

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

October 8, 2008

CHANGE NOTICE NO. 2 (REVISED)
TO
CONTRACT NO. 071B4200346
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR Novell, Inc. 1800 South Novell Place Mailstop D231 Provo, UT 84601 Email: lhopkins@novell.com	TELEPHONE Les Hopkins (801) 861-2855
	VENDOR NUMBER/MAIL CODE
	BUYER (517) 373-3993 Dale N. Reif
Contract Administrator: Dale Reif Master Contract for Software/Maintenance and Limited Consulting Services – Department of Information Technology	
CONTRACT PERIOD: From: July 15, 2004 To: July 14, 2009	
TERMS N/A	SHIPMENT N/A
F.O.B. N/A	SHIPPED FROM N/A
MINIMUM DELIVERY REQUIREMENTS N/A	

NATURE OF CHANGE(S):

Effective immediately, this contract is **EXTENDED** to July 14, 2009 using the remaining option year of the contract and is **INCREASED** by \$1,400,000.00. All other terms and conditions remain the same.

AUTHORITY/REASON(S):

Per vendor and agency agreement and the approval of Ad Board on 10/7/08.

INCREASE: \$1,400,000.00

TOTAL REVISED ESTIMATED CONTRACT VALUE: \$11,509,166.00

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

September 17, 2008

**CHANGE NOTICE NO. 2
 TO
 CONTRACT NO. 071B4200346
 between
 THE STATE OF MICHIGAN
 and**

NAME & ADDRESS OF VENDOR Novell, Inc. 1800 South Novell Place Mailstop D231 Provo, UT 84601	TELEPHONE David Alvin (801) 861-2855
	VENDOR NUMBER/MAIL CODE
	BUYER (517) 373-3993 Dale N. Reif
Contract Administrator: Dale Reif Master Contract for Software/Maintenance and Limited Consulting Services – Department of Information Technology	
CONTRACT PERIOD: From: July 15, 2004 To: June 30, 2009	
TERMS <p align="center">N/A</p>	SHIPMENT <p align="center">N/A</p>
F.O.B. <p align="center">N/A</p>	SHIPPED FROM <p align="center">N/A</p>
MINIMUM DELIVERY REQUIREMENTS <p align="center">N/A</p>	

NATURE OF CHANGE(S):

**Effective immediately, this contract is EXTENDED to June 30, 2009.
 All other terms and conditions remain the same.**

AUTHORITY/REASON(S):

Per vendor and agency agreement.

TOTAL ESTIMATED CONTRACT VALUE REMAINS: \$10,109,166.00

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

March 28, 2007

CHANGE NOTICE NO. 1
TO
CONTRACT NO. 071B4200346
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR Novell, Inc. 1800 South Novell Place Mailstop D231 Provo, UT 84601	TELEPHONE David Alvin (801) 861-2855
	VENDOR NUMBER/MAIL CODE
	BUYER (517) 373-3993 Dale N. Reif
Contract Administrator: Dale Reif Master Contract for Software/Maintenance and Limited Consulting Services – Department of Information Technology	
CONTRACT PERIOD: From: July 15, 2004 To: September 30, 2008	
TERMS N/A	SHIPMENT N/A
F.O.B. N/A	SHIPPED FROM N/A
MINIMUM DELIVERY REQUIREMENTS N/A	

NATURE OF CHANGE(S):

Effective immediately, this contract is **EXTENDED** to September 30, 2008 and **INCREASED** by \$3,060,766.00. Please note that the buyer has been changed to Dale Reif. All other terms and conditions remain the same.

AUTHORITY/REASON(S):

Per vendor and agency agreement.

INCREASE: \$3,060,766.00

TOTAL REVISED ESTIMATED CONTRACT VALUE: \$10,109,166.00

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

August 31, 2004

NOTICE
TO
CONTRACT NO. 071B4200346
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR Novell, Inc. 1800 South Novell Place Mailstop D231 Provo, UT 84601	TELEPHONE David Alvin (801) 861-2855
	VENDOR NUMBER/MAIL CODE
	BUYER (517) 241-1646 Greg Faremouth
Contract Administrator: Dale Reif Master Contract for Software/Maintenance and Limited Consulting Services – Department of Information Technology	
CONTRACT PERIOD: From: July 15, 2004 To: July 15, 2007	
TERMS N/A	SHIPMENT N/A
F.O.B. N/A	SHIPPED FROM N/A
MINIMUM DELIVERY REQUIREMENTS N/A	

The terms and Conditions of this Contract are enclosed. In the event of any conflicts between the specifications, terms and conditions indicated by the state and those indicated by the vendor, those of the State take precedence.

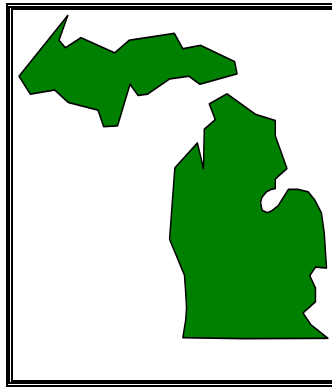
Estimated Contract Value: **\$7,048,400.00**

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

**CONTRACT NO. 071B4200346
 between
 THE STATE OF MICHIGAN
 and**

NAME & ADDRESS OF VENDOR Novell, Inc. 1800 South Novell Place Mailstop D231 Provo, UT 84601		TELEPHONE David Alvin (801) 861-2855
		VENDOR NUMBER/MAIL CODE
		BUYER (517) 241-1646 Greg Faremouth
Contract Administrator: Dale Reif Master Contract for Software/Maintenance and Limited Consulting Services – Department of Information Technology		
CONTRACT PERIOD: From: July 15, 2004 To: July 15, 2007		
TERMS N/A	SHIPMENT N/A	
F.O.B. N/A	SHIPPED FROM N/A	
MINIMUM DELIVERY REQUIREMENTS N/A		
MISCELLANEOUS INFORMATION: The terms and Conditions of this Contract are enclosed. In the event of any conflicts between the specifications, terms and conditions indicated by the state and those indicated by the vendor, those of the State take precedence.		
Estimated Contract Value: \$7,048,400.00		

FOR THE VENDOR:	FOR THE STATE:
Novell, Inc. _____ Firm Name	_____ Signature
_____ Authorized Agent Signature	Sean Carlson Director _____ Name
_____ Authorized Agent (Print or Type)	Acquisition Services _____ Title
_____ Date	_____ Date



STATE OF MICHIGAN
Department of Management and Budget
Acquisition Services

Contract No. [071B4200346](#)

Novel Master Contract
For
Software/Maintenance
And
Limited Services

Buyer Name: Greg Faremouth
Telephone Number: 517 241-1646
E-Mail Address: faremouthg@michigan.gov



(Novel Contract NO.071B4200346)

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ATTACHMENTS

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EXHIBITS

A - NOVEL MLA



Article 1 – Statement of Work (SOW)

1.0 Project Identification

1.001 PROJECT REQUEST

The State of Michigan desires to enter into a multi-year agreement with Novell, Inc. that will provide the State with commodities and services furnished by Novell. In addition, Novell will provide dedicated consulting services and auxiliary resources to specific work statements identified herein.

1.002 BACKGROUND

Novell has extensive knowledge of Novell proprietary software and is very familiar with the State of Michigan architecture. The combined knowledge of the current architecture, existing state-owned Novell components and configurations along with third party products is essential to completely implement vital solutions.

Novell supports the communication and collaboration software (GroupWise) that provides e-mail and calendaring for thousands of State employees for over fifteen years. Other products such as BorderManager, ZENworks and NETware are also used by various agencies for many years and supported by Novell. The total cost to replace these products would be great. GroupWise products, services and maintenance were obtained from EDS via the EUCN contract at an uplift charge prior to this agreement. Continued functionality of the vastly used GroupWise tools is essential to the State and the State anticipates an overall savings of 10% by contracting direct with Novell.

The State of Michigan Department of Information Technology has many initiatives underway leveraging its investment in Novell Solutions. This Statement of Work will focus on providing consulting resources to act in an Architect role to work with DIT on Architecting and Designing strategic projects focused around Novell solutions.

Novell consultants will bring new technologies to the attention of State of Michigan Department of Information Technology, and assist in a consulting role for those products as directed by State of Michigan Department of Information Technology. The consultant will assist in finalizing the design, planning, and implementation phase of each agreed-upon project, as directed by State of Michigan Department of Information Technology management, and to assist with deployment, as requested. State of Michigan Department of Information Technology will appoint an individual in a management role to give direction to the Novell consultant.

1.1 Scope of Work and Deliverables

1.101 IN SCOPE

Products:

The scope of this agreement includes all Novell products as listed in the July 2004 Master License Agreement (MLA). A discount rate of 50% shall be applied to all product listed in the MLA or a subsequent product price list, whichever is lower. Products of particular interest to the State are those associated with the following groups.

- Network Operating Systems
- Internet/Intranet Security
- Directory Services
- Novell Collaboration Services
- Network Management
- Novell Premium Service

Services:

The scope of work will include continued efforts to ensure that Novell components for any State of Michigan Department of Information Technology projects are implemented in keeping with the holistic design strategies set forth by State of Michigan Department of Information Technology and Novell. Novell Consultants will provide continued design/planning recommendations for Novell's product line, with integration into third-party products, as specified and agreed upon by Novell and State of Michigan Department of Information Technology management.

1.102 OUT OF SCOPE

All products not listed in the July 2004 Master License Agreement.

**1.103 TECHNICAL ENVIRONMENT**

NA

1.104 WORK AND DELIVERABLE

Contractor shall provide all services and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth in this document or as an attachment: Specific deliverables appear in the following attachments.

Attachment – Statement of Work / CHR Implementation

Attachment – Statement of Work CVISN / EAI Integration Project

Attachment – Statement of Work Dedicated Consultant

1.2 Roles and Responsibilities**1.201 CONTRACTOR STAFF, ROLES, AND RESPONSIBILITIES**

Contractor to provide staff, training and materials required to accomplish tasks described in Article 1.104 and other such roles and responsibilities as mutually agreed upon.

1.202 STATE STAFF, ROLES, AND RESPONSIBILITIES

Self-Audits: The State agrees to perform a self-audit at least annually and upon termination of this agreement. The State agrees to report to Novell the findings of the self-audits as mutually agreed.

1.203 OTHER ROLES AND RESPONSIBILITIES

NA

1.3 Project Plan**1.301 PROJECT PLAN MANAGEMENT**

NA

1.302 REPORTS

NA

1.4 Project Management**1.401 ISSUE MANAGEMENT**

NA

1.402 RISK MANAGEMENT

NA

1.403 CHANGE MANAGEMENT

NA

1.5 Acceptance**1.501 CRITERIA**

The criteria that will be used by the State to determine Acceptance of the Services and/or Deliverables is provided within the document and attachments.

1.502 FINAL ACCEPTANCE

NA

1.6 Compensation and Payment

Pricing during the term of contract is set forth in Attachment A.



1.7 Additional Terms and Conditions Specific to this SOW

Please see Exhibit A: MLA. In addition the following provision has been added to the contract:
Customers that submitted a completed Application Form or Membership Form to Novell under the previous MLA version signed between Novell and Prime Customer are not required to submit a new Application Form or Membership Form. Such members shall be governed by the terms and conditions of this new MLA Agreement effective upon execution of such MLA between Novell and Prime Customer, and each such member's submission of a purchase order for each new Annual Period signifies such member's acceptance of such new MLA Agreement.



Article 2 – General Terms and Conditions

2.0 Introduction

2.001 GENERAL PURPOSE

The Contract is for Software/maintenance and limited services as detailed in the Attachments for the State of Michigan. Orders will be issued directly to the Contractor by various State Agencies on the Purchase Order Contract Release Form.

2.002 ISSUING OFFICE AND CONTRACT ADMINISTRATOR

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

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

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

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

Department of Management and Budget
Acquisition Services
Attn: Greg Faremouth
2nd Floor, Mason Building
P.O. Box 30026
Lansing, Michigan 48909
(517) (241-1646)
(faremouthg@michigan.gov)

2.003 NOTICE

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

2.004 CONTRACT TERM

The term of this Contract will be for three (3) years and will commence with the issuance of a Contract. This will be approximately July 15, 2004 through July 14, 2007.

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

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



Written notice will be provided to the Contractor within 90 days, provided that the State gives the Contractor a preliminary written notice of its intent to extend at least 60 days before the contract expires. The preliminary notice does not commit the Government to an extension. If the Government exercises this option, the extended contract shall be considered to include this option clause.

2.005 GOVERNING LAW

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

2.006 APPLICABLE STATUTES

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

MI Uniform Commercial Code (MIUCC) MCL 440. (All sections unless otherwise altered by agreement)
 MI OSHA MCL §§ 408.1001 – 408.1094
 Freedom of Information Act (FIOA) MCL §§ 15.231, et seq.
 Natural Resources and Environmental Protection Act MCL §§ 324.101, et seq.
 MI Consumer Protection Act MCL §§ 445.901 – 445.922
 Laws relating to wages, payments of wages, and fringe benefits on state projects MCL §§ 408.551 – 408.558, 408.471 – 408.490, 1965 PA 390.
 Department of Civil Service Rules and regulations
 Elliot Larsen Civil Rights Act MCL §§ 37.2201, et seq.
 Persons with disabilities Civil Rights Act MCL §§ 37.1101, et seq.
 MCL §§ 423.321, et seq.
 MCL § 18.1264 (law regarding debarment)
 Davis-Bacon Act (DBA) 40 USCU §§ 276(a), et seq.
 Contract Work Hours and Safety Standards Act (CWHSSA) 40 USCS § 327, et seq.
 Business Opportunity Act for Persons with Disabilities MCL §§ 450.791 – 450.795
 Rules and regulations of the Environmental Protection Agency
 Internal Revenue Code
 Rules and regulations of the Equal Employment Opportunity Commission (EEOC)
 The Civil Rights Act of 1964, USCS Chapter 42
 Title VII, 42 USCS §§ 2000e et seq.
 The Americans with Disabilities Act (ADA), 42 USCS §§ 12101 et seq.
 The Age Discrimination in Employment Act of 1967 (ADEA), 29 USCS §§ 621, 623 et seq.
 The Old Workers Benefit and Protection Act of 1990 (OWBPA), 29 USCS §§ 626, et seq.
 The Family Medical Leave Act of 1993 (FMLA), 29 USC §§ 651 et seq.
 The Fair Labor Standards Act (FLSA), 29 USC §§ 201 et seq.
 Pollution Prevention Act of 1990 (PPA) 42 U.S.C. §13106
 Sherman Act, 15 U.S.C.S. § 1 et seq.
 Robinson-Patman Act, 15 U.S.C.S. § 13 et. seq.
 Clayton Act, 15 U.S.C.S. § 14 et seq.

2.007 RELATIONSHIP OF THE PARTIES

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



2.008 HEADINGS

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

2.009 MERGER

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

2.010 SEVERABILITY

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

2.011 SURVIVORSHIP

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

2.012 NO WAIVER OF DEFAULT

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

2.013 PURCHASE ORDERS

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

Acquisition Services has given the State Departments approval to make payments for commodities and services purchased from this contract through Direct Voucher. For this reason, the Contractor may be asked to reference the Blanket Purchase Order/Contract number rather than a Purchase Order Number when invoicing for payment.

2.014 MASTER LICENSE AGREEMENT (MLA)

The Master License Agreement (MLA) attached hereto as Exhibit A forms an integral part of this Contract and further identifies Terms and Conditions related to Software licenses, Maintenance, Technical Support and Services. Where "Customer" or "Prime Customer" or "Affiliate" or "parent" or "Subsidiary" are referenced within the MLA, each reference shall also mean the State as defined in this Contract. The State and Contractor agree that the following sections of the MLA are not applicable, nor do they form a part of, this Contract: sections 2.5 and 2.8, all but the last sentence of section 8.1, all of sections 9 and 11, section 12 except for sections 12.9, 12.10 and 12.11.

Notwithstanding anything contained in this Contract, the State and Contractor understand and agree that any State orders placed with Contractor prior to the effective date of this Contract shall be subject to the terms and conditions of the applicable agreement in place between the State and Contractor at the time of such order and that any prior Maintenance or Software licenses shall become a part of this Contract beginning 01 October 2004.

Notwithstanding that contained in section 6.5 or 6.6 of the MLA, payment of fees is net thirty (30) days subject to a fifteen-day grace period that is not subject to late payment fees.



Vendor/Contractor Obligations

2.101 ACCOUNTING RECORDS

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

2.102 NOTIFICATION OF OWNERSHIP

The Contractor shall make the following notifications in writing:

1. When the Contractor becomes aware that a change in its ownership or officers has occurred, or is certain to occur, that could result in changes in the valuation of its capitalized assets in the accounting records, the Contractor shall notify Acquisition Services within 30 days.
2. The Contractor shall also notify the Acquisition Services within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership or officers.

The Contractor shall:

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

2.103 SOFTWARE COMPLIANCE

The vendor warrants that all software for which the vendor either sells or licenses to the State of Michigan and used by the State is warranted pursuant to the MLA and section 2.507 of this Contract.

2.104 IT STANDARDS

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

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



3. ADHERENCE TO PORTAL TECHNOLOGY TOOLS. The State of Michigan, Department of Information Technology, has adopted the following tools as its Portal Technology development efforts:

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

Vendors must use the Portal Technology Tools to implement web content management and deployment efforts for agencies. Tools used for web-based application development must work in conjunction with Vignette and Inktomi. The interaction with Vignette and Inktomi must be coordinated with the Department of Information Technology, Enterprise Application Services Office, e-Michigan Web Development team.

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

2.105 PERFORMANCE AND RELIABILITY EVALUATION (PARE)

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

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

The Performance and Reliability Evaluation will consist of two phases.

PHASE I

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

PHASE II

a. Determination of System Readiness

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

b. During the PARE:

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

- 1) All reconfiguration and reload time shall be excluded from the performance hours.



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

STANDARD OF PERFORMANCE

- a. The performance period (a period of thirty consecutive calendar days) shall commence on the installation date, at which time the operational control becomes the responsibility of the State. It is not required that one thirty day period expire in order for another performance period to begin.
- b. If each component operates at an average level of effectiveness of 95 percent or more for a period of 30 consecutive days from the commencement date of the performance period, it shall be deemed to have met the State's standard of performance period. The State shall notify the Contractor in writing of the successful completion of the performance period. The average effectiveness level is a percentage figure determined by dividing the total operational use time by the total operational use time plus associated down-time. In addition, the equipment shall operate in substantial conformance with the Contractor's published specifications applicable to such equipment on the date of this Agreement. Equipment added by amendment to this contract shall operate in conformance with the Contractor's published specifications applicable to such equipment at the time of such amendment.
- c. During the successful performance period, all rerun time resulting from equipment failure and preventive maintenance time shall be excluded from the performance period hours. All reconfigurations and reload time shall be excluded from the performance hours. Equipment failure down-time shall be measured by those intervals during the performance period between the time that the Contractor is notified of equipment failure and the time that the equipment is returned to the State in operating condition.
- d. During the successful performance period, a minimum of 80 hours of operational use time on each component will be required as a basis for computation of the average effectiveness level. However, in computing the effectiveness level, the actual number of operational use hours shall be used when in excess of the minimum stated above.
- e. No more than one hour will accrue to the performance hours during any one wall-clock hour.
- f. Equipment shall not be accepted by the State and no charges will be paid by the State until the standard of performance is met.
- g. When a system involves on-line machines, which are remote to the basic installation, the required effectiveness level shall apply separately to each component in the system.
- h. Promptly upon successful completion of the performance period, the State shall notify the Contractor in writing of acceptance of the equipment and authorize the monthly payments to begin on the first day of the successful performance period.
- i. If successful completion of the performance period is not attained within 90 days of the installation date, the State shall have the option of terminating the Contract, or continuing the performance tests. The State's option to terminate the contract shall remain in effect until such time as a successful completion of the performance period is attained. The Contractor shall be liable for all outbound preparation and shipping costs for contracted items returned under this clause.



- j. The PARE will be complete when the equipment has met the required effectiveness level for the prescribed time period.

2.106 PREVAILING WAGE

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

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

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

2.107 PAYROLL AND BASIC RECORDS

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

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

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

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

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

2.108 COMPETITION IN SUB-CONTRACTING

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



2.109 CALL CENTER DISCLOSURE

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

2.2 Contract Performance

2.201 TIME IS OF THE ESSENCE

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

2.202 CONTRACT PAYMENT SCHEDULE

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

2.203 POSSIBLE PROGRESS PAYMENTS

The Government may make progress payments to the Contractor when requested as work progresses, but not more frequently than monthly, in amounts approved by the Contract Administrator, after negotiation. Contractor must show verification of measurable progress at the time of requesting progress payments.

2.204 POSSIBLE PERFORMANCE-BASED PAYMENTS (Actual performance rendered)

- a. *Contractor request for performance-based payment.* The Contractor may submit requests for payment of performance-based payments not more frequently than monthly, in a form and manner acceptable to the Contract Administrator. Unless otherwise authorized by the Contract Administrator, all performance-based payments in any period for which payment is being requested shall be included in a single request, appropriately itemized and totaled.
- b. *Approval and payment of requests.*
 - (1) The Contractor shall not be entitled to payment of a request for performance-based payment prior to successful accomplishment of the event or performance criterion for which payment is requested. The Contract Administrator shall determine whether the event or performance criterion for which payment is requested has been successfully accomplished in accordance with the terms of the contract. The Contract Administrator may, at any time, require the Contractor to substantiate the successful performance of any event or performance criterion, which has been or is represented as being payable.
 - (2) A payment under this performance-based payment clause is a contract financing payment under the Quick Payment clause (1.402) of this contract.
 - (3) The approval by the Contract Administrator of a request for performance-based payment does not constitute an acceptance by the Government and does not excuse the Contractor from performance of obligations under this contract.

2.205 ELECTRONIC PAYMENT AVAILABILITY

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



2.206 PERFORMANCE OF WORK BY CONTRACTOR

N/A

2.3 Contract Rights and Obligations

2.301 INCURRING COSTS

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

2.302 CONTRACTOR RESPONSIBILITIES

The Contractor will be required to assume responsibility for all contractual activities, whether or not that Contractor performs them. Further, the State will consider the Contractor to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the anticipated Contract. If any part of the work is to be subcontracted, the Contract must include a list of subcontractors, including firm name and address, contact person and a complete description of work to be subcontracted. The State reserves the right to approve subcontractors and to require the Contractor to replace subcontractors found to be unacceptable. The Contractor is totally responsible for adherence by the subcontractor to all provisions of the Contract. Any change in subcontractors must be approved by the State, in writing, prior to such change.

2.303 ASSIGNMENT AND DELEGATION

The Contractor shall not have the right to assign this Contract, to assign its rights under this contract, or delegate any of its duties or obligations under the Contract to any other party (whether by operation of law or otherwise), without the prior written consent of the State. Any purported assignment in violation of this Section shall be null and void. Further, the Contractor may not assign the right to receive money due under the Contract without the prior written consent of the Director of Acquisition Services.

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

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

2.304 TAXES

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

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

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

2.305 INDEMNIFICATION

General Indemnification

To the fullest extent permitted by law and subject to limitation as otherwise set forth in this Contract, the Contractor shall indemnify, defend and hold harmless the State, its departments, divisions,



agencies, sections, commissions, officers, employees and agents, from and against all losses, liabilities, penalties, fines, damages and claims (including taxes), and all related costs and expenses (including reasonable attorneys' fees and disbursements and costs of investigation, litigation, settlