notwithstanding any other Article of this Agreement, the non-breaching Party shall be entitled to seek equitable relief to protect its interests pursuant to this Article 9, including, but not limited to, injunctive relief.

9.6 Monitoring of Services. Except as otherwise expressly set forth in a PSA, Comcast assumes no obligation to pre-screen or monitor Customer's use of the Service, including without limitation postings and/or transmission. However, Customer acknowledges and agrees that Comcast and its agents shall have the right to pre-screen and monitor such use from time to time and to use and disclose such results to the extent necessary to operate the Service properly, to ensure compliance with applicable use policies, to protect the rights and/or property of Comcast, or in emergencies when physical safety is at issue, and that Comcast may disclose the same to the extent necessary to satisfy any law, regulation, or governmental request. Comcast shall have no liability or responsibility for content received or distributed by Customer or its users through the Service, and Customer shall indemnify, defend, and hold Comcast and its directors, officers, employees, agents, subsidiaries, affiliates, successors, and assigns harmless from any and all claims, damages, and expenses whatsoever (including reasonable attorneys' fees) arising from such content attributable to Customer or its users. For the avoidance of doubt, the monitoring of data described in this Section 9.6 refers to aggregate data and types of traffic (protocol, upstream/downstream utilization, etc.). Comcast does not have access to the content of encrypted data transmitted across Comcast networks.

9.7 Survival of Confidentiality Obligations. The obligations of confidentiality and limitation of use described in this Article 9 shall survive the expiration and termination of the Agreement for a period of two (2) years (or such longer period as may be required by law).

ARTICLE 10. USE OF SERVICE; USE AND PRIVACY POLICIES

10.1 Prohibited Uses and Comcast Use Policies. Customer is prohibited from using, or permitting the use of, any Service (i) for any purpose in violation of any law, rule, regulation, or policy of any government authority; (ii) in violation of any Use Policy (as defined below); (iii) for any use as to which Customer has not obtained all required government approvals, authorizations, licenses, consents, and permits; or (iv) to interfere unreasonably with the use of Comcast service by others or the operation of the Network. Customer is responsible for assuring that any and all of its users comply with the provisions of the Agreement. Comcast reserves the right to act immediately and without notice to terminate or suspend the Services and/or to remove from the Services any information transmitted by or to Customer or users, if Comcast determines that such use is prohibited as identified herein, or information does not conform with the requirements set or Comcast reasonably believes that such use or information may violate any laws, regulations, or written and electronic instructions for use. Furthermore, to the extent applicable, Services shall be subject to Comcast's acceptable use policies ("Use Policies") that may limit use. The Use Policies and other security policies concerning the Services are posted on the Website, and are incorporated into this Agreement by reference. Comcast may update the Use Policies from time to time, and such updates shall be deemed effective immediately upon posting, with or without actual notice to Customer. Comcast's action or inaction in enforcing acceptable use shall not constitute review or approval of Customer's or any other users' use or information.

10.2 Privacy Policy. In addition to the provisions of Article 9, Comcast's commercial privacy policy applies to Comcast's handling of Customer confidential information. Comcast's privacy policy is available on the Website.

10.3 Privacy Note Regarding Information Provided to Third Parties. Comcast is not responsible for any information provided by Customer to third parties. Such information is not subject to the privacy provisions of this Agreement. Customer assumes all privacy and other risks associated with providing personally identifiable information to third parties via the Services.

10.4 Prohibition on Resale. Customer may not sell, resell, sublease, assign, license, sublicense, share, provide, or otherwise utilize in conjunction with a third party (including, without limitation, in any joint venture or as part of any outsourcing activity) the Services or any component thereof.

10.5 Violation. Any breach of this Article 10 shall be deemed a material breach of this Agreement. In the event of such material breach, Comcast shall have the right to restrict, suspend, or terminate immediately any or all Sales Orders, without liability on the part of Comcast, and then to notify Customer of the action that Comcast has taken and the reason for such action, in addition to any and all other rights and remedies under this Agreement.

ARTICLE 11. MISCELLANEOUS TERMS

11.1 Force Majeure. Neither Party (and in the case of Comcast, Comcast affiliates and subsidiaries) shall be liable to the other Party for any delay, failure in performance, loss, or damage to the extent caused by force majeure conditions such as acts of God, fire, explosion, power blackout, cable cut, acts of regulatory or governmental agencies, unavailability of right-of-way or materials, or other causes beyond the Party's reasonable control, except that Customer's obligation to pay for Services provided under the Agreement shall not be excused. Changes in economic, business or competitive condition shall not be considered force majeure events.

11.2 Assignment or Transfer. Neither Party shall assign any right, obligation or duty, in whole or in part, nor of any other interest hereunder, without the prior written consent of Comcast, which shall not be unreasonably withheld. All obligations and duties of either Party under this Agreement shall be binding on all successors in interest and assigns of such Party. Nothing herein is intended to limit Comcast's use of third-party consultants and contractors to perform Services under a Sales Order.

11.3 Notices. Any notice sent pursuant to the Agreement shall be deemed given and effective when sent by facsimile (confirmed by first-class mail), or when delivered by overnight express or other express delivery service, in each case as follows: (i) with respect to Customer, to the address set forth on any Sales Order; or (ii) with respect to either party in accordance with SOM Contract Notices, Section 2.025.

11.4 Entire Understanding. The Contract, constitutes the entire understanding of the Parties related to the subject matter hereof. The Contract supersedes all prior agreements, proposals, representations, statements, or understandings, whether written or oral, concerning the Services or the Parties' rights or obligations relating to Services. Any prior representations, promises, inducements, or statements of intent regarding the Services that are not embodied in the Contract are of no effect. No subsequent agreement among the Parties concerning Service shall be effective or binding unless

it is made in writing by authorized representatives of the Parties. Terms or conditions contained in any Sales Order, or restrictive endorsements or other statements on any form of payment, shall be void and of no force or effect.

11.5 Tariffs. Notwithstanding anything to the contrary in the Agreement, Comcast may elect or be required to file with regulatory agencies tariffs for certain Services. In such event, the terms set forth in the Contract supersede the terms and conditions of the Tariffs. Without limiting the generality of the foregoing, in the event of any inconsistency with respect to rates, the rates and other terms set forth in the applicable Sales Order shall be treated as individual case based arrangements to the maximum extent permitted by law, and Comcast shall take such steps as are required by law to make the rates and other terms enforceable. If Comcast voluntarily or involuntarily cancels or withdraws a Tariff under which a Service is provided to Customer, the Service will thereafter be provided pursuant to the Contract and the terms and conditions contained therein. In the event that Comcast is required by a governmental authority to modify a Tariff under which Service is provided to Customer in a manner that is material and adverse to either Party, the affected Party may terminate the applicable Sales Order upon a minimum thirty (30) days' prior written notice to the other Party, without further liability.

11.6 Construction. In the event that any portion of the Agreement is held to be invalid or unenforceable, the Parties shall replace the invalid or unenforceable portion with another provision that, as nearly as possible, reflects the original intention of the Parties, and the remainder of the Agreement shall remain in full force and effect.

11.7 Survival. The rights and obligations of either Party that by their nature would continue beyond the termination or expiration of a Sales Order shall survive termination or expiration of the Sales Order.

11.8 Choice of Law. The domestic law of the state in which the Service is provided shall govern the construction, interpretation, and performance of this Agreement, except to the extent superseded by federal law.

11.9 No Third Party Beneficiaries. This Agreement does not expressly or implicitly provide any third party (including users) with any remedy, claim, liability, reimbursement, cause of action, or other right or privilege.

11.10 Parties' Authority to Contract. The persons whose signatures appear on the SOM Contract are duly authorized to enter into the Agreement on behalf of the Parties named therein.

11.11 No Waiver; Etc. No failure by either Party to enforce any right(s) hereunder shall constitute a waiver of such right(s). This Agreement may be executed in counterpart copies.

11.12 Independent Contractors. The Parties to this Agreement are independent contractors. Neither Party is an agent, representative, or partner of the other Party. Neither Party shall have any right, power, or authority to enter into any agreement for, or on behalf of, or incur any obligation or liability of, or to otherwise bind, the other Party. This Agreement shall not be interpreted or construed to create an association, agency, joint venture, or partnership between the Parties or to impose any liability attributable to such a relationship upon either Party.

11.13 Article Headings. The article headings used herein are for reference only and shall not limit or control any term or provision of this Agreement or the interpretation or construction thereof.

11.14 Compliance with Laws. Each of the Parties agrees to comply with all applicable local, state and federal laws and regulations and ordinances in the performance of its respective obligations under this Agreement.

Attachment 8 WAN Pricing Tables

Instructions for Bidder to complete the Pricing Table template:

Bidder must complete the Summary of the Service Costs and all associated tables identified. Identify all information related, directly or indirectly, to the Bidder's proposed charges for services and deliverables including, but not limited to, costs, fees, prices, rates, bonuses, discounts, rebates, or the identification of free services, labor or materials.

Identify any assumptions Bidder has made developing its Price Proposal in the **Pricing Additional Information** section provided at the end of the pricing table.

All sections in the pricing tables refer back to the categories listed in Article 1 - **Section 1.104 Work and Deliverables**.

Attachment 8 WAN Pricing Tables

Table 1: Summary of Contract Costs

Bidder please transfer category totals Table 2 and 3.

No.	Project Cost(s)	Cost (\$)	Comments
A.	Procurement of Services	<i>Reserved</i>	
B.	Contract Plan and Administration	<i>Reserved</i>	
C.	Professional Services	\$	
D.	Service Integrator	\$	
E.	Internet Service Providers	\$404,850	Pricing for 60 months based on upgrading existing 1Gbps EDI to 2Gbps EDI. See pricing chart in Comcast response for additional bandwidths. The monthly rate for this is \$6747.50 (2Gbps) compared to the current 1Gbps rate of \$7087.50 (1Gbps).
F.	Service Level Agreements	\$	
G.	Change Management	\$	
H.	Reports	\$	
I.	Business Continuity	\$	
J.	Optional Services	\$	
K.	WAN Service Provider(s)	\$19,776,881.40	Pricing is for 60 months for 498 locations. See pricing chart in Comcast response for individual site pricing and terms and conditions.
Pricing Proposal Supplemental Work Labor Rates		\$	
Total Contract Costs		\$20,181,731.40	

Attachment 8 WAN Pricing Tables

Table 2: WAN Service Costs

No.	Category	Resources Required	Total # of hours (Bidder to identify # of hours per resource)	Total cost Per Site (\$) (Bidder must transfer category totals to Table 1)	Comments (Bidder must explain how they arrived at the costs identified)
A.	Procurement of Services				
	Pre-Sales Consulting			Reserved	
	Design Services			Reserved	
	Total			Reserved	
B.	Contract Plan and Administration				
	Transaction Plan			Reserved	
	Operations Plan			Reserved	
	Escalation Plan Procedures			Reserved	
				\$	
C.	Professional Services				
	Support Service Desk			\$	
	CPE Management and NOC Services			\$	
	Problem and Incident Management			\$	
	Service Desk - Request and Change Management			\$	
	Management and Monitoring			\$	
	Network Assessments			\$	

Attachment 8 WAN Pricing Tables

No.	Category	Resources Required	Total # of hours (Bidder to identify # of hours per resource)	Total cost Per Site (\$) (Bidder must transfer category totals to Table 1)	Comments (Bidder must explain how they arrived at the costs identified)
				\$	
D.	Service Integrator Services				
	Bidder is to provide a full list of all WAN and WAN related services they offer. Bidder is to add rows as necessary				
	Example: Installation Charges (construction, outside/inside cable plant)				
			Total	\$	
E.	Internet Service Providers				
	Installation Charges (construction, outside/inside cable plant)			0.0	Comcast is an existing ISP at 7150 Harris
	Bidders is to provide a full list of all ISP Services			\$404,850	Pricing for 60 months based on upgrading existing 1Gbps EDI to 2Gbps EDI. See pricing chart in Comcast response for additional bandwidths.
	Examples?			\$	
			Total	\$404,850	
F.	Service Level Agreements				
				<i>Reserved</i>	
			Total	Reserved	
			Total	Reserved	
G.	Change Management				

Attachment 8 WAN Pricing Tables

No.	Category	Resources Required	Total # of hours (Bidder to identify # of hours per resource)	Total cost Per Site (\$) (Bidder must transfer category totals to Table 1)	Comments (Bidder must explain how they arrived at the costs identified)
				<i>Reserved</i>	
			Total	<i>Reserved</i>	
H.	Reports				
	Special Reporting Per Request for reports not included in normal scope Bidder is to add rows as necessary			\$	
			Total	\$	
I.	Business Continuity				
				<i>Reserved</i>	
			Total	<i>Reserved</i>	
J.	Optional Services				
	Examples listed: Additional Project Management outside of normal scope			\$	
	Work outside of normal scope mentioned in contract			\$	
	Hardware Lease			\$	
	Bidder is to add rows as necessary				

Attachment 8 WAN Pricing Tables

No.	Category	Resources Required	Total # of hours (Bidder to identify # of hours per resource)	Total cost Per Site (\$) (Bidder must transfer category totals to Table 1)	Comments (Bidder must explain how they arrived at the costs identified)
	Total			\$	
K.	WAN Services to be Provided				
	Managed Services			\$0.00	
	Installation Charges (construction, outside/inside cable plant)			0.00	
	Bidders to provide a complete list of all services being offered Bidder is to add rows as necessary			\$19,776,881.40	Pricing is for 60 months for 498 locations. See pricing chart in Comcast response for individual site pricing and terms and conditions.
	Total			\$19,776,881.40	

Attachment 8 WAN Pricing Tables

Table 3: Pricing Proposal Supplemental Work Labor Rates

Staffing Category	Firm Fixed Hourly Rate	Comments
WAN Project Manager	\$0.00	Project Management of Comcast installation is included.
List any other positions:		
Total	0.00	

Notes:

1. Hourly rates quoted are firm, fixed rates for the duration of the contract. Travel and other expenses will not be reimbursed. The State will utilize the fully loaded hourly rates detailed above for each staff that will be used as fixed rates for responses to separate statements of work.
2. Actual funding for enhancements will occur on a yearly basis, and there is no guarantee as to the level of funding, if any, available to the project.
3. Unless otherwise agreed by the parties, each Statement of Work will include:
 - a. Background
 - b. Service or Project Objective
 - c. Scope of Work
 - d. Deliverables
 - e. Acceptance Criteria
 - f. Project Control and Reports
 - g. Specific Department Standards
 - h. Payment Schedule
 - i. Travel and Expenses
 - j. Project Contacts
 - k. Agency Responsibilities and Assumptions

Attachment 8 WAN Pricing Tables

- l. Location of Where the Work is to be Performed
 - m. Expected Bidder Work Hours and Conditions
4. The parties agree that the Services/Deliverables to be rendered by Bidder using the PSA Pricing Proposal Labor Rates on this Contract will be defined and described in detail in separate Statements of Work. Bidder shall not be obliged or authorized to commence any work to implement a Statement of Work until authorized via a purchase order issued against this Contract.

Pricing Additional Information

Bidders are to provide any additional details below needed to fully understand the proposed pricing contained in the cost tables. Bidders must describe any assumptions or any relevant information needed in understanding the pricing approach being proposed.

Bidders are to provide any additional details in this response box. Bidders must describe any assumptions and define State and Contractor roles as it pertains to this Contract.

Bidder's Response:

Pricing provided is based upon desktop survey results since site surveys were not permitted during bid process. Final pricing may vary based upon physical site survey.

Pricing assumes that of the total final sites selected by the State of Michigan, no more than 50% of the total sites are considered type two.

Comcast Note: Pricing as proposed above requires purchase of all sites and does not include any local, state or federal taxes, fees or other charges. Individual sites may be purchased separately but will require a new pricing proposal. Tax exemption certificates must be on file prior to the initial billing period for exemptions to be considered.

Taxes, Surcharges, and Other Similar Charges (Miscellaneous)

Description: Taxes, surcharges, and other similar charges refer generally to additional fees that are a necessary component of the cost of a product or service.

Eligibility: Federal taxes, state taxes, and other similar, reasonable charges incurred in obtaining eligible Telecommunications Services, Internet Access, and Internal Connections are eligible. Such eligible charges include reasonable administrative recovery by a service provider for participation in the Universal Service Support mechanism. Administrative cost added by parties other than the service provider, are not eligible.