

STATE OF MICHIGAN
DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET October 21, 2011
PURCHASING OPERATIONS
P.O. BOX 30026, LANSING, MI 48909
OR
530 W. ALLEGAN, LANSING, MI 48933

CHANGE NOTICE NO. 1
TO
CONTRACT NO. 071B1300097
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR Verizon Business Network Services Inc. 22001 Loudoun County Parkway Ashburn, VA 20147 Email: Samuel.aldridge@verizonbusiness.com	TELEPHONE Sam Aldridge (248) 728-5155 Office (734) 325-3763 Mobile
	CONTRACTOR NUMBER/MAIL CODE
	BUYER/CA (517) 335-0462 Christine Mitchell
Contract Compliance Inspector: Jack Harris LINK MI – DTMB Telecom/Statewide	
CONTRACT PERIOD: From: October 29, 2010 To: October 31, 2012	
TERMS N/A	SHIPMENT N/A
F.O.B. N/A	SHIPPED FROM N/A
MINIMUM DELIVERY REQUIREMENTS N/A	
MISCELLANEOUS INFORMATION:	

THIS CONTRACT IS EXTENDED TO LOCAL UNITS OF GOVERNMENT.

NATURE OF CHANGE (S):

Effective immediately, the Company and Buyer contact information are updated for this contract. This contract is also EXTENDED for one year to October 31, 2012, exercising one of the options allowed within the contract.

AUTHORITY/REASON:

Per Agency request 9/12/2011 and vendor agreement.

TOTAL ESTIMATED CONTRACT VALUE REMAINS: \$329,409.82

STATE OF MICHIGAN
DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET October 29, 2010
PURCHASING OPERATIONS
P.O. BOX 30026, LANSING, MI 48909
OR
530 W. ALLEGAN, LANSING, MI 48933

**NOTICE
OF
CONTRACT NO. 071B1300097**
(Supersedes Contract No. 071B4200181 for Nice Maintenance Services)
**between
THE STATE OF MICHIGAN
and**

NAME & ADDRESS OF CONTRACTOR Verizon Business Network Services Inc. 22001 Loudoun County Parkway Ashburn, VA 20147 Email: Maureen.hoeltzel@verizonbusiness.com		TELEPHONE Maureen Hoeltzel (248) 728-5449 Office (248) 410-4228 Mobile
		CONTRACTOR NUMBER/MAIL CODE
		BUYER/CA (517) 241-3215 Steve Motz
Contract Compliance Inspector: Jack Harris LINK MI – DTMB Telecom/Statewide		
CONTRACT PERIOD: From: October 29, 2010 To: October 31, 2011		
TERMS N/A	SHIPMENT N/A	
F.O.B. N/A	SHIPPED FROM N/A	
MINIMUM DELIVERY REQUIREMENTS N/A		
MISCELLANEOUS INFORMATION:		

THIS CONTRACT IS EXTENDED TO LOCAL UNITS OF GOVERNMENT.

TOTAL ESTIMATED CONTRACT VALUE: \$329,409.82

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

CONTRACT NO. 071B1300097
(Supersedes Contract No. 071B4200181 for Nice Maintenance Services)
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR Verizon Business Network Services Inc. 22001 Loudoun County Parkway Ashburn, VA 20147 Email: Maureen.hoeltzel@verizonbusiness.com		TELEPHONE Maureen Hoeltzel (248) 728-5449 Office (248) 410-4228 Mobile
		CONTRACTOR NUMBER/MAIL CODE
		BUYER/CA (517) 241-3215 Steve Motz
Contract Compliance Inspector: Jack Harris LINK MI – DTMB Telecom/Statewide		
CONTRACT PERIOD: From: October 29, 2010 To: October 31, 2011		
TERMS N/A	SHIPMENT N/A	
F.O.B. N/A	SHIPPED FROM N/A	
MINIMUM DELIVERY REQUIREMENTS N/A		
MISCELLANEOUS INFORMATION: THIS CONTRACT IS EXTENDED TO LOCAL UNITS OF GOVERNMENT. The terms and conditions of this Contract are those of Master Services Contract (MSC) #071B3001358. In the event of any conflicts between the specifications, and terms and conditions, indicated by the State and those indicated by the vendor, those of the State take precedence. Verizon Business Network Services Inc. is executing this contract on behalf of and as agent for the following Verizon affiliates: MCI Communications Services Inc. d/b/a Verizon Business Services, MCImetro Access Transmission Services LLC d/b/a Verizon Access Transmission Services, Verizon Network Integration Corp., and Verizon Select Services Inc. (collectively "Verizon") Estimated Contract Value: \$329,409.82		

THIS IS NOT AN ORDER: Orders for delivery will be issued directly by the Department of Technology Management and Budget through the issuance of a Purchase Order Form.

FOR THE CONTRACTOR:

Verizon Business Network Services Inc.
Firm Name

Authorized Agent Signature

Authorized Agent (Print or Type)

Date

FOR THE STATE:

Signature
Steve Motz, Buyer
Name/Title
IT Division
Division

Date

The Contractor is Verizon Business Network Services Inc. on behalf of and as agent for the following Verizon affiliates: MCI Communications Services Inc. d/b/a Verizon Business Services, MCI metro Access Transmission Services LLC d/b/a Verizon Access Transmission Services, Verizon Network Integration Corp., and Verizon Select Services Inc. (collectively "Verizon")

Effective July 1, 2010, Verizon North Inc., formerly an affiliate of Verizon, was acquired by and became an affiliate of Frontier Communications Corporation. The services herein were transferred from Contract No. 071B4200181 and Master Services Contract (MSC) 071B3001358 since they included services and products provided by the Verizon affiliates not acquired by Frontier.

This Contract includes the attached pricing (**Attachment A**) for maintenance on the Statewide NICE Call Recording platform, such service to be provided by Verizon Network Integration Corp.

Effective July 1, 2010, all pricing, specifications, terms and conditions of Contract No. 071B4200181 and Master Services Contract (MSC) 071B3001358 related to the Nice Recording Maintenance previously provided by Verizon, are hereby incorporated into and made a part of this contract.

Attachment A - Maintenance on the Statewide NICE Call Recording Platform

**Quote Header:** Quote Level Title/Description:

<u>Account Manager</u>	<u>Customer Name</u>	<u>Quote #</u>	<u>Revision</u>
STEVEN HAMILL	STATE OF MICHIGAN	1-4P40L7	4

(248) 728-5243

<u>SE</u>	<u>Primary Transport Service</u>	<u>Currency</u>	<u>Quote Date</u>
REGENA NAVORS		USD	10/26/2010

Equipment & Services by Site:Site Level Title/Description:

UIA GRAND RAPIDS

Maintenance Payment Option: PrepaidSite ID: 1-5G8V2ZSite Name: 1-4P7KFG

Verizon Legal Entity:
Verizon Network Integration
Corporation

Verizon Contract Country:
USA

Site Address:
STATE OF MICHIGAN
608 W ALLEGAN ST
HANNA BLDG 1ST FLOOR

Bill To:
STATE OF MICHIGAN
608 W ALLEGAN ST
HANNA BLDG 1ST FLOOR

Ship To:
STATE OF MICHIGAN
608 W ALLEGAN ST
HANNA BLDG 1ST FLOOR

LANSING, MI, 48913
USA

LANSING, MI, 48913
USA

LANSING, MI, 48913
USA

<u>Part Number</u>	<u>Description</u>	<u>Qty</u>	<u>Unit Sale Price</u>	<u>Extended Sales Price</u>
UIA GRAND RAPIDS				
VENDORMTC- NICE	VENDOR MAINTENANCE	1		\$23,190.80
Maintenance Term (Months): 12				
SILVER				

Site 1-5G8V2Z Sub Totals

Equipment:	\$0.00
Labor:	\$0.00
Maintenance:	\$23,190.80
Other:	\$0.00
Trade In:	\$0.00
Site Total:	\$23,190.80
Shipping & Handling Total:	\$0.00
Site Total with Shipping & Handling:	\$23,190.80

Site Level Title/Description:

UIA SAGINAW

Maintenance Payment Option: PrepaidSite ID: 1-5G8V34Site Name: 1-4P8VIVVerizon Legal Entity:Verizon Network Integration
CorporationVerizon Contract Country:

USA

Site Address:STATE OF MICHIGAN
608 W ALLEGAN ST
HANNA BLDG 1ST FLOORBill To:STATE OF MICHIGAN
608 W ALLEGAN ST
HANNA BLDG 1ST FLOORShip To:STATE OF MICHIGAN
608 W ALLEGAN ST
HANNA BLDG 1ST FLOORLANSING, MI, 48913
USALANSING, MI, 48913
USALANSING, MI, 48913
USA

<u>Part Number</u>	<u>Description</u>	<u>Qty</u>	<u>Unit Sale Price</u>	<u>Extended Sales Price</u>
UIA SAGINAW				
VENDORMTC- NICE	NICE VENDOR MAINTENANCE	1		\$23,190.80
Maintenance Term (Months): 12				
SILVER				

Site 1-5G8V34 Sub Totals

Equipment:	\$0.00
Labor:	\$0.00
Maintenance:	\$23,190.80
Other:	\$0.00
Trade In:	\$0.00
Site Total:	\$23,190.80
Shipping & Handling Total:	\$0.00
Site Total with Shipping & Handling:	\$23,190.80

Site Level Title/Description:

ORS 8.8/8.9 Playback

Maintenance Payment Option: PrepaidSite ID: 1-5G8V39Site Name: 1-4P9VAEVerizon Legal Entity:Verizon Network Integration
CorporationVerizon Contract Country:

USA

Site Address:STATE OF MICHIGAN
608 W ALLEGAN ST
HANNA BLDG 1ST FLOORBill To:STATE OF MICHIGAN
608 W ALLEGAN ST
HANNA BLDG 1ST FLOORShip To:STATE OF MICHIGAN
608 W ALLEGAN ST
HANNA BLDG 1ST FLOORLANSING, MI, 48913
USALANSING, MI, 48913
USALANSING, MI, 48913
USA

Site Level Title/Description:

ORS 8.8/8.9 Playback

Maintenance Payment Option: PrepaidSite ID: 1-5G8V39Site Name: 1-4P9VAEVerizon Legal Entity:Verizon Network Integration
CorporationVerizon Contract Country:

USA

<u>Part Number</u>	<u>Description</u>	<u>Qty</u>	<u>Unit Sale Price</u>	<u>Extended Sales Price</u>
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ORS 8.8/8.9 PLAYBACKVENDORMTC- NICE VENDOR MAINTENANCE
NICE

1

\$8,881.84

Maintenance Term (Months): 12
SILVERSite 1-5G8V39 Sub Totals

Equipment:	\$0.00
Labor:	\$0.00
Maintenance:	\$8,881.84
Other:	\$0.00
Trade In:	\$0.00
Site Total:	\$8,881.84
Shipping & Handling Total:	\$0.00
Site Total with Shipping & Handling:	\$8,881.84

Site Level Title/Description:

Enterprise NICE Perform R3

Maintenance Payment Option: PrepaidSite ID: 1-5G8V3ESite Name: 1-4P9VB9Verizon Legal Entity:Verizon Network Integration
CorporationVerizon Contract Country:

USA

Site Address:STATE OF MICHIGAN
608 W ALLEGAN ST
HANNA BLDG 1ST FLOORBill To:STATE OF MICHIGAN
608 W ALLEGAN ST
HANNA BLDG 1ST FLOORShip To:STATE OF MICHIGAN
608 W ALLEGAN ST
HANNA BLDG 1ST FLOORLANSING, MI, 48913
USALANSING, MI, 48913
USALANSING, MI, 48913
USA

<u>Part Number</u>	<u>Description</u>	<u>Qty</u>	<u>Unit Sale Price</u>	<u>Extended Sales Price</u>
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ENTERPRISE NICE PERFORM R3VENDORMTC- NICE VENDOR MAINTENANCE
NICE

1

\$72,870.53

Maintenance Term (Months): 12
SILVERQuote # 1-4P40L7

ALL PRICING IS VALID UNTIL: 12/10/2010

PRICES DO NOT INCLUDE TAXES

VERIZON PROPRIETARY INFORMATION

THE EQUIPMENT LISTED ON THIS QUOTE IS SOLELY FOR DOMESTIC USE IN THE UNITED STATES

Page 3 of 5

Site Level Title/Description:

Enterprise NICE Perform R3

Maintenance Payment Option: PrepaidSite ID: 1-5G8V3ESite Name: 1-4P9VB9Verizon Legal Entity:Verizon Network Integration
CorporationVerizon Contract Country:

USA

Site 1-5G8V3E Sub Totals

Equipment:	\$0.00
Labor:	\$0.00
Maintenance:	\$72,870.53
Other:	\$0.00
Trade In:	\$0.00
Site Total:	\$72,870.53
Shipping & Handling Total:	\$0.00
Site Total with Shipping & Handling:	\$72,870.53

Site Level Title/Description:

UIA DETROIT

Maintenance Payment Option: PrepaidSite ID: 1-5G8V2USite Name: 1-4P413PVerizon Legal Entity:Verizon Network Integration
CorporationVerizon Contract Country:

USA

Site Address:STATE OF MICHIGAN
608 W ALLEGAN ST
HANNA BLDG 1ST FLOORBill To:STATE OF MICHIGAN
608 W ALLEGAN ST
HANNA BLDG 1ST FLOORShip To:STATE OF MICHIGAN
608 W ALLEGAN ST
HANNA BLDG 1ST FLOORLANSING, MI, 48913
USALANSING, MI, 48913
USALANSING, MI, 48913
USA

<u>Part Number</u>	<u>Description</u>	<u>Qty</u>	<u>Unit Sale Price</u>	<u>Extended Sales Price</u>
UIA DETROIT				
VENDORMTC- NICE	NICE VENDOR MAINTENANCE	1		\$36,570.94
Maintenance Term (Months): 12				
SILVER				

Site Level Title/Description:

UIA DETROIT

Maintenance Payment Option: PrepaidSite ID: 1-5G8V2USite Name: 1-4P413P

Verizon Legal Entity:

Verizon Network Integration
Corporation

Verizon Contract Country:

USA

Site 1-5G8V2U Sub Totals

Equipment:	\$0.00
Labor:	\$0.00
Maintenance:	\$36,570.94
Other:	\$0.00
Trade In:	\$0.00
Site Total:	\$36,570.94
Shipping & Handling Total:	\$0.00
Site Total with Shipping & Handling:	\$36,570.94

Total Extended Sales Price

Equipment:	\$0.00
Labor:	\$0.00
Maintenance:	\$164,704.91
Other:	\$0.00
Trade In:	\$0.00
Grand Total:	\$164,704.91
Shipping & Handling Total:	\$0.00
Grand Total with Shipping & Handling:	\$164,704.91

*Other - The Other totals include miscellaneous charges including Minor Materials, Expedites, and special fees.

Contract # 071B3001358

MASTER SERVICES CONTRACT (MSC) # 071B3001358

between

THE STATE OF MICHIGAN

and

SBC Global Services, Incorporated

Qwest Communications Corporation

Merit Network, Incorporated

Verizon Select Services, Incorporated

Norlight Telecommunications, Incorporated

Effective as of August 1, 2003

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CONTRACT

This is Contract No. 071B3001358 ("MSC"), between SBC Global Services, Inc., a Delaware Company¹ ("SBC"), Qwest Communications Corporation, a Delaware corporation ("Qwest"), Merit Network, Inc., a Michigan corporation ("Merit"), Verizon Select Services, Incorporated, a Delaware corporation ("Verizon"), and Norlight Telecommunications, Inc., a Wisconsin corporation ("Norlight") on behalf of themselves and as agents for their affiliates and subsidiaries providing services hereunder (individually and collectively "Contractor"), and the State of Michigan (the "State"), acting by and through the Department of Management and Budget ("DMB") for the Department of Information Technology ("DIT"). The effective date of this Contract is August 1, 2003 ("Effective Date"). For purposes of contract administration, references to "Contractor" generally refer to SBC as the single point of contact for the contractors. The terms and conditions described herein shall be applicable to all contractors and the relationship among the contractors is further defined in the Memorandum of Understanding, attached hereto as **Exhibit D**.

INTRODUCTION

Access to high-speed telecommunication services is Michigan's most important technology infrastructure issue for the new century. Providing ubiquitous availability of the broadband infrastructure for the benefit of all citizens, businesses, schools, libraries, and other institutions is paramount to the economic growth of Michigan and its citizens. Additionally, government, education, health care organizations, and public safety organization would clearly benefit from this level of network availability. Successful delivery of these services cannot be provided by government alone, but requires a long term, mutually beneficial relationship between the public and private sectors. Shared risks and shared rewards is a core element to the effective ubiquitous delivery of product and services at an affordable price.

Launched in May 2001, the LinkMichigan effort is working to transform Michigan's telecommunications infrastructure into one of the most robust and advanced in the nation. The four-step approach includes aggregating statewide telecommunication purchases to create a high-speed backbone, implementing taxing and permitting fairness, increasing access to information about the telecommunication infrastructure that exists in Michigan, and providing funds for regional telecommunication planning of last mile solutions. The basis for the LinkMichigan project is a report produced by the Michigan Economic Development Corporation (MEDC) available at: <http://medc.michigan.org/cm/attach/94595AF5-BAE2-4BEE-856A-22DA8A130538/linkmichigan2.pdf>

This Contract is designed to address the first component of LinkMichigan concerning the aggregation of statewide telecommunications purchases in order to leverage the creation of a high-speed backbone. Key components of this resulting contract include, but are not limited to:

- The State joining with a single integrator capable of forming a collective team to deliver needed telecommunications products and services to the State.
- In partnership, the State will obtain assistance for a variety of telecommunications technologies, allowing the State and its agencies the flexibility to implement programs without technology restrictions.
- In union with the private sector partners, obtain service contracts for the migration of the communications infrastructure to higher speed digital technology, allowing a single network capable of transmitting voice, video, and data simultaneously.

¹ "SBC" refers to, individually and collectively Michigan Bell Telephone Company, a Michigan corporation, SBC Internet Services, a registered d/b/a of: Ameritech Interactive Media Services, Inc., a corporation in Illinois, Indiana, Michigan and Ohio, Pacific Bell Internet Services, a corporation in California and Nevada, SNET Diversified Group, Inc., a Connecticut corporation, and Southwestern Bell Internet Services, a corporation in Arkansas, Missouri, Oklahoma and Texas, and a business name in Kansas (by Kansas PUC order) (individually and collectively, "**SBC-IS**"); SBC DataComm, Inc., a Delaware corporation, and SBC DataComm, a registered d/b/a of SWBT and PacBell (individually and collectively, "**SBC DataComm**"); (i) SBC Advanced Solutions, Inc., a Delaware corporation and (ii) Ameritech Advanced Data Services of Michigan, Inc., a Delaware corporation using the name SBC Advanced Solutions [(i) and (ii) individually and collectively "**SBC-ASI**"]; SBC Long Distance, a registered d/b/a of Southwestern Bell Communications Services, Inc., a Delaware corporation; SBC Telecom, Inc., a Delaware corporation; and SNET America, Inc., a Connecticut corporation.

- Obtain broadband access and services for geographically remote areas of the State.
- Provide reliable voice-grade communications to the end users in the most cost-effective manner and under terms that are in the best interests of the State and its citizens.
- Make available to various State users an assortment of communications options from which they may choose.
- Jointly with the single integrator, develop oversight and verification capabilities in areas of ordering and provisioning of services, network management and billing.
- Obtain a clear accounting trail with reference to services rendered to the State.
- Reduce to an absolute minimum any service disruptions or other situations that may negatively impact the End Users.
- Strive to provide the shortest lead-times possible in installing new services or modifying existing ones.
- Integrate support and delivery of existing network solutions with growth into new technologies that offer greater capabilities at less cost.
- Position State government as the anchor tenant to facilitate the build-out of high-speed bandwidth backbone and other needed infrastructure components.
- To the extent possible, make available the new Michigan Broadband Development Authority (MBDA) financing programs to assist and expedite the build-out of high-speed broadband infrastructure throughout Michigan.
- To the extent possible, provide expandable infrastructure that will allow for the growth of government bandwidth use.
- Throughout the Contract, jointly work to continue to reduce costs, reduce cycle time and provide better and faster service.

The statements appearing in this Introduction are intended to provide the background for and to be a general introduction to this Contract and are not intended to expand the scope of the Parties' obligations under this Contract or to alter the plain meaning of the terms and conditions of this Contract. However, to the extent the terms and conditions of this Contract are unclear or otherwise ambiguous, such terms and conditions are to be interpreted and construed in light of such statements.

1. DEFINITIONS

1.1 Definitions

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

"24x7x365" means 24 hours a day, seven days a week, and 365 days a year (including the 366th day in a leap year).

"Additional Service" means any functions and/or services within the scope of the Contract, but not specifically provided under any Statement of Work, that once added will result in the need to provide the Contractor with additional consideration. "Additional Service" does not include New Work.

"Amendment Labor Rates" means the schedule of fully-loaded hourly labor rates attached as **Exhibit Q**.

"Audit Period" has the meaning given in **Section 8.8(b)**.

"Business Day," whether capitalized or not, shall mean any day other than a Saturday, Sunday or State-recognized legal holiday (as identified in the Collective Bargaining Agreement for State employees) from 8:00am EST through 5:00pm EST unless otherwise stated.

"Central Office Facilities" means a business telephone service providing PBX style services over a broad coverage area. Such service may be provided through multiple switches or a single CO based switch.

"Central Office Facilities Type Services" means telephone services providing common PBX features including call forwarding, line hunting, group pickup, etc. Central Office Facilities services are also referred to as Centrex and Centranet service.

“Change Request” means a change to the Contract as defined in **Section 8.6**.

“CO” means local exchange Central Office; the LEC main facility termination location which houses switching equipment for the transport of communications services.

“Contract” has the meaning given in **Section 1.2**.

“Contract Change Notice” has the meaning given in **Section 8.6**.

“Contract Exhibits” means the Exhibits attached to, or referenced in, this Contract.

“Customer Premise Equipment (CPE)” means State-owned equipment located at individual state sites.

“Cutover” means the transfer of services from existing contractor services to new Contractor services and/or the introduction and initiation or conversion of Services to any location.

“Day” means a timeframe consisting of 24 hours for each 365 calendar days of the year (including the 366th day in a leap year).

“Deliverables” means all tangible embodiments of the Services delivered or to be delivered to the State under this Contract that are listed or described in any applicable Statements of Work, as such Exhibit and Statements of Work may be amended or added from time to time.

“Designated State Contact” means a State employee or other designee that has been given authority from the Contract Administrator to perform designated Contract Management functions.

“Developed Materials” means all software and other materials produced by Contractor or its Subcontractors in the performance of the Contract, including software program code, in both object code and source code forms, and all related materials, including designs, data models, database models, object models, program listings, flow charts, Application manuals, technical manuals, training manuals, user manuals and operating procedures. The term “Developed Materials” does not include any pre-existing software, such as Standard Software or modifications thereto produced outside this Contract, but does include all modifications, enhancements and interfaces to either Standard Software or other pre-existing materials that are created in the performance of the Contract.

“DIT” means the Michigan Department of Information Technology.

“DMB” means the Michigan Department of Management and Budget.

“Default” has the meaning given in **Section 19.1**.

“Effective Date” has the meaning given in the Introduction to this Contract.

“End User” means the final recipient or user of Services.

“Hours” means continuous duration of time based on a 24-hour clock.

“Including” means “including, without limitation,” wherever the word “including” appears in this Contract, whether or not such word is capitalized.

“Information” means all data and records developed or obtained during the performance of, or acquired or developed by reason of, the Contract, including but not limited to, all studies, reports, written and software data files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, notes, letters, memoranda, papers, and documents, all whether finished or unfinished.

“Information Technology (IT)” refers to the tools and processes used for gathering, storing, manipulating, transmitting, sharing, and sensing of information including, but not limited to, data processing, computing, information systems, telecommunications, and various audio and video technologies.

“Inter-LATA” means all calls originated and terminated in different LATA’s.

“Intra-LATA” means all calls originated and terminated in the same LATA.

“ISDN” means Integrated Services Digital Network type service or related devices.

“LATA” means Local Access and Transport Area; geographic boundary established at the breakup of AT&T to define the boundaries between local exchange and inter-exchange carriers.

“LEC” means Local Exchange Carrier that provides telephone local exchange service.

“New Work” means all services, functions, products and materials that are requested in writing by the State to be provided by Contractor, which are outside the scope of Contractor’s responsibilities under all Statements of Work issued under this Contract that are in effect at the time the State’s request is made. Any services, functions, products and materials that are requested by the State to be provided by Contractor but which, although not specifically enumerated in any Statements of Work issued under this Contract that are in effect at the time the State’s request is made, are reasonably

necessary in order for Contractor to complete performance of its obligations in accordance with the requirements and specifications of such existing Statements of Work, shall be considered to be in-scope Services, not New Work.

“On Time Installation Completion” means the State being notified installation is complete in accordance with the particular product/service technical specifications.

“Party” or “Parties,” whether or not capitalized, means one or all of the parties to this Contract, respectively, unless the context requires otherwise.

“Premises” means a State Location requiring service from the Contractor.

“Project” is a generic term referring to the complete set of activities, including the Services, to be undertaken and performed pursuant to this Contract.

“Services” means all of the services, functions, equipment, software and other products and materials (including Deliverables) to be performed or provided by Contractor and any of its Subcontractors under this Contract, as such Services are described in this Contract and any Exhibits and as such Services evolve, are enhanced and change over time as contemplated by this Contract, and including any services or functions not specifically described in this Contract that are reasonably required for the proper performance and provision of the Services.

“Service Deliverable” means any Deliverable identified in an applicable Statement of Work that is primarily a service.

“Stage” means a discrete phase of the Contract as described in **Exhibit E**, any portion of **Exhibit B** or any other Statements of Work added to this Contract.

“Standard Software” means the object code version of computer programs, and any related documentation (excluding maintenance diagnostics), provided by Contractor to the State (under reasonable and customary license terms and conditions acceptable to the State), that is either (i) owned by Contractor prior to the Effective Date, or (ii) owned by a third party, provided Contractor has obtained the legal right from the original licensor to license such Standard Software. Standard Software also includes the source code version of Standard Software where provided by Contractor, and any modifications or enhancements to Standard Software that are produced outside this Contract. Standard Software also includes loadable microcode that enables the underlying equipment to function according to its published specifications.

“State” means the State of Michigan, its Executive departments, divisions, agencies, offices, commissions, officers, employees and agents.

“State Location” means any State occupied structure.

“State Review Period” means the time period specified in the applicable Contract Exhibit during which the State is to complete its review and, as applicable, testing of a Deliverable for approval.

“Subcontractor” means a company to which Contractor delegates performance of a portion of the Services, but does not include independent contractors engaged by Contractor solely in a staff augmentation role.

“System Testing” means all of the testing of a Deliverable to be conducted by Contractor prior to turning over the Deliverable to the State for approval, as further described in **Section 6.3(a)(i)**.

“Technology” means the methods, procedures and associated equipment used to provide Services.

“User Acceptance Testing” (also referred to as “UAT”) means the testing of Deliverables to be carried out by the State with the support and assistance of Contractor to determine whether the Deliverables should be approved or accepted by the State.

“Warranty Period” has the meaning set forth in **Section 15.1**.

“Written Deliverable” shall have the meaning assigned in **Section 6.2**.

1.2 Other Definitions

As used in this document, the term “Contract” (whether or not capitalized) shall, unless the context requires otherwise, be considered to be references to this Contract, including any Statements of Work and other Exhibits hereto. Other capitalized terms used in this document shall have the meanings given in **Section 1.1**. Any other capitalized term used elsewhere in the Contract but not defined in **Section 1.1** shall have the meaning given it in the document or Contract Exhibit in which it is used.

2. CONTRACT STRUCTURE AND ADMINISTRATION

2.1 Exhibits

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

2.2 Statements of Work

(a) The parties agree that the Services to be rendered by Contractor pursuant to this Contract (and any future amendments of it) will be defined and described in detail in separate Statements of Work executed under this Contract. Contractor shall not be obliged or authorized to commence any work to implement a Statement of Work until it is signed by both parties. Contractor shall perform the Services in accordance with this Contract, including the Statements of Work executed under it.

(b) Unless otherwise agreed by the parties, each Statement of Work will include, or incorporate by reference to the appropriate Contract Exhibit containing, the following information:

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

(c) Reserved.

(d) The initial Statements of Work, as of the Effective Date, are attached to this Contract as **Exhibit B** and its several parts.

2.3 Issuing Office

This Contract is issued by the State of Michigan DMB, Office of Acquisition Services ("Office of Acquisition Services") and DIT (collectively, including all other relevant State of Michigan departments and agencies, the "State"). The Office of Acquisition Services is the sole point of contact in the State with regard to all procurement and contractual matters relating to the Services described. The Office of Acquisition Services is the only State office authorized to change, modify, amend, alter or clarify the prices, specifications, terms and conditions of this Contract. The Buyer within the Office of Acquisition Services for this Contract is:

Christine Mitchell, Buyer Specialist
Office of Acquisition Services
Department of Management and Budget
Mason Bldg, 2nd Floor
PO Box 30026
Lansing, MI 48909
michelc@michigan.gov
(517) 335-0462

2.4 Contract Administrator

Upon receipt at the Office of Acquisition Services of the properly executed Contract, it is anticipated that the Director of Acquisition Services, DMB will direct that the person named below, or

any other person so designated, be authorized to administer the Contract on a day-to-day basis during its term. However, administration of this Contract implies no authority to change, modify, clarify, amend, or otherwise alter the prices, terms, conditions and specifications of such Contract. That authority is retained by the Office of Acquisition Services. The Contract Administrator for this Contract is:

Thomas J. Fogle
Director of Telecommunications & Network Management
Department of Information Technology
608 West Allegan, 1st floor
Lansing, MI 48913

2.5 Reference to Days

All references in this Contract to days shall be calendar days unless otherwise specified.

2.6 Ordering

(a) Any services to be furnished under this Contract shall be ordered by issuance of written Purchase Orders/Blanket Purchase Order by the State after approval by the Contract Administrator or his/her designee. Such orders may be issued from the Effective Date through six years and any subsequent renewals. All orders are subject to the terms and conditions of this Contract. In the event of conflict between an order and this Contract, the Contract shall take precedence as stated in **Section 25.3**. In no event shall any additional terms and conditions contained on a Purchase Order/Blanket Purchase Order be applicable, unless specifically contained in that Purchase Order/Blanket Purchase Order's accompanying Statement of Work.

(b) Contractor and the State will work to develop an electronic ordering process, which may include an interactive website.

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

3. CONTRACT OBJECTIVES AND SCOPE

3.1 Objectives

(a) Through its competitive bid process, the State has selected SBC as the commercial vendor to coordinate the provision of the products and services generally described in the Invitation to Bid # 071I2000305, dated June 24, 2002.

The State expects SBC and its team, consisting of Qwest, Verizon, Merit, and Norlight, to provide the products and services required in this Contract. Those products and services initially fall within one or more categories consisting of Audio Conferencing, Central Office Facilities, Long Distance Service, Internet Service Provision, Payphones Operations, Video Conferencing, Toll Free Telephone Service, Wide Area Networking, Help Desk Services, and Invoicing Services. However, it remains the State's intent to continue examining whether other telecommunication and network subject areas that were originally considered in ITB#071I2000305 might be added to this Contract at some future date if desired by the State and agreed to by the SBC and its partners. Each service area is driven by a Statement of Work, attached as Exhibits to this Contract, to be performed during the Contract.

The State expects to monitor performance through the measuring, monitoring and reporting of the service levels identified within the Contract. Through this measurement and monitoring process, the State and SBC and its partners will work to improve service levels and the delivery of telecommunications services to the State and its extended partners. Through this Contract, the State's requirement for a single integrator capable of forming a collective team to meet the State's needs will be achieved.

In addition, the State expects this Contract to improve access to high-speed telecommunication services within the geographical State of Michigan. The solution provided by the SBC lead team of service providers will facilitate the development of a robust telecommunications infrastructure throughout the State. Through State, regional, and local government aggregation of demand, this Contract provides an opportunity for SBC and its partners to operate, manage, and in some cases, own the infrastructure. Such aggregation provides for a cost effective, process efficient, and customer centric solution.

3.2 Interpretation

Section 3.1 is intended to provide background and context for this Contract and is not intended to expand the scope of the Parties' obligations under this Contract or to alter the plain meaning of the terms and conditions of this Contract. However, to the extent the terms and conditions of this Contract are unclear or otherwise ambiguous, such terms and conditions are to be interpreted and construed in light of the provisions of **Section 3.1**.

3.3 New Services

Contractor shall inform the State of instances where new services or products may be considered for inclusion in this Contract. If the State determines that such New Work or Additional Services are necessary, then such services or products may be added/approved for this Contract pursuant to **Section 8.6**.

4. LEGAL EFFECT AND TERM

4.1 Legal Effect

Except as otherwise agreed in writing by the parties, the State assumes no liability for costs incurred by Contractor or payment under this Contract until Contractor is notified in writing that this Contract has been approved by the State Administrative Board and the Michigan Department of Attorney General, and approved and signed by all the parties. The total liability of the State under this Contract is limited in accordance with the terms and conditions of this Contract.

4.2 Contract Term

This Contract is for a period of six (6) years commencing on August 1, 2003 and ending on July 31, 2009. All outstanding Purchase Orders shall also expire on July 31, 2009, unless otherwise extended pursuant to the Contract. This Contract may be renewed in writing by mutual agreement of the parties not less than sixty (60) days before its expiration. The Contract may be renewed for up to four (4) additional one (1) year periods.

4.3 Severability

Each provision of the Contract shall be deemed to be severable from all other provisions of the Contract and, if one or more of the provisions of the Contract shall be declared invalid, the remaining provisions of the Contract shall remain in full force and effect. If the removal of an invalid provision would strike at the heart of the Services to be provided under this Contract, then the parties will negotiate in good faith to substitute for such invalid provision a mutually acceptable provision consistent with the original intention of the parties.

4.4 Relationship of the Parties

The relationship between the State and the Contractor is that of client and independent Contractor. No agent, employee, or servant of the Contractor nor any of its subcontractors shall be or shall be deemed to be an employee, agent, or servant of the State for any reason. The Contractor will be solely and entirely responsible for its acts and the acts of its agents, employees, servants and subcontractors during the performance of this Contract.

Each party will be responsible for the management, direction and control of its employees, and such employees will not be employees of the other party. Accordingly, each party will be responsible

for all federal, state, and local taxes and assessments related to its employees, such as taxes associated with social security, unemployment compensation, and workers' compensation.

4.5 Technology & Pricing Review

The State reserves the right to complete a technology and pricing review ("Review") 18, 36, 54, 72 and 90 months (if applicable) following Effective Date, to allow for upgrades in equipment and/or service as necessary and update pricing models accordingly. The State may also use this opportunity to examine new technologies and/or service areas. Requested updates may include increases or decreases in price and/or service level, and may be accompanied by documentation indicating market support of proposed modifications. The documentation, if provided or requested will be used to evaluate whether charges and services for substantially similar services for each Statement of Work remain competitive. Each aggregate sum of Statement of Work services will be measured based on similar volumes and service levels. Resulting amendments may include: economic adjustments, equipment, software or service updates, revision in overall revenue commitments, exercise of contract extension options, the addition of New Work or Additional Services or a combination of any of the above.

(a) The State may request a Review upon thirty (30) days written notice that specifies the Technology and/or Services being reviewed. At the Review, each party may present supporting information including a representative sample derived from substantially similar Services with respect to volume, nature of services, service levels and technology indicating market support of proposed modifications and/or documentation regarding new technologies, service areas, or changes in existing technologies. Documentation may include information created by, presented, or received from third parties.

(b) Following presentation of supporting information, both parties will have thirty (30) days to review the supporting information and prepare any written response. Written responses shall be provided to each party and may be reviewed by a mutually agreed third party.

(c) In the event a Review indicates no need for modifications of any type, contract requirements and pricing will remain unchanged unless mutually agreed by the parties. However, if a Review indicates changes may be recommended, each party will negotiate in good faith to mutually beneficial contract changes, if necessary, within thirty (30) days unless extended by mutual agreement of the parties.

(d) If the supporting information indicating market conditions dictates a reduction in prices or increase in service levels and Contractor agrees to reduce rates accordingly, then the State may elect to exercise the next one (1) year extension that has not previously been exercised; provided that Contractor agrees to the extension.

(e) If the supporting information indicating market conditions dictates a reduction in prices or increase in service levels and the parties are unable to reach agreement, then the Minimum Revenue Commitment, **Section 10.1(e)**, may be reduced by a percentage equal to the amount the Statement of Work in question contributes to the total annual amount paid to Contractor.

(f) This clause is in no way intended to replace or interfere with the exercise of the **Section 8.5** or **Section 3.3**, which can be utilized at any time. Any changes resulting from the technology and pricing review will be implemented through issuance of a change order pursuant to **Section 8.6**.

5. CONTRACTOR PERSONNEL AND THIRD PARTIES

5.1 Contractor Personnel

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

(b) Key Personnel.

(i) In discharging its obligations under this Contract, Contractor shall provide the named Key Personnel on the terms indicated. **Exhibit C** provides an organization chart showing the roles of certain Key Personnel.

(ii) Key Personnel shall be dedicated as defined in **Exhibit C** 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.

(iii) The State will have the right to recommend and approve in writing the initial assignment, as well as any proposed reassignment or replacement, of any Key Personnel. Before assigning an individual to any Key Personnel position, Contractor will notify the State of the proposed assignment, will introduce the individual to the appropriate State representatives, and will provide the State with a resume and any other information about the individual reasonably requested by the State. The State reserves the right to interview the individual before granting written approval. The State's request shall be written with reasonable detail outlining the reasons for the removal request. Additionally, the State's request shall be based on legitimate, good-faith reasons. Replacement personnel for the removed person shall be fully qualified for the position.

(iv) Contractor shall not remove any Key Personnel from their assigned roles or the Contract without the prior written consent of the State. If the Contractor does remove Key Personnel without the prior written consent of the State, it shall be considered an unauthorized removal ("Unauthorized Removal"). It shall not be considered an Unauthorized Removal if Key Personnel must be replaced for reasons beyond the reasonable control of Contractor, including illness, disability, leave of absence, personal emergency circumstances, resignation or for cause termination of the Key Personnel's employment. It shall not be considered an Unauthorized Removal if Key Personnel must be replaced because of promotions or other job movements allowed by Contractor personnel policies or Collective Bargaining Agreement(s) as long as the State receives prior written notice before shadowing occurs and Contractor provides thirty (30) days of shadowing is provided unless parties agree to a different time period. The Contractor with the State shall review any Key Personnel replacements, and appropriate transition planning will be established. Any Unauthorized Removal may be considered by the State to be a material breach of the Contract, in respect of which the State may elect to exercise its rights under **Section 19.1**.

(v) It is acknowledged that an Unauthorized Removal will interfere with the timely and proper completion of the Contract, to the loss and damage of the State, and that it would be impracticable and extremely difficult to fix the actual damage sustained by the State as a result of any Unauthorized Removal. Therefore, Contractor and the State agree that in the case of any Unauthorized Removal in respect of which the State does not elect to exercise its rights under **Section 19.1**, the State may assess liquidated damages against Contractor as specified below.

For the Unauthorized Removal of any Key Personnel designated in the applicable Statement of Work, the liquidated damages amount shall be \$50,000.00 per individual provided Contractor identifies a replacement approved by the State pursuant to **Section 5.1** and assigns the replacement to the Project to shadow the Key Personnel s/he is replacing for a period of at least thirty (30) days prior to such Key Personnel's removal.

If Contractor fails to assign a replacement to shadow the removed Key Personnel for at least thirty (30) days, in addition to the \$50,000.00 liquidated damages for an Unauthorized Removal, Contractor shall pay the amount of \$1,666.67 per day for each day of the thirty (30) day shadow period that the replacement Key Personnel does not shadow the removed Key Personnel, up to \$50,000.00 maximum per individual. The total liquidated damages that may be assessed per Unauthorized Removal and failure to provide thirty (30) days of shadowing shall not exceed \$100,000.00 per individual.

(c) Re-assignment of non-Key Personnel. Prior to re-deploying to other projects, at the completion of their assigned tasks on the Project, teams of its non-Key Personnel who are performing Services on-site at State facilities or who are otherwise dedicated primarily to the Project, Contractor will give the State at least ten (10) Business Days notice of the proposed re-deployment to give the State an opportunity to object to the re-deployment if the State reasonably believes such team's Contract responsibilities are not likely to be completed and approved by the State prior to the proposed date of re-deployment.

(d) Re-assignment of Personnel at the State's Request. The State reserves the right to require the removal from the Project of Contractor personnel found, in the judgment of the State, to be unacceptable. The State's request shall be written with reasonable detail outlining the reasons for the removal request. Additionally, the State's request shall be based on legitimate, good-faith reasons. Replacement personnel for the removed person shall be fully qualified for the position. If the State exercises this right, and the Contractor cannot immediately replace the removed personnel, the State agrees to an equitable adjustment in schedule or other terms that may be affected by the State's required removal. If any such incident with removed personnel results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Work will not be counted in **Section 7.6** for a time as agreed to by the parties.

(e) Staffing Levels.

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

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

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

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

5.2 Contractor Identification

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

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

5.4 Subcontracting by Contractor

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

(b) Contractor shall not delegate any duties under this Contract to a Subcontractor unless the Office of Acquisition Services has given written consent to such delegation. The State shall have the right of prior written approval of all Subcontractors and to require Contractor to replace any Subcontractors found, in the reasonable judgment of the State, to be unacceptable. The State's request shall be written with reasonable detail outlining the reasons for the removal request. Additionally, the State's request shall be based on legitimate, good-faith reasons. Replacement Subcontractor(s) for the removed Subcontractor shall be fully qualified for the position. If the State exercises this right, and the Contractor cannot immediately replace the removed Subcontractor, the State will agree to an equitable adjustment in schedule or other terms that may be affected by the State's required removal. If any such incident with a removed Subcontractor results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Work will not be counted in **Section 7.6** for a time agreed upon by the parties. 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 prior to providing them to the State. The management of any Subcontractor will be the responsibility of Contractor, and Contractor shall remain responsible for the performance of its Subcontractors to the same extent as if Contractor had not subcontracted such performance. Contractor shall make all payments to Subcontractors or suppliers of Contractor. Except as otherwise agreed in writing by the State and Contractor, the State will not be obligated to direct payments for the Services other than to Contractor. The State's written approval of any Subcontractor engaged by Contractor to perform any obligation under this Contract shall not relieve Contractor of any obligations or performance required under this Contract. Attached as **Exhibit M** is a list of the Subcontractors, if any, approved by the State as of the execution of this Contract, together with a copy of the applicable subcontract.

(c) Except where specifically approved in writing by the State on a case-by-case basis, Contractor shall flow down the obligations in **Sections 5.1, 7, 8.8, 13, 14, 15.1, 15.3, 16, 24.1, 24.4, and 25.7** in all of its agreements with any Subcontractors.

5.5 Contractor Responsibility for Personnel

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

6. DELIVERY AND ACCEPTANCE OF DELIVERABLES; HOLDBACK

6.1 Delivery Responsibilities

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

(a) **SHIPMENT RESPONSIBILITIES** - Services performed under this contract shall be delivered "F.O.B. Destination, within Government Premises." The Contractor shall have complete responsibility for providing all contracted services to all site(s). Actual delivery dates will be specified on the individual purchase order.

(b) **DELIVERY LOCATIONS** - Services will be performed at every State of Michigan office location within Michigan. Specific locations will be provided by the State or upon issuance of individual purchase orders.

6.2 Delivery of Deliverables

(a) The Statements of Work contain lists of the Deliverables to be prepared and delivered by Contractor including, for each Deliverable, the scheduled delivery date and a designation of whether the Deliverable is a document ("Written Deliverable") or a Service Deliverable. 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.

(b) Prior to delivering any Deliverable to the State, Contractor will first perform all required quality assurance activities and System Testing to verify that the Deliverable is complete and in conformance with its specifications listed in the applicable Statement of Work. Prior to 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, and (4) the Deliverable is in a suitable state of readiness for the State's review and approval.

6.3 Contractor System Testing

(a) Contractor will be responsible for System Testing each System not in use or substantially modified upon Effective Date unless the State requests such System testing in Contractor's development environment prior to User Acceptance Testing and approval.

(b) Within five (5) Business Days following the completion of System Testing pursuant to **Section 6.3(a)**, 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 at State Locations, the State shall be entitled to observe or otherwise participate in testing under this **Section 6.3** as the State may elect.

6.4 Approval of Deliverables, In General

(a) All Deliverables (Written Deliverables and Service 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, 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.

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

(c) Prior to commencement of its review or testing of a Deliverable, the State may inspect the Deliverable to confirm that all components of the Deliverable have been delivered without material deficiencies. If the State determines that the Deliverable has material deficiencies, 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 **Section 6.2(b)**.

(d) The State will approve in writing a Deliverable upon confirming that it conforms to and, performs in accordance with, its specifications without material deficiency. The State may, but shall not be required to, conditionally approve in writing a Deliverable 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.

(e) If, after three (3) opportunities (the original and two repeat efforts), Contractor is unable to correct all deficiencies preventing Final Acceptance of a Deliverable, 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 provided the State can furnish proof of such general expenses; or (iii) terminate the particular Statement of Work for default, either in whole or in part by notice to Contractor provided Contractor is unable to cure such breach. If the Statement of Work contributes to the MRC, then the MRC shall be equitably adjusted to reflect the reduction in Services. Notwithstanding the foregoing, the State shall not use, as a basis for exercising its termination rights under this Section, deficiencies discovered in a repeat State Review Period that could reasonably have been discovered during a prior State Review Period.

(f) The State, at any time and in its reasonable discretion, may halt the 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 **Section 6.5 and 6.6**, as the case may be.

6.5 Process for Approval of Written Deliverables

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

6.6 Process for Approval of Service Deliverables

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

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

6.7 Final Acceptance

"Final Acceptance" of each Deliverable shall be considered to occur when each Deliverable has been approved by the State and has been operating in production without any material deficiency for thirty (30) Business Days. Payment will be made for Services installed and accepted. Upon acceptance of a Service the State will pay for all Services provided during the State Review Period that conformed to the acceptance criteria.

7. PERFORMANCE

7.1 Performance, In General

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

7.2 Time of Performance

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

(b) Without limiting the generality of **Section 7.2(a)**, Contractor shall notify the State in a timely manner upon becoming aware of any circumstances that may reasonably be expected to jeopardize the timely and successful completion of any Contract Deliverables or tasks on the scheduled due dates set forth in the latest State-approved delivery schedule and, in such event, shall inform the State of the projected actual delivery date.

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

7.3 Liquidated Damages. The parties acknowledge that the late installation of the CBDS III network will interfere with the timely and proper completion of the Contract, to the loss and damage of the State, and that it would be impracticable and extremely difficult to fix the actual damage sustained by the State as a result of any such delay. Therefore, Contractor and the State agree that in the case of any such late installation in respect of which the State does not elect to exercise its rights under **Section 19.1**, the State may assess liquidated damages against Contractor as specified in this **Section 7.3**.

If Contractor fails to convert CBDS II Backbone to CBDS III Core Sites as specified in **Exhibit E**, then the State shall be entitled to collect liquidated damages in the amount of \$100,000.00 and an additional \$5,000.00 per day for each day Contractor fails to complete conversion thereafter.

7.4 Problem Management Standards

Problem management standards applicable to Contractor's performance of Services under this Contract (collectively, "Problem Management Standards"), are governed by this Contract and the Statements of Work.

7.5 Reserved

7.6 Service Level Agreements (SLAs)

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

(i) SLAs will not be calculated for individual Incidents where any event of Excusable Failure has occurred as defined in **Section 18.2**; provided, however, that for redundantly diversely routed physical locations unscheduled cable cuts by SBC will not suspend the calculation of the applicable SLA.

(ii) SLAs will not be calculated for individual Incidents where loss of service is planned and where the State has received prior notification and/or coordination.

(iii) SLAs will not apply if the applicable incident could have been prevented through capacity planning proposed by Contractor and not implemented at the request of the State. In order to invoke this consideration, complete engineering support documentation relevant to the denied capacity planning proposal must be presented to substantiate the proposal.

(iv) Time period measurements will be based on the time received by the LinkMichigan Center and the time that the State receives notification of ticket resolution based on 24x7x365 time period, except that the time period measurement will be suspended based on the following ("Stop-Clock Conditions"):

1. 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 resolution.

2. 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 (3) 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 thirty (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 vendor for the chronic location(s) with Contractor to pay the difference in charges for up to three (3) additional months. The termination of the Service will not effect any tiered pricing levels. If the terminated Service is part of the MRC, then the MRC will be equitably adjusted to reflect the reduction of Services.

(c) Root Cause Analysis will be performed on any Business Critical outage(s) or outage(s) on other Services when requested by the Contract Administrator. Contractor will provide its analysis within two (2) weeks of outage(s) and provide a recommendation for resolution.

(d) If no SLA applies to a given Service where an applicable Tariff exists, then the SLA provided by the Tariff will apply.

(e) All decimals shall be rounded to two decimal places with 5 and greater rounding up and 4 and less rounding down unless otherwise specified.

7.7 Bankruptcy

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

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

8. PROJECT AND CONTRACT MANAGEMENT

8.1 Contract Management Responsibility

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

(b) The Services will be provided by the Contractor either directly or through its affiliates, subsidiaries, subcontractors or resellers. Regardless of the entity providing the Service, the Contractor will act as a single point of contact coordinating these entities to meet the State's need for Services. 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.

8.2 Contract Management Procedures

Contract Management procedures will be governed by the Contract and the applicable Statements of Work and **Exhibit D** (Memorandums Of Understanding).

8.3 Reports and Meetings

(a) Reports. Within thirty (30) days after the Effective Date, the parties shall determine an appropriate set of periodic reports to be issued by Contractor to the State. It is contemplated that such reports will:

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

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

8.4 System Changes

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

8.5 Modification of Service

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. The Contractor shall provide a change order process and all requisite forms. At a minimum, to the extent applicable, the State would like the Contractor to provide a detailed outline of all work to be done, including tasks necessary to accomplish the deliverables, timeframes, listing of key personnel assigned, estimated hours for each individual per task, and a complete and detailed cost justification.

(a) Within five (5) Business Days of receipt of a request by the State for any such change, or such other period of time as to which the parties may agree mutually in writing, the Contractor shall submit to the State a proposal describing any changes in products, services, timing of delivery, assignment of personnel, and the like, and any associated price adjustment. The price adjustment shall be based on a good faith determination and calculation by the Contractor of the additional or reduced cost to the Contractor in implementing the Change Request less any savings realized by the Contractor as a result of implementing the Change Request. To the extent applicable, Contractor's proposal shall describe in reasonable detail the basis for the Contractor's proposed price adjustment, including the estimated number of hours by task by labor category required to implement the Change Request and the reason for any deviation from the rates listed in **Exhibit Q**.

(b) If the State accepts the Contractor's proposal, it will issue a change notice and the Contractor will implement the Change Request described therein. The Contractor will not implement any Change Request until a change notice has been issued validly. The Contractor shall not be entitled to any compensation for implementing any Change Request or change notice except as provided explicitly in an approved change notice.

(c) If the State does not accept the Contractor's proposal, the State may:

- (i) withdraw its Change Request; or
- (ii) modify its Change Request, in which case the procedures set forth above will apply to the modified Change Request.

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

If the State requests or directs the Contractor to perform any services or functions that are consistent with and similar to the services 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 prior to performing such services or function, the Contractor shall promptly notify the State in writing that it considers the services or function to be an "Additional Service" 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 function. If the Contractor does so notify the State, then such a service or function shall be governed by the Change Request procedure set forth in the preceding paragraph. In the event prices or service levels are not acceptable to the State, the additional work shall be subject to competitive bidding based upon the specifications.

(d) If the State proposes to acquire New Work or Additional Services for telecommunication and network service areas originally in ITB#071I2000305, Contractor will have the first right to provide a proposal under this Section before the State seeks other proposals.

8.6 Change Requests

(a) State Change Requests.

(i) If the State should require Contractor to perform New Services or make changes to the Services that would affect the Contract completion schedule or the amount of compensation due

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

(ii) Upon receipt of a Change Request, Contractor shall examine the implications of the requested Change on the technical specifications, Contract schedule and price of the Services and shall submit to the State without undue delay a written proposal for carrying out the Change.

Contractor's proposal will include any associated changes in the technical specifications, Contract schedule and price and method of pricing of the Services. If the Change is to be performed on a time and materials basis, the Amendment Labor Rates shall apply to the provision of such Services. If Contractor provides a written proposal and should Contractor be of the opinion that a requested Change is not to be recommended, it shall communicate its opinion to the State but shall nevertheless carry out the Change as specified in the written proposal if the State directs it to do so.

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

(iv) No proposed Change shall be performed until the proposed Change has been specified in a duly executed Contract Change Notice.

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

(b) **Contractor Change Requests.**

(i) Contractor shall be entitled to propose a Change to the State, on its own initiative, should it be of the opinion that this would benefit the Contract. Contractor's proposal for such Change shall be in writing and reasonably detailed. The procedures described in this Section shall apply to any such proposal.

(ii) Upon receipt of a Change Request from the Contractor, the State shall examine the implications of the requested Change on the technical specifications, Contract schedule and price of the Services. Contractor's proposal will include any associated changes in the technical specifications, Contract schedule and price and method of pricing of the Services. If the Change is to be performed on a time and materials basis, the Amendment Labor Rates shall apply to the provision of such Services.

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

(iv) No proposed Change shall be performed until the proposed Change has been specified in a duly executed Contract Change Notice.

8.7 Management Tools

Contractor will use an automated tool for planning, monitoring and tracking the Contract's progress and the level of effort of any Contractor personnel spent performing Services under the Contract. In addition, Contractor shall use automated project management tools as reasonably necessary to perform the Services, which tools shall include the capability to produce through the end of the Contract: (i) staffing tables with names of personnel assigned to Contract tasks, (ii) project plans showing tasks, subtasks, Deliverables and the resources required and allocated to each (including

detailed plans for all Services to be performed within the next sixty (60) days, updated semi-monthly) and (iii) graphs showing critical events, dependencies and decision points during the course of the Contract. Any tool(s) used by Contractor for such purposes must produce information of a type and in a manner and format that will support reporting in compliance with the State's standard to the extent such standard is described with reasonable detail in the Statements of Work.

8.8 Records and Inspections

(a) Inspection of Work Performed. The State's authorized representatives shall at all reasonable times and with fifteen (15) Business 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 Fifteen (15) Business Days prior written notice and during business hours, the State's representatives shall be allowed to inspect, monitor, or otherwise evaluate the work being performed and to the extent that such access will not interfere or jeopardize the safety or operation of the systems or facilities. Contractor must provide all reasonable facilities and assistance for the State's representatives. So long as no security, labor relations policies and propriety information policies are violated.

(b) Examination of Records. No more than once per year, Contractor agrees that the State, including its duly authorized representatives, until the expiration of three (3) years after final payment of all amounts due under this Contract and all pending matters are closed (collectively, the "Audit Period"), shall, upon thirty (30) days prior written notice, have access to and the right to examine and copy any of Contractor's books, records, documents and papers pertinent to establishing Contractor's compliance with the terms and conditions of this Contract and with applicable laws and rules, including the State's procurement rules, regulations and procedures, and actual performance of this Contract for the purpose of conducting an audit, examination, excerpt and/or transcription but the State shall not have access to any information deemed confidential to Contractor to the extent such access would require such 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 this Contract.

(c) 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 this Contract and to the Services, equipment, and commodities provided under this Contract) pertaining to the Contract in accordance with 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 must 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.

8.9 Binding Commitments

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

9. STATE RESPONSIBILITIES

9.1 State Performance Obligations

(a) Personnel. The State shall provide adequate resources to perform the State's tasks described herein. If the State, or any of its vendors or agents, fails to provide such personnel resources, Contractor will use commercially reasonable efforts (subject to **Section 9.2**) to perform its obligations notwithstanding such failure and to otherwise work around and mitigate the adverse effects of such failure. If Contractor reasonably believes that the State's failure to comply with this **Section 9.1** has interfered with, delayed or impeded Contractor's performance, Contractor may propose to the State a Change pursuant to **Section 8.6**. Contractor will not be in default for a delay in performance to the extent such delay is caused by the State.

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

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

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

9.2 Savings Clause

Except as otherwise provided in **Section 20**, the State's failure to perform its responsibilities set forth in this Contract shall not be deemed to be grounds for termination by Contractor. However, Contractor will not be liable for any default or delay in the performance of its obligations under this Contract to the extent such default or delay is caused by nonperformance of the State's obligations under this Contract, provided Contractor provides the State with reasonable written notice of such nonperformance and Contractor uses commercially reasonable efforts to perform notwithstanding the State's failure to perform. In addition, if the State's nonperformance of its responsibilities under this Contract materially increases the time required for Contractor's performance or Contractor's cost of performance, Contractor shall be entitled to seek an equitable extension via the Change Request process described in **Section 8.6**.

9.3 Reserved.

9.4 Security. Various End Users have specific access and security requirements. Contractor must adhere to End User's access and security policies, including, but not limited to, background checks, Contractor identification, and drug testing to the extent permissible by State and Federal law.

10. FINANCIAL

10.1 Pricing

(a) Fixed Prices for Services. Each Statement of Work issued under this Contract shall specify (or indicate by reference to the appropriate Contract Exhibit) the firm, fixed prices for all Services and items to be provided hereunder, and the associated payment milestones and payment amounts. To the extent the parties agree that certain specific Services will be provided on a time and materials basis, such Services shall be provided at the Amendment Labor Rates (**Exhibit Q**). Notwithstanding the firm, fixed price limitation, the Contractor may pass-through certain tax-like surcharges, surcharges and permissive pass-throughs only if specified in **Exhibit A**. If a pass-through charge is not specifically identified in **Exhibit A**, then the State will not be liable for payment of the billed pass-through. New or adjusted pass-through charges will be added to or amended in **Exhibit A** pursuant to **Section 8.6**.

(b) Adjustments for Reductions in Scope of Services. If the scope of the Services under any Statement of Work issued under this Contract is subsequently reduced by the State, the parties shall negotiate an equitable reduction in Contractor's charges under such Statement of Work commensurate with the reduction in scope, using the rates in **Exhibit Q** unless specifically identified in an applicable Statement of Work. If the Services reduced are part of the MRC, then the MRC will be equitably reduced to reflect the reduction in Services.

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

(d) Labor Rates. All time and material charges will be at the rates specified in **Exhibit Q**.

(e) Charges. The State will guarantee a minimum level of revenue for this Contract over the Contract term ("MRC"). All payments made for this Contract by the Department of Information Technology (DIT) will be applied against the MRC. In the event that the State exercises its rights under **Section 19.1, 19.3, 19.4, and/or 19.5**, then the State shall not be subject to any termination penalty for failure to meet the MRC.

The MRC for the Contract is \$44,500,000.00 and shall be paid on the Contract over the Contract term. Until the MRC is completely paid, subject to adjustments, Contractor will provide a report covering the amount the State has paid against the MRC.

(f) Fraud. Except as provided by Contractor's standard and applicable fraud policies, as published from time-to-time, and as otherwise stated in this Contract, the State is responsible and agrees to pay Contractor for all Services furnished under the Contract. This responsibility is not changed by virtue of any use, misuse, or abuse of the service, which may be occasioned by the State or third parties, including employees of the State or other members of the public.

(g) Contractor agrees that no modification to the State's existing terminal equipment will be made which would result in any cost to the State, unless specifically provided for under this Contract or via the Change Request process pursuant to **Section 8.6**.

10.2 Invoicing and Payment Procedures and Terms

(a) Invoicing and Payment – In General.

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

(ii) Each invoice will show details as provided in **Exhibit B-11**.

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

(iv) Contractor will show reasonable detail as to charges for any regulatory fees, including permissive pass-throughs listed in **Exhibit A**, universal service fees and connectivity charges.

(b) Taxes. The State is exempt from Federal Excise Tax, State and Local Sales Taxes, and Use Tax with respect to the sale to and use by it of tangible personal property. Such taxes shall not be included in Contract prices as long as the State maintains such exemptions. Excise Tax exemption certificates will be furnished with purchase order if requested. Copies of all tax exemption certificates shall be supplied to Contractor.

(c) Out-of-Pocket Expenses. Contractor acknowledges that the out-of-pocket expenses that Contractor expects to incur in performing the Services (such as, but not limited to, travel and lodging, document reproduction and shipping, and long distance telephone) are included in Contractor's fixed price for each Statement of Work. Accordingly, Contractor's out-of-pocket expenses are not separately reimbursable by the State unless, on a case-by-case basis for unusual expenses, the State has agreed in advance and in writing to reimburse Contractor for such an expense at the State's current travel reimbursement rates. Such reimbursement will be limited to reasonable and actual expenses incurred which, in the case of air travel, shall be limited to coach-class fare.

(d) Reserved.

(e) Reserved.

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

(g) 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.

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

10.3 State Funding Obligation

The State's obligation under this Contract is payable only and solely from funds appropriated for the purpose of this Contract. Contractor acknowledges and agrees that all funds for payments after the end of the current fiscal year are subject to the availability of a legislative appropriation for the purpose of this Contract. Events of non-appropriation are addressed further in **Section 19** of this Contract. The State will make a commercially reasonable effort to secure continued funding.

10.4 Reserved

11. RESERVED

12. EQUIPMENT

12.1 Hardware

Exhibit J lists the items of hardware the State is required to purchase for execution the Contract. The list in **Exhibit J** 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). **Exhibit J** also identifies certain items of hardware to be provided by the State.

12.2 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.

12.3 Risk of Loss

Risk of loss for each item of equipment provided under this Contract by Contractor shall pass upon written acknowledgement of receipt (*i.e.*, signature on delivery) of such item by the State at State Locations.

12.4 Damage Disputes

At the time of delivery to State Locations, the State shall examine all packages. The quantity of packages delivered shall be recorded and any obvious visible or suspected damage shall be noted at time of delivery using the shipper's delivery document(s) and appropriate procedures to record such. The State shall provide a copy of all shipper's receipts to the Contractor, at a place determined in the Operations Plan, within five (5) days of receipt of any items that are damaged or suspected of being damaged at the time of delivery and the Contractor shall make arrangements for the return of such equipment. To not make such a note of actual or suspected damage at time of delivery means the receiving party accepts the delivery as is. If later it is determined the delivery is damaged, the cure for such damaged deliveries shall transfer to the delivery signing party.

If the Contractor is responsible for installation and delivery is made to a State Location; at the time of delivery, the State shall examine all packages. The quantity of packages delivered shall be recorded and any obvious visible or suspected damage shall be noted at time of delivery using the shipper's delivery document(s) and appropriate procedures to record such and a copy of this document provided to the Contractor, at a place determined in the Operations Plan, within five (5) days of receipt. To not make such a note of actual or suspected damage at time of delivery means the receiving party accepts the delivery as is. If later it is determined the delivery is damaged, the cure for such damaged deliveries shall transfer to the delivery signing party.

Deliveries to the Contractor's location; the Contractor shall provide written notice to the State within ten (10) day of receipt of any items that are damaged at the time of delivery and the Contractor shall make arrangements for the return of such equipment after providing the State with reasonable opportunity to inspect the equipment.

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

Any damaged deliveries will cause the related project's completion date to be re-evaluated and could be adjusted accordingly.

13. CONFIDENTIALITY

13.1 Confidential Information

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

13.2 Protection of Confidential Information

The State and Contractor will each use at least the same degree of care to prevent disclosing to third parties the Confidential Information of the other as it employs to avoid unauthorized disclosure, publication or dissemination of its own confidential information of like character, but in no event less

than reasonable care. Neither Contractor nor the State will (i) make any use of the Confidential Information of the other except as contemplated by this Contract, (ii) acquire any right in or assert any lien against the Confidential Information of the other, or (iii) if requested to do so, refuse for any reason to promptly return or destroy (with written verification of destruction) the other party's Confidential Information to the other party, except as otherwise provided by law. Each party will limit disclosure of the other party's Confidential Information to employees and Subcontractors who must have access in order to fulfill the purposes of this Contract. Disclosure to, and use by, a Subcontractor is permissible where (A) use of a Subcontractor is authorized under this Contract, (B) such disclosure is necessary or otherwise naturally occurs in connection with work that is within such Subcontractor's scope of responsibility, and (C) Contractor obligates the Subcontractor in a written Contract to protect the State's Confidential Information in confidence. At the State's request, any employee of Contractor and of any Subcontractor having access or continued access to the State's Confidential Information may be required to execute an acknowledgment that the employee has been advised of Contractor's and the Subcontractor's obligations under this Section and of the employee's obligation to Contractor or Subcontractor, as the case may be, to protect such Confidential Information from unauthorized use or disclosure.

13.3 Exclusions

Notwithstanding the foregoing, the provisions of **Section 13** will not apply to any particular information which the State or Contractor can demonstrate (i) was, at the time of disclosure of it, in the public domain; (ii) after disclosure of 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 of it without an obligation of confidentiality; (iv) was received after disclosure of it from a third party who had a lawful right to disclose such information 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 **Section 13** will not apply to any particular Confidential Information to the extent the receiving party is required by law to disclose such Confidential Information, provided that the receiving party (i) promptly provides the furnishing party with notice of the legal request, and (ii) assists the furnishing party in resisting or limiting the scope of such disclosure as reasonably requested by the furnishing party. In the case of information of either Contractor or the State "Confidential Information" shall exclude any information (including this Contract) that is publicly available pursuant to the Michigan Freedom of Information Act, 1976 Public Act No. 442, as amended, MCL 15.231, *et seq.* Notwithstanding the foregoing, neither party waives its rights to pursue actions to protect and/or keep its information confidential.

13.4 No Implied Rights

Nothing contained in this **Section 13** (Confidentiality) shall be construed as obligating a party to disclose any particular Confidential Information to the other party, or as granting to or conferring on a party, expressly or impliedly, any right or license to the Confidential Information of the other party.

13.5 Remedies

Each party acknowledges that, if it breaches (or attempts or threatens to breach) its obligations under **Section 13**, the other party may be irreparably harmed. Accordingly, if a court of competent jurisdiction should find that a party has breached (or attempted or threatened to breach) any such obligations, the non-breaching party shall be entitled to seek an injunction preventing such breach (or attempted or threatened breach) unless such injunction would create an unreasonable risk for the safety and security of the public and/or State employees.

13.6 Survival

The parties' respective obligations under this **Section 13** shall survive the termination or expiration of this Contract for any reason.

14. PROPRIETARY RIGHTS AND SOFTWARE

14.1 Rights in Data

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

(b) The State is and shall remain the owner of all State-specific data pursuant to this Contract. The State will not use the Contractor's data for any purpose other than receiving the Services, nor will any part of the Contractor'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 State, nor will any employee of the State other than those on a strictly need to know basis have access to the Contractor's data, except as provided by law. The State will not possess or assert any lien or other right against the Contractor's data. Without limiting the generality of this Section, the State shall only use personally identifiable information as strictly necessary to utilize the Services and shall disclose such information only to its employees who have a strict need to know such information, except as provided by law. The State shall comply at all times with all laws and regulations applicable to such personally identifiable information. Other material developed and provided by the State shall remain the State's sole and exclusive property.

14.2 Ownership of Materials

State and Contractor will continue to own their respective proprietary technologies developed prior to entering into this Contract.

14.3 Standard Software

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

(b) Contractor shall not introduce any Standard Software in providing the Services without the State's prior written approval.

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

14.4 Reserved.

14.5 General Skills

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

15. REPRESENTATIONS AND WARRANTIES

15.1 Contractor's Representations and Warranties

Contractor represents and warrants to the State as follows:

(a) The Contractor represents and warrants that it is capable in all respects of fulfilling and shall fulfill all of its obligations under this Contract. Contractor further represents and warrants that the performance of all obligations under this Contract shall be provided in a timely, professional, and workman-like manner and shall meet the performance and operational standards required under this Contract.

(b) Contractor represents and warrants that the Contract Appendices and Exhibits identify all equipment and software and services necessary for the Deliverable(s) to perform and operate in compliance with the requirements and other standards of performance contained in this Contract.

(c) Contractor represents and warrants that to the best of its knowledge 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, to the best of its knowledge, has all of the rights necessary to convey to the State the ownership rights or licensed use, as applicable, of any and all Deliverables. Contractor will provide patent, copyright, and trade secret indemnification for Contractor's products pursuant to **Section 17.1** and will flow any such indemnifications for third-party products to the State.

(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 and not in lieu of Contractor's other responsibilities with respect to such items as set forth in this Contract, Contractor represents and warrants that it shall assign or otherwise transfer to the State or its designees, or afford the State the benefits of, any manufacturer's warranty for such Deliverable to the extent permitted by manufacturer.

(e) Contractor represents and warrants that the contract signatory has the power and authority, including any necessary corporate authorizations, necessary to enter into this Contract, on

behalf of Contractor. Similarly, the State represents that the Contract signatory has the authority, including appropriate governmental approvals, necessary to enter into this Contract on behalf of the State.

(f) Contractor represents and warrants, to the best of its knowledge and belief, that it is qualified and registered to transact business in all locations where required.

(g) Contractor represents and warrants, to the best of its knowledge and belief, that neither the Contractor nor any Affiliates, nor any employee of either, has, shall have, or shall acquire, any contractual, financial, business, or other interest, direct or indirect, that would conflict in any manner or degree with Contractor's performance of its duties and responsibilities to the State under this Contract or otherwise create an appearance of impropriety with respect to the award or performance of this Contract. Contractor shall notify the State within two (2) days of any such interest that may be incompatible with the interests of the State.

(h) Contractor represents and warrants, to the best of its knowledge and belief, that neither Contractor nor any Affiliates, nor any employee of either has accepted or shall accept anything of value based on an understanding that the actions of the Contractor or Affiliates or employee on behalf of the State would be influenced. Contractor shall not attempt to influence any State employee by the direct or indirect offer of anything of value.

(i) Contractor represents and warrants that, to the best of its knowledge, neither Contractor nor any Affiliates, nor any employee of either has paid or agreed to pay any person, other than bona fide employees and consultants working solely for Contractor or such Affiliate, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract.

(j) Contractor represents and warrants that 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) Except with regards to Qwest, Contractor represents and warrants, to the best of its knowledge and belief, that all financial statements, reports, and other information furnished by Contractor to the State as part of its response to the ITB or otherwise in connection with the award of this Contract fairly and accurately represent the business, properties, financial condition, and results of operations of Contractor, and/or its parent company, as of the respective dates, or for the respective periods, covered by such financial statements, reports, other information. Since the respective dates or periods covered by such financial statements, reports, or other information, to the best of its knowledge and belief except with respect to Qwest, there have been no material adverse changes in the business, properties, financial condition, or results of operations of Contractor.

(l) Contractor represents and warrants that all written information furnished to the State by or behalf of 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 such information not misleading.

(m) Contractor represents and warrants that, to the best of its knowledge and belief, 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, to the best of its knowledge and belief, that it has not been a party to any contract with the State or any of its departments, that was terminated by the State or such department within the previous five (5) years for the reason that Contractor failed to perform or otherwise breached an obligation of such contract.

(n) Contractor will comply with all laws concerning antitrust behavior and collusion.

15.2 Performance Warranty

The Contractor represents and warrants that all Services, 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). In the event of a breach of the foregoing warranty, Contractor will promptly correct the affected Deliverable(s) at no charge to the State.

15.3 Equipment Warranty

For Data Equipment in **Exhibit B-1**:

(a) The Contractor warrants it has good title to the Equipment, free of any claims, liens, encumbrances or security interest of any other part. In addition, for thirty (30) days after delivery (or installation, if installation was included), Contractor will promptly repair or replace (at Contractor's option and expense) any failure of the Equipment to conform to or perform according to the manufacturer's specifications or any electrical or mechanical defects in materials or workmanship with (at Contractor's option) new or used replacement parts.

(b) The State will be subrogated to any claims or rights Contractor may have against the manufacturer of the Equipment for breach of any manufacturer warranties or representations and, upon the State's written request, Contractor will take all commercially reasonable actions to enforce on the State's behalf any such express or implied warranties or representations applicable to the Equipment.

For Voice Equipment in Section B-2:

(a) The "Warranty Period" for Equipment shall be twelve (12) months from the date of Cutover when Contractor provides installation, otherwise it shall be twelve (12) months from the date of delivery. Contractor warrants that during the Warranty Period, the Equipment shall materially conform to the manufacturer's published specifications. If the State notifies Contractor of a material defect during the Warranty Period, Contractor shall, at Contractor's sole option, repair or replace the Equipment free of charge to the State. Contractor's repair or replacement of the Equipment shall be the State's sole remedy for breach of the warranty as stated herein. All warranty services will be performed during Business Day.

(b) During the Warranty Period, any change in the location of Equipment must be performed by Contractor and shall be at the State's expense.

(c) The State may request maintenance Service 24x7x365. If the State's problem is an Emergency, Contractor will use its best efforts to respond to the State's report of a malfunction by dispatching a technician to the site or by beginning remote diagnosis, as appropriate within two (2) business hours for PBX systems and four (4) business hours for key, hybrid or any other system, and will complete the appropriate repairs as soon as reasonably practical. "Emergency" means any malfunction that leaves the State unable to place or receive calls through the Equipment, or any other failure agreed to in writing by the Parties.

(d) In the event the problem is a non-emergency, Contractor shall use reasonable efforts, within eight (8) business hours after the State's problem is reported, to either: (i) commence repair or replacement from a remote location, (ii) dispatch service personnel to the State's site, or (iii) ship replacement Equipment as soon as practical, provided, however, the State must return the defective Equipment within thirty (30) days. Contractor reserves the right to inspect all defective Equipment and Contractor shall have final determination of the status of such Equipment.

For Video Equipment in Section B-4:

(a) The "Warranty Period" for the Equipment shall be twelve (12) months from the date of installation when Contractor provides installation, unless otherwise specified in a Project Scope of Work. The "Warranty Period" for the Software shall be ninety (90) days from the date of installation when Contractor provides installation. For all Equipment and Software not installed by Contractor, the Warranty Period begins upon delivery. Repair or replacement will be done as described in a Project Scope of Work if a maintenance plan is selected at the time of Equipment purchase, otherwise; Contractor shall provide "Return to Factory" warranty services as described below. Contractor's or manufacturer's repair or replacement of the Equipment shall be State's sole remedy for breach of warranty. "Return to Factory Warranty" means if the State has purchased the BasicSERVSM support option, the State may contact the SBC DataComm Customer Service Center (DCSC) for assistance with manufacturer warranty work. The DCSC will assist with trouble shooting and will provide assistance in following the manufacturer's warranty provisions. If the State has selected none of the Contractor maintenance options, then the State shall contact manufacturer directly and follow the manufacturer's terms and process. If the State is a current subscriber to the on-site support option of the EssentialSERVSM 8x5 service, and the State requires on site repair within the scope of the

maintenance plan, Contractor shall provide the on-site repair. If the State is not a current subscriber to the on-site repair option, then the State may request and Contractor may agree to perform on-site repair; The State shall pay for such service at Contractor's then prevailing hourly rates, including any applicable overtime rates (minimum two (2) hour charge per occurrence, portal to portal).

For All Equipment:

The Contractor warrants it has the legal right to sell the equipment to the State. The Contractor further warrants that during the Warranty Period, the equipment shall materially conform to the manufacturer's published specifications. If the State notifies the Contractor of a material defect during the Warranty Period, the Contractor shall, at its option, repair or replace the equipment, free of charge to the State. Repair or replacement will be done if a maintenance plan is selected at the time of equipment purchase, otherwise, the Contractor shall provide services on a Time and Material basis. Replacement parts or products may be new or equivalent to new in performance. Replaced parts shall become the property of the Contractor upon their removal. The Contractor's repair or replacement of the equipment shall be the State's sole remedy for the breach of the warranty as stated herein. The Contractor and the State agree that specific warranties and service level guarantees may be defined on a per-service basis as mutually agreed. During the Warranty Period, any change in the location of the equipment must be performed by the Contractor and shall be at the State's expense.

15.4 Calendar Warranty

The Contractor represents and warrants for ninety (90) days from the installation date that all software for which the Contractor either sells or licenses to the State of Michigan and used by the State prior to, during or after the calendar year 2000, includes or shall include, at no added cost to the State, design and performance so the State shall not experience software abnormality and/or the generation of incorrect results from the software, due to date oriented processing, in the operation of the business of the State of Michigan. The Contractor makes no Year 2000 Limited Warranty regarding any equipment where the manufacturer does not provide a Year 2000 Limited Warranty to the Contractor. In such instance, the State shall be responsible for all charges associated with any correction or repair of equipment, including any replacement products, parts, components, systems, software releases, updates or upgrades and associated labor, which results in equipment functionality which exceeds that expressly provided in the manufacturers' specifications at the time such equipment was installed (including Year 2000 functionality).

The software design, to insure calendar year rollover compatibility, shall include, but is not limited to: data structures (databases, data files, etc.) that provide 4-digit date century; stored data that contain date century recognition, including, but not limited to, data stored in databases and hardware device internal system dates; calculations and program logic (e.g., sort algorithms, calendar generation, event recognition, and all processing actions that use or produce date values) that accommodates same century and multi-century formulas and date values; interfaces that supply data to and receive data from other systems or organizations that prevent non-compliant dates and data from entering any State system; user interfaces (i.e., screens, reports, etc.) that accurately show 4 digit years; and assurance that the year 2000 shall be correctly treated as a leap year within all calculation and calendar logic.

The Contractor will make commercially reasonable efforts to correct errors reported by State during the warranty period. The Contractor's warranty does not cover interfaces, databases, files or any products not developed or provided by Contractor under this Contract nor does it cover non-Contractor changes, alterations, or attachment to Software, nor does it cover Software that is not used according to the published specifications. The warranty requires use by the State of the most recent version of the Software and requires that such Software be maintained under a support agreement with Contractor.

15.5 Third-party Software Warranty

As applicable, the Contractor represents and warrants that, to the best of its knowledge and belief, 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.

15.6 Reserved.

15.7 Reserved.

15.8 Consequences For Breach

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

15.9 Disclaimer

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

16. INSURANCE

16.1 Coverage

Contractor shall purchase and maintain insurance [except that Norlight Telecommunications, Merit Network, Inc., and Qwest Communications Corporation are not required to purchase and maintain the insurance required in **Section 16.1(c)**; Merit Network, Inc. is not required to purchase and maintain the insurance required in Section 16.1 (d) or (f)] at Contractor's expense for at least the following types and amounts of insurance coverage, which amounts shall be not less than any limits set forth in this **Section 16.1** or required by law, whichever is greater:

(a) Commercial General Liability Insurance (including premises/operations liability, independent contractors liability, contractual liability, products liability, completed operations liability, broad form property damage liability, personal injury liability and extended bodily injury and death coverage) in a minimum amount of \$2,000,000 per occurrence [Norlight Telecommunication, Inc. minimum amount will be \$1,000,000 per occurrence] and \$5,000,000 aggregate combined single limit for bodily injury or death, personal injury or property damage. Merit Network, Inc. shall purchase and maintain Commercial General Liability Insurance with a minimum amount of \$1,000,000 per occurrence, and \$4,000,000 maximum liability to include \$1,000,000 in aggregate coverage, \$1,000,000 in product liability, \$1,000,000 in personal liability.

(b) Workers Compensation Insurance (including workers' disability compensation, disability benefit and other similar employee benefits) covering Contractor's employees in an amount not less than the limits required by law and Employers Liability Insurance covering Contractor's employees in an amount not less than \$500,000 per occurrence. A non-resident Subcontractor shall have insurance for benefits payable under Michigan's Workers' Disability Compensation Law for any employee resident of and hired in Michigan; and as respects any other employee protected by workers' disability compensation laws of any other State, Contractor and its Subcontractors shall have insurance or participate in a mandatory State fund to cover the benefits payable to any such employee.

(c) Professional Liability Insurance issued to and covering the liability of Contractor for errors or omissions committed by Contractor, its agents and employees, in the performance of this Contract. The policy shall have limits of liability of not less than \$1,000,000 per claim.

(d) Computer Crime Insurance providing coverage for which Contractor has been found to be legally liable to the State arising out of or related to fraudulent or dishonest acts committed by the employees of Contractor, acting alone or in collusion with others, in a minimum amount of \$2,000,000.

(e) Commercial Automobile Liability Insurance including coverage for owned, hired and non-owned vehicles with a combined single limit minimum of \$1,000,000 per occurrence for bodily injury, personal injury and property damage or as required by law.

(f) Umbrella Liability Insurance in a minimum amount of \$25,000,000, which shall apply, at a minimum, to the insurance required by **Sections 16.1(a)** and **(e)**.

The insurers selected by Contractor shall have an A.M. Best rating of A-, or as otherwise approved in writing by the State, or better or, if such ratings are no longer available, with a comparable rating from a recognized insurance rating agency.

16.2 Subcontractors

Except where the State has approved in writing a Contractor subcontract with other insurance provisions, Contractor shall require all of its Subcontractors hereunder to purchase and maintain the insurance coverage as described in **Section 16.1** for each Contractor in connection with the performance of work by such Subcontractors. Alternatively, Contractor may include any Subcontractors under Contractor's insurance on each coverage required in **Section 16.1**.

16.3 Certificates of Insurance and Other Requirements

Within thirty (30) days after the Effective Date of this Contract, Contractor shall furnish to the Office of Acquisition Services certificate(s) of insurance verifying insurance coverage or providing satisfactory evidence of self-insurance as required in this Section (the "Certificates"). The contract number must be shown on each Certificate. The Certificates shall provide that the Office of Acquisition Services shall be given at least thirty (30) days prior written notice (bearing the contract number) of termination, non-renewal or reduction in limit below the amounts specified herein or in material scope of coverage of such policies. Within thirty (30) days following the execution of this Contract, and every year thereafter, the Contractor shall provide evidence that the State and its agents, officers and employees are listed as additional insureds, but only to the extent of liabilities assumed by Contractor as set forth in **Section 17** of this Contract, under each commercial general liability and commercial automobile liability policy. Insurance policies listing the State as an additional insured, to the extent of liabilities assumed by Contractor as set forth in **Section 17** of this Contract, are required to contain language in the certificate which provides that, "Any litigation activity on behalf of the State of Michigan, or any of its subdivisions, as additional insured must be coordinated with the Department of Attorney General." In the event the insurer's attorney is asked to represent the State, 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. Contractor shall maintain all required insurance coverage throughout the term of the Contract and any extensions thereto and, in the case of claims-made Commercial General Liability policies, shall secure tail coverage for at least three (3) years following the expiration or termination for any reason of this Contract. The minimum limits of coverage specified above are not intended, and shall not be construed, to limit any liability or indemnity of Contractor under this Contract to any indemnified party or other persons. Contractor shall be responsible for all deductibles with regard to such insurance. If Contractor fails to pay any premium for required insurance as specified herein, or if any insurer cancels or significantly reduces any required insurance as specified herein without the State's written consent, at the State's election (but without any obligation to do so) after the State has given Contractor at least thirty (30) days written notice, the State may pay such premium or procure similar insurance coverage from another company or companies; and at the State's election, the State may deduct the entire cost (or part thereof) from any payment due Contractor, or Contractor shall pay the entire cost (or any part thereof) upon demand by the State.

17. INDEMNIFICATION

17.1 Patent/Copyright Infringement Indemnity

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

States patent, copyright, trademark or trade secret of any person or entity, which is enforceable under the laws of the United States. Notwithstanding the foregoing, the Contractor shall have no obligation to indemnify or defend the State for, or to pay any costs, damages or attorneys' fees related to, any claim based upon (i) equipment developed based on written specifications of the State; or (ii) use of the equipment in a configuration other than implemented or approved in writing by the Contractor, including, but not limited to, any modification of the equipment by the State; or (iii) the combination, operation, or use of the equipment with equipment or software not supplied by the Contractor under this Contract. The State shall in a timely manner notify the Contractor of any claim of infringement, violation or misappropriation for which the Contractor may be responsible under this Contract and shall cooperate with the Contractor to facilitate the defense or settlement of such claim. The Contractor shall keep the State reasonably apprised of the continuing status of the claim, including any lawsuit resulting therefrom, and shall permit the State, at its expense, to participate in the defense or settlement of such claim, although the Contractor shall have final authority regarding defense and settlement.

In addition, should the equipment, software, commodity, or service, or its operation, become or in the State's or Contractor's reasonable opinion be likely to become the subject of a claim of infringement, the Contractor shall at the Contractor's sole expense (i) procure for the State the right to continue using the equipment, software, commodity or service or, if such option is not reasonably available to the Contractor, (ii) replace or modify to the State's reasonable satisfaction the same with equipment, software, commodity or service of equivalent function and performance so that it becomes non-infringing, or, if such option is not reasonably available to Contractor, (iii) accept its return by the State with appropriate credits to the State against the Contractor's charges and reimburse the State for reasonable direct costs associated with the return of such equipment. **THIS SECTION 17.1 STATES THE ENTIRE LIABILITY OF THE CONTRACTOR WITH RESPECT TO THE INFRINGEMENT OF INTELLECTUAL PROPERTY.**

17.2 Other Indemnities

(a) General Indemnification

To the extent permitted by law, the Contractor shall indemnify, defend and hold harmless the State from liability of any kind, 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 provided that the State make reasonable effort to notify the Contractor in writing within thirty (30) days from the time that the State has knowledge of such claims. The Contractor shall not be liable to the State for consequential damages arising out of claims brought by third parties except for claims for infringement of any United States patent, copyright, trademark or trade secret.

(b) Reserved.

(c) Independent Contractor Indemnification

Contractor will defend, indemnify, and hold harmless the State, its departments, divisions, agencies, sections, commissions, officers, employees, and agents from and against all Losses, whether based on statutes, contract or tort, to the extent arising out of or resulting from any claim or action by, on behalf of or related to any employees or personnel of Contractor, including claims arising under Occupational Safety and Health Administration requirements or orders, Equal Employment Opportunity Commission requirements or orders, National Labor Relations Board or Fair Labor Standards Act, unemployment insurance or workers' compensation laws, disability benefit acts, employee benefits acts, or other applicable federal, state or local laws or regulations, except to the extent that such losses result from the State's failure to comply with this Contract or such claim or action arose or grew out of events that occurred while such person was an employee of the State, prior to his or her hire by and employment with Contractor.

(d) Continuation of Indemnification Obligations

The Contractor's duty to indemnify pursuant to **Sections 17.1 and 17.2** continues in full force and effect, notwithstanding the expiration or early cancellation of the Contract, with respect to any claims based on facts or conditions that occurred prior to expiration or cancellation.

17.3 Indemnification Procedures

The procedures set forth below shall apply to all indemnity obligations under this Contract. The State agrees to provide reasonably necessary assistance and cooperation in the defense of any claim.

(a) After receipt by the State of notice of the action or proceeding involving a claim in respect of which it will seek indemnification, the State shall promptly notify Contractor of such claim in writing and take or assist Contractor in taking, as the case may be, any reasonable action to avoid the imposition of a default judgment against Contractor. No failure to so notify Contractor shall relieve Contractor of its indemnification obligations except to the extent that Contractor can demonstrate damages attributable to such failure. Within thirty (30) days following receipt of written notice from the State relating to any claim, Contractor shall notify the State in writing whether Contractor agrees to assume control of the defense and settlement of that claim (a "Notice of Election"). After notifying Contractor of a claim and prior to the State receiving Contractor's Notice of Election, the State shall be entitled to defend against the claim if necessary to preserve its defense, at Contractor's expense, and Contractor will be responsible for any reasonable costs incurred by the State in defending against the claim during such period.

(b) If Contractor delivers a Notice of Election relating to any claim: (i) the State shall be entitled to participate in the defense of such claim and to employ counsel at its own expense to assist in the handling of such claim and to monitor and advise the State about the status and progress of the Defense; (ii) Contractor shall provide written notice to the State of a proposed settlement and allow the State five (5) Business Days to provide written consent for the settlement proposed, unless a shorter time period is reasonably necessary to preserve the settlement opportunity and such shorter time is reflected in the notice of the proposed settlement. In no event shall the time period be less than twenty-four (24) hours following actual notice. If the State does not reject the proposal in writing, stating the reasons for the rejection by the date specified in the notice or five (5) Business Days if no other time period is specified, the State will be deemed to have approved the proposed settlement or ceasing to defend against such claim and (iii) to the extent that any principles of Michigan governmental or public law may be involved or challenged, the State shall have the right, at its own expense, to control the defense of that portion of such claim involving the principles of Michigan governmental or public law. Any litigation activity on behalf of the State of Michigan, or any of its subdivisions pursuant to this Section, must be coordinated with the Department of Attorney General. In the event the insurer's attorney represents the State pursuant to this Section, the insurer's attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.

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

18. LIMITATION OF LIABILITY AND EXCUSABLE FAILURE

18.1 Limitation of Liability

The Contractor's liability for damages to the State shall be limited to \$50 Million (\$50,000,000.00) Dollars per rolling 365 Day period as specified in **Exhibit D**. The foregoing limitation of liability shall not apply to claims for infringement of United States patent, copyright, trademarks or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of this Contract calling for liquidated damages; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on this Contract.

The State's liability for damages to the Contractor shall be limited to \$50 Million (\$50,000,000.00) Dollars per rolling 365 Day period. The foregoing limitation of liability shall not apply to claims for infringement of United States patent, copyright, trademarks or trade secrets; to claims for

personal injury or damage to property caused by the gross negligence or willful misconduct of the State; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on this Contract.

The parties agree that neither the Contractor nor the State shall be liable to each other, regardless of the form of action, whether in contract, tort, strict liability, or otherwise, for consequential, incidental, indirect, or special damages including lost profits, sustained or incurred in connection with this Contract and whether or not such damages are foreseeable. The foregoing limitation of liability shall not apply to claims for infringement of United States patent, copyright, trademark or trade secrets or to claims for personal injury or damage to property (excluding loss of data) caused by the gross negligence or willful misconduct of the Contractor.

18.2 Excusable Failure

Neither party will be liable for any default, damage or delay in the performance of its obligations under this Contract to the extent such default, damage or delay is caused by government regulations or requirements (executive, legislative, judicial, military or otherwise), power failure, electrical surges or current fluctuations, lightning, earthquake, war, water or other forces of nature or acts of God, delays or failures of transportation, equipment shortages, suppliers' failures, or acts or omissions of telecommunications common carriers (other than the Contractor specifically responsible for the service or product in question), fire; riots, civil disorders, rebellions or revolutions in any country; strikes or other labor disputes, embargoes; injunctions (provided the injunction was not issued as a result of any fault or negligence of the party seeking to have its default or delay excused); or any other cause beyond the reasonable control of such party; provided the non-performing party and its Subcontractors are without fault in causing such default or delay, and such default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans or other means, including disaster recovery plans. In such event, the non-performing party will be excused from any further performance or observance of the obligation(s) so affected for as long as such circumstances prevail and such party continues to use its commercially reasonable efforts to recommence performance or observance whenever and to whatever extent possible without delay and provided further that such party promptly notifies the other party in writing of the inception of the excusable failure occurrence, and also of its abatement or cessation. If any of the above-enumerated circumstances substantially prevent, hinder, or delay Contractor's performance of the Services for more than fourteen (14) days, and the State determines that performance is not likely to be resumed within a period of time that is satisfactory to the State in its reasonable discretion, then at the State's option: (a) the State may procure the affected Services from an alternate source, and the State shall not be liable for payment for the unperformed Services under this Contract for so long as the delay in performance shall continue; (b) the State may terminate any portion of this Contract so affected and the charges payable thereunder shall be equitably adjusted to reflect those Services terminated; or (c) the State may terminate the affected Statement of Work without liability to Contractor as of a date specified by the State in a written notice of termination to Contractor, except to the extent that the State shall pay for products and services provided through the date of termination. Contractor will not have the right to any additional payments from the State as a result of any excusable failure occurrence or to payments for Services not rendered 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 this 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.

18.3 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, the State will receive priority service for repair and work around in the event of a natural or manmade disaster. The State will identify a priority list of those functions that must be returned to service as soon as possible following a disaster.

19. TERMINATION BY THE STATE

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

19.1 Termination for Cause

(a) In the event that Contractor breaches any of its material duties or obligations under this Contract (including a Chronic Failure to meet any particular SLA as defined in **Section 7.6**), which are either not capable of or subject to being cured, or are not cured within the time period specified in the written notice of breach provided by the State (such time period not to be less than thirty (30) days), or pose a serious and imminent threat to the health and safety of any person, or the imminent loss, damage or destruction of any real or tangible personal property, the State may, having provided written notice of termination to Contractor, terminate this Contract in whole or in part, for cause, as of the date specified in the notice of termination.

(b) In the event that this Contract is terminated for cause, in addition to any legal remedies otherwise available to the State by law or equity, Contractor shall be responsible for all costs incurred by the State in terminating this Contract, including but not limited to, State administrative costs, reasonable attorneys' fees and court costs, and any reasonable additional costs the State may incur to procure the Services required by this Contract from other sources. Re-procurement costs shall not be considered by the parties to be consequential, indirect or incidental damages, and shall not be excluded by any other terms otherwise included in this Contract, provided such costs are not in excess of twenty-five percent (25%) more than the prices for such Service provided under this Contract; provided, however, that any such costs recovered by the State under this paragraph shall otherwise be treated as damages recovered by the State for the purposes of **Section 18.1**.

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

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

19.2 Termination for Convenience by the State

The State may terminate this Contract for its convenience, in whole or part, if the State determines that such a termination is in the State's best interest. Reasons for such termination shall be left to the sole discretion of the State and may include, but not necessarily be limited to (a) the State no longer needs the Services or products specified in the Contract, (b) relocation of office, program changes, changes in laws, rules, or regulations make implementation of the Services no longer practical or feasible, or (c) unacceptable prices for Additional Services requested by the State. The State may terminate this Contract for its convenience, in whole or in part, by giving Contractor written notice at least one hundred twenty (120) days prior to the date of termination. If the State chooses to terminate this Contract in part, the charges payable under this Contract shall be equitably adjusted to reflect those Services that are terminated. Services and related provisions of this Contract that are terminated for cause shall cease on the effective date of the termination.

19.3 Non-Appropriation

(a) Contractor acknowledges that, if this Contract extends for several fiscal years, continuation of this Contract is subject to appropriation or availability of funds for this Contract. If funds to enable the State to effect continued payment under this Contract are not appropriated or otherwise made available, the State shall have the right to terminate this Contract and all affected Statements of Work, in whole or in part, at the end of the last period for which funds have been appropriated or

otherwise made available by giving written notice of termination to Contractor. The State shall give Contractor at least thirty (30) days advance written notice of termination for non-appropriation or unavailability (or such time as is available if the State receives notice of the final decision less than thirty (30) days before the funding cutoff).

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

(c) In the event the State terminates this Contract or reduces the level of Services to be provided by Contractor pursuant to this **Section 19.3**, the State shall pay Contractor for all work-in-progress performed through the effective date of the termination or reduction in level, as the case may be, to the extent funds are available. For the avoidance of doubt, this **Section 19.3** will not preclude Contractor from reducing or stopping Services and/or raising against the State in a court of competent jurisdiction, any claim for a shortfall in payment for Services performed before the effective date of termination.

19.4 Criminal Conviction

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

19.5 Approvals Rescinded.

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

19.6 Rights and Obligations Upon Termination

(a) If this Contract is terminated by the State for any reason, Contractor shall (a) stop all work as specified in the notice of termination, (b) take any action that may be necessary, or that the State may direct, for preservation and protection of Deliverables or other property derived or resulting from this Contract that may be in Contractor's possession, (c) return all materials and property provided directly or indirectly to Contractor by any entity, agent or employee of the State, (d) in the event that the Contractor maintains title in equipment and software that is intended to be transferred to the State at the termination of the Contract, Contractor will transfer title in, and deliver to, the State, unless otherwise directed, all Deliverables and other Developed Materials intended to be transferred to the State at the termination of the Contract and which are resulting from the Contract (which shall be provided to the State on an "As-Is" basis except to the extent the amounts paid by the State in respect of such items included compensation to Contractor for the provision of warranty services in respect of such materials), and (e) take any action to mitigate and limit any potential damages, or requests for Contractor adjustment or termination settlement costs, to the maximum practical extent, including terminating or limiting as otherwise applicable those subcontracts and outstanding orders for material and supplies resulting from the terminated Contract.

(b) In the event the State terminates this Contract prior to its expiration for its own convenience, the State shall pay Contractor for all charges due for Services provided prior to the date of termination and, if applicable, as a separate item of payment pursuant to this Contract, for partially

completed Deliverables, on a percentage of completion basis. All completed or partially completed Deliverables prepared by Contractor pursuant to this Contract shall, at the option of the State, become the State's property, and Contractor shall be entitled to receive equitable fair compensation for such Deliverables. Regardless of the basis for the termination, the State shall not be obligated to pay, or otherwise compensate, Contractor for any lost expected future profits, costs or expenses incurred with respect to Services not actually performed for the State.

(c) Reserved.

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

19.7 Termination Assistance

If this Contract (or any Statement of Work issued under it) is terminated for any reason before completion, Contractor agrees to provide for up to two-hundred seventy (270) days after the termination all reasonable termination assistance requested by the State to facilitate the orderly transfer of such Services to the State or its designees in a manner designed to minimize interruption and adverse effect. Such termination assistance will be deemed by the parties to be governed by the terms and conditions of this Contract (notwithstanding its termination) other than any terms or conditions that do not reasonably apply to such termination assistance. The State shall compensate Contractor for such termination assistance at the same rates and charges set forth in the Contract on a time and materials basis in accordance with the Amendment Labor Rates at **Exhibit Q**. If this Contract is terminated by Contractor under **Section 20**, then Contractor may condition its provision of termination assistance under this Section on reasonable assurances of payment by the State for such assistance, and any other amounts owed under the Contract.

19.8 Reservation of Rights

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

19.9 End of Contract Transition

In the event this contract is terminated, for convenience or cause, or upon expiration, the Contractor agrees to comply with direction provided by the State to assist in the orderly transition of equipment, services, software, leases, etc. to the State or a third party designated by the State. In the event of termination or the expiration of this Contract, the Contractor agrees to make all reasonable efforts to effect an orderly transition of services within a reasonable period of time that in no event will exceed 270 days. These efforts shall include, but are not limited to, the following:

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

(b) Reserved.

(c) Information - The Contractor agrees to provide reasonable detailed specifications for all Services needed by the State, or specified third party, to properly provide the services required under this Contract. The Contractor will also provide any licenses required to perform the Services under this Contract.

(d) Software. - The Contractor shall reasonably assist the State in the acquisition of any Contractor software required to perform the Services under this Contract. This shall include any documentation being used by the Contractor to perform the Services under this Contract. If the State

transfers any software licenses to the Contractor, those licenses shall, upon expiration of the Contract, transfer back to the State at their current revision level.

(e) Payment - If the transition results from a termination for any reason, reimbursement shall be governed by the termination provisions of this Contract. If the transition results from expiration, the Contractor will be reimbursed for all reasonable transition costs (i.e. costs incurred within the agreed period after contract expiration that result from transition operations) as specified by **Exhibit Q**.

19.10 Transition out of this Contract

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

- (i) Cooperating with any contractors, vendors, or other entities with whom the State contracts to meet its telecommunication needs, for at least two hundred and seventy (270) days after the termination of this Contract;
 - (ii) Reserved.
 - (iii) Providing the State with all asset management data generated from the inception of this Contract through the date on which this Contract is terminated, in a comma-delimited format unless otherwise required by the Program Office;
 - (iv) Reconciling all accounts between the State and the Contractor;
 - (viii) Allowing the State to request the winding up of any pending or ongoing projects at the price to which the State and the Contractor agreed at the inception of the project;
 - (ix) Freezing all non-critical software changes;
 - (x) Notifying all of the Contractor's subcontractors of procedures to be followed during the transition out phase;
 - (xv) Assisting with the communications network turnover, if applicable;
 - (xvi) Assisting in the execution of a parallel operation until the effective date of termination of this Contract
 - (xvii) Answering questions regarding post-migration services;
 - (xviii) Delivering to the State any remaining owed reports and documentation still in the Contractor's possession.
- (b) In the event that this Contract is terminated, dissolved, voided, rescinded, nullified, or otherwise rendered unenforceable, the State agrees to perform the following obligations, and any others upon which the State and the Contractor agree:
- (i) Reconciling all accounts between the State and the Contractor;
 - (ii) Completing any pending post-project reviews.

20. TERMINATION BY THE CONTRACTOR

If the State materially breaches its obligation to pay Contractor undisputed amounts due and owing under this Contract in accordance with **Section 10**, or if the State breaches its other obligations under this Contract to an extent that makes it impossible or commercially impractical for Contractor to perform the Services, and if the State does not cure the breach within the time period specified in a written notice of breach provided to the State by Contractor (such time period not to be less than thirty (30) days), then Contractor may terminate this Contract for cause, as of the date specified in the notice of termination; provided, however, that Contractor must discharge its obligations under **Section 23.2** prior to any such termination.

21. RESERVED

22. STOP WORK

22.1 Issuance of Stop Work Order

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 this Contract for a period of up to ninety (90) days after the stop work order is delivered to Contractor, and for any further period to which the parties may agree. The stop work order shall be specifically identified as such and shall indicate that it is issued under this

Section 22. Upon receipt of the stop work order, Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the stop work order during the period of work stoppage. Within the period of the stop work order, the State shall either: (a) cancel the stop work order; or (b) terminate the work covered by the stop work order as provided in **Section 19** of this Contract.

22.2 Cancellation or Expiration of Stop Work Order

If a stop work order issued under this **Section 22** is canceled or the period of the stop work order or any extension thereof expires, Contractor shall resume work. The parties shall agree upon an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract shall be modified, in writing, accordingly, if: (a) the stop work order results in an increase in the time required for, or in Contractor's costs properly allocable to, the performance of any part of this Contract; and (b) Contractor asserts its right to an equitable adjustment within thirty (30) days after the end of the period of work stoppage; provided that, if the State decides the facts justify the action, the State may receive and act upon a Contractor proposal submitted at any time before final payment under this Contract.

22.3 Allowance of Contractor Costs

If the stop work order is not canceled and the work covered by the stop work order is terminated for reasons other than material breach, such termination shall be deemed to be a termination for convenience under **Section 19.2**, and the State shall allow reasonable costs resulting from the stop work order in arriving at the termination settlement. For the avoidance of doubt, the State shall not be liable to Contractor for loss of profits because of a stop work order issued under this **Section 22**.

23. DISPUTE RESOLUTION

23.1 In General

- (a) Any claim, counterclaim, or dispute between the State and Contractor arising out of or relating to this Contract or any Statement of Work shall be resolved as set forth herein.
- (b) For all Contractor claims seeking an increase in the amounts payable to Contractor under this Contract, or the time for Contractor's performance, Contractor shall submit a letter executed by Contractor's Contract Administrator or his designee certifying that (i) the claim is made in good faith, (ii) 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 (iii) the supporting data provided with such an affidavit are current and complete to Contractor's best knowledge and belief.

23.2 Informal Dispute Resolution

(a) All operational disputes between the parties shall be resolved under the Contract Management procedures developed pursuant to **Section 8.2**. If the parties are unable to resolve any disputes after compliance with such processes, the parties shall meet with the Director of Acquisition Services, DMB, or designee, for the purpose of attempting to resolve such dispute without the need for formal legal proceedings, as follows:

- (i) The representatives of Contractor and the State shall meet as often as the parties reasonably deem necessary in order to gather and furnish to each other all information with respect to the matter in issue which the parties believe to be appropriate and germane in connection with its resolution. The representatives shall discuss the problem and negotiate in good faith in an effort to resolve the dispute without the necessity of any formal proceeding.
- (ii) During the course of negotiations, all reasonable requests made by one party to another for non-privileged information reasonably related to this Contract will be honored in order that each of the parties may be fully advised of the other's position.
- (iii) The specific format for the discussions will be left to the discretion of the designated State and Contractor representatives, but may include the preparation of agreed upon statements of fact or written statements of position.

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

(b) This **Section 23.2** will not be construed to prevent either party from instituting, and a party is authorized to institute, formal proceedings earlier to avoid the expiration of any applicable limitations period, to preserve a superior position with respect to other creditors, or pursuant to **Section 23.3**.

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

23.3 Injunctive Relief

The only circumstance in which disputes between the State and Contractor will not be subject to the provisions of **Section 23.2** is where a party makes a good faith determination that a breach of the terms of this Contract by the other party is such that the damages to such party resulting from the breach will be so immediate, so large or severe and so incapable of adequate redress after the fact that a temporary restraining order or other immediate injunctive relief is the only adequate remedy.

23.4 Continued Performance

Each party agrees to continue performing its obligations under this Contract while a dispute is being resolved except to the extent the issue in dispute precludes performance (dispute over payment shall not be deemed to preclude performance) and without limiting either party's right to terminate this Contract as provided in **Section 19 and 20**, as the case may be.

23.5 Governing Law

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

23.6 Jurisdiction

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

24. FEDERAL AND STATE CONTRACTUAL REQUIREMENTS

24.1 Nondiscrimination

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

24.2 Unfair Labor Practices

Pursuant to 1980 Public Act 278, as amended, MCL 423.231, *et seq.*, the State shall not award a contract or subcontract to an employer whose name appears in the current register of employers failing to correct an unfair labor practice compiled pursuant to section 2 of the Act. This information is

compiled by the United States National Labor Relations Board. A contractor of the State, in relation to the Contract, shall not enter into a contract with a Subcontractor, manufacturer, or supplier whose name appears in this register. Pursuant to section 4 of 1980 Public Act 278, MCL 423.324, the State may void any Contract if, subsequent to award of the Contract, the name of Contractor as an employer or the name of the Subcontractor, manufacturer or supplier of Contractor appears in the register.

24.3 Disclosure of Litigation

(a) Disclosure. Contractor must disclose any material criminal litigation, investigations or proceedings involving the Contractor (and each Subcontractor) or any of its officers or directors. In addition, each Contractor (and each Subcontractor) must notify the State of any material civil litigation, arbitration or proceeding which arises during the term of the Contract and extensions thereto, to which Contractor (or, to the extent Contractor is aware, any Subcontractor hereunder) is a party, and which involves: (i) disputes that might reasonably be expected to adversely affect the viability or financial stability of Contractor or any Subcontractor hereunder; or (ii) a claim or written allegation of fraud against Contractor or, to the extent Contractor is aware, any Subcontractor hereunder by a governmental or public entity arising out of their business dealings with governmental or public entities. Any such litigation, investigation, arbitration or other proceeding (collectively, "Proceeding") must be disclosed in a written statement to the Contract Administrator within thirty (30) days of its occurrence. Details of settlements which are prevented from disclosure by the terms of the settlement may be annotated as such. Information provided to the State from Contractor's publicly filed documents referencing its material litigation will be deemed to satisfy the requirements of this **Section 24.3(a)**.

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

(i) the ability of Contractor (or a Subcontractor hereunder) to continue to perform this Contract in accordance with its terms and conditions, or

(ii) whether Contractor (or a Subcontractor hereunder) in performing Services for the State is engaged in conduct which is similar in nature to conduct alleged in such Proceeding, which conduct would constitute a breach of this Contract or a violation of Michigan law, regulations or public policy, then Contractor shall be required to provide the State all reasonable assurances requested by the State to demonstrate that: (A) Contractor and/or its Subcontractors hereunder will be able to continue to perform this Contract and any Statements of Work in accordance with its terms and conditions, and (B) Contractor and/or its Subcontractors hereunder have not and will not engage in conduct in performing the Services which is similar in nature to the conduct alleged in such Proceeding.

24.4 Compliance with Laws

Contractor shall comply with all applicable state, federal, and local laws and ordinances {"Applicable Laws"} in providing the Services.

25. GENERAL

25.1 Amendments

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

25.2 Assignment

(a) Neither party shall have the right to assign this Contract, or to assign or delegate any of its duties or obligations under this 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 this Contract to any other State agency, department, division or department without the prior consent of Contractor and Contractor may assign this Contract to an affiliate so long as such affiliate is adequately capitalized and can provide adequate assurances that such affiliate can perform this Contract. Any purported assignment in violation of this Section shall be null and void. It is the policy of the State of Michigan to withhold consent from proposed assignments, subcontracts, or novations when

such transfer of responsibility would operate to decrease the State's likelihood of receiving performance on the Contract or the State's ability to recover damages.

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

25.3 Entire Contract; Order of Precedence

(a) This Contract, including any Statements of Work and Exhibits referred to herein and attached hereto, applicable Tariffs and Rate and Service Schedules to the extent not contrary to this Contract, each of which is incorporated herein for all purposes, constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, whether written or oral, with respect to such subject matter and as additional terms and conditions on the purchase order shall apply as limited by Section 2.6.

(b) In the event of any inconsistency between the terms of this Contract and a Statement of Work, the terms of the Statement of Work will take precedence (as to that Statement of Work only); provided, however, that a Statement of Work may not modify or amend the terms of **Sections 12 through 23** of this Contract, which may be modified or amended only by a formal Contract amendment. In the event of an inconsistency between the terms and conditions of this Contract and any regulatory filing, the terms and conditions of this Contract will prevail. If necessary, Contractor, after the Effective Date, shall make a regulatory filing which shall include the rates and charges for service and any terms and conditions that affect the rates and charges paid by the State. These shall conform to those set forth in this Contract.

25.4 Headings

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

25.5 Relationship of the Parties (Independent Contractor Relationship)

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

25.6 Notices

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

State:

State of Michigan
Office of Acquisition Services
Attention: Christine Mitchell, Buyer Specialist
PO Box 30026
530 West Allegan
Lansing, Michigan 48909

with a copy to:

State of Michigan
Department of Information Technology

Attention: Thomas J. Fogle, Director
608 West Allegan
Lansing, Michigan 48913

Contractor:

Robert F. Weldon
Sales Manager
SBC Global Services, Inc.
221 North Washington
Room 227
Lansing, MI 48933

with a copy to:

SBC Global Services, Inc.
225 West Randolph Street, 25th Floor
Chicago, Illinois 60606
Attn: Legal Marketing

For Qwest:

The person(s) noted below is authorized to administer the Contract on a day-to-day basis during its term:

Mike Edwards
Qwest - National Account Manager
State of Michigan
517-675-7006

For Merit:

Jennifer C. Wolf
Dedicated Connections Product Manager
4251 Plymouth Road
Suite 2000
Ann Arbor, MI 48105

For Norlight:

Cindy Malley
Manager - Strategic Accounts
Norlight Telecommunications
13935 Bishop's Drive
Brookfield, WI 53005
262.792.7748 or 800.572.9324
Fax: 262.792.7717
c_m@norlight.com
<http://carrier.norlight.com>

For Verizon:

William L. Graham- Corporate Account Manager
Robert Lenz-Regional Sales Manager

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

25.7 Media Releases

Neither Contractor nor the State will make any news releases, public announcements or public disclosures, nor will they have any conversations with representatives of the news media, pertaining to this Contract, the Services or the Contract without the prior written approval of the other party, and then only in accordance with explicit written instructions provided by that party. In addition, neither Contractor nor the State will use the name, trademarks or other proprietary identifying symbol of the other party or its affiliates without such party's prior written consent. Prior written consent of the Contractor must be obtained from authorized representatives of Contractor's Legal and Corporate Communications Departments.

25.8 Reformation and Severability

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

25.9 Consents and Approvals

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

25.10 No Waiver of Default

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

25.11 Survival

Any provisions of this Contract that impose continuing obligations on the parties including the parties' respective warranty, indemnity and confidentiality obligations, shall survive the expiration or termination of this 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.

25.12 Covenant of Good Faith

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

25.13 Approval

The State assumes no liability for payment under this Contract or the terms of any Contract Change Notice or Statement of Work issued under this Contract until Contractor is notified in writing that the Statement of Work has been approved by the DMB Office of Acquisition Services and, if required, the State Administrative Board and the Michigan Office of Attorney General. Execution of this Contract by State authorities indicates approval by the State.

25.14 Permits

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

25.15 Environmental Provision

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

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

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

(c) Once the Hazardous Material has been removed or rendered harmless by the State, the affected Work shall be resumed as directed in writing by the State. Any determination by the Michigan Department of Community Health and/or the Michigan Department of Environmental Quality (whichever is applicable) that the Hazardous Material has either been removed or rendered harmless shall be

binding upon the State and Contractor for the purposes of resuming the Work. If any such incident with Hazardous Material results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Work will not be counted in **Section 7.6** for a time as mutually agreed by the parties.

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

25.16 Appointment Of Contractor As Limited Agent For The State

The State hereby appoints the Contractor as its limited agent to act on the State's behalf, to the extent necessary to provide the Services throughout the term of the Contract. The State will notify all lessors, vendors, suppliers and appropriate third parties of such limited agency appointment as the State or the Contractor determines must be notified pursuant to a third party agreement, or any other agreement to which the State is a party, or applicable law. The State shall execute all necessary or appropriate letters of agency. Upon the expiration of any letter of agency issued hereunder, the Contractor shall immediately cease to act or have any authority to act as the State's agent.

26. RESERVED

27. REPORTS

27.1 Usage Reports. The Contractor agrees to provide monthly summary reports identifying all Services implemented under the Contract. The reports shall provide, at a minimum, service period, identification of service type, quantity, total recurring revenue, total non-recurring revenue, applicable administrative fee rate and total administrative fee billed.

The Contractor agrees to provide monthly summary reports identifying all Services implemented under the Contract for an individual agency/buyer. These reports shall contain, at a minimum, the name of the agency/buyer, service period, type of service, quantity, total recurring charges and total nonrecurring charges (if applicable), applicable administrative fee rate and total administrative fee billed.

28. RESERVED

29. EXTENDED PURCHASING PROGRAM

Public Act 431 of 1984 permits the State of Michigan, Department of Management and Budget, 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 on the State of Michigan, Department of Management and Budget, Office of Acquisition Services website at: <http://www.michigan.gov/doingbusiness/0,1607,7-146-6586-16656--,00.html>. In order for non-state agencies to participate in the Extended Purchasing Program, the non-state governmental agency must enter into an agreement with the State of Michigan to become authorized to participate, thus ensuring that local units of government secure a greater return for the expenditure of public funds. It is the responsibility of the Contractor to ensure that the non-state agency is an authorized Extended Purchasing Program member before extending the Contract pricing. Orders received from non-approved local units of government shall not be considered unless prior approval is granted by DMB-Office of Acquisition Services.

It is the policy of the Office of Acquisition Services, Department of Management and Budget, that the final approval to utilize this Contract in this manner must come from the Contractor. In such cases, the Contractor will supply Contract Services and equipment at the established State of Michigan contract prices and terms to the extent applicable and where available. Inasmuch as these are non-state agencies, all invoices will be submitted to and payment remitted by 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.

Commodities and/or Services under this Contract will be supplied to State of Michigan departments and agencies, and authorized Extended Purchasing Program members in accordance with the terms and prices quoted to the extent applicable and where available.

30. CIRCUIT INFORMATION

30.1 Transmission facilities.

The State may request current information about Contractor's transmission facilities. Provided the requested information is not proprietary and/or does not pose a security concern the Contractor shall supply said information in a timely way.

Exhibit A

Deleted – Not Applicable to Contract #071B1300097

Exhibit B-1

Deleted – Not Applicable to Contract #071B1300097

Exhibit B-2

Deleted – Not Applicable to Contract #071B1300097

Exhibit B-3

Deleted – Not Applicable to Contract #071B1300097

Exhibit B-4

Deleted – Not Applicable to Contract #071B1300097

Exhibit B-5

Deleted – Not Applicable to Contract #071B1300097

Exhibit B-6

Deleted – Not Applicable to Contract #071B1300097

Exhibit B-7

Deleted – Not Applicable to Contract #071B1300097

Exhibit B-8

Deleted – Not Applicable to Contract #071B1300097

Exhibit B-9

Deleted – Not Applicable to Contract #071B1300097

Exhibit B-10

Deleted – Not Applicable to Contract #071B1300097

Exhibit B-11

Deleted – Not Applicable to Contract #071B1300097

Exhibit C

Deleted – Not Applicable to Contract #071B1300097

Exhibit D

Deleted – Not Applicable to Contract #071B1300097

Exhibit E

Exhibit E will be written and mutually agreed upon by the parties within forty-five (45) days of Effective Date. This description shall be replaced upon the mutual agreement of the parties as outlined in **Exhibit B**.

Exhibit H

The person noted below is authorized by SBC to change, modify, amend, alter or clarify the prices, specifications, terms and conditions of this Contract:

Raymond Wilkins

The person(s) noted below is authorized to administer the Contract on a day-to-day basis during its term:

FOR SBC:

Robert F. Weldon
SBC - Sales Manager
State of Michigan Account Team
221 N. Washington Square, Suite 227
Lansing, MI 48933

Susan Bologna
SBC Program Executive

FOR NORLIGHT TELECOMMUNICATIONS:

The person noted below is authorized by Norlight Telecommunications to change, modify, amend, alter or clarify the prices, specifications, terms and conditions of this Contract:

Ann Ballinger
Vice-President Wholesale
Norlight Telecommunications
13935 Bishop's Drive
Brookfield, WI 53005

The person(s) noted below is authorized to administer the Contract on a day-to-day basis during its term:

Cindy Malley
Manager – Strategic Accounts
Norlight Telecommunications
13935 Bishop's Drive
Brookfield, WI 53005

FOR QWEST COMMUNICATIONS:

The person noted below is authorized by Qwest Communications to change, modify, amend, alter or clarify the prices, specifications, terms and conditions of this Contract:

Steve Brinkmann

The person(s) noted below is authorized to administer the Contract on a day-to-day basis during its term:

Mike Edwards
Qwest – National Account Manager
State of Michigan

FOR MERIT NETWORK:

The person noted below is authorized by Merit Network to change, modify, amend, alter or clarify the prices, specifications, terms and conditions of this Contract:

Huntington Williams, III
President
4251 Plymouth Road
Suite 2000
Ann Arbor, MI 48105

The person(s) noted below is authorized to administer the Contract on a day-to-day basis during its term:

Jennifer C. Wolf
Dedicated Connections Product Manager
4251 Plymouth Road
Suite 2000
Ann Arbor, MI 48105

FOR VERIZON:

The individuals noted below are authorized by Verizon North Inc. to change, modify, amend, alter or clarify the prices, specifications, terms and conditions of this Contract:

John J. Crowne-Contract Specialist
Verizon Communications
19845 N US 31
Westfield, IN 46074
Voice: 317/896-8925
Fax: 317/896-5288

Eric Edgington-Attorney
Robert Mulherrin-General Manager

The individuals noted below are authorized to administer the Contract on a day-to-day basis during its term:

William L. Graham- Corporate Account Manager
Robert Lenz-Regional Sales Manager

Exhibit I

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Exhibit J

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Exhibit M

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Exhibit Q

Rates provided within each Statement of Work will serve as the Amendment Labor Rates.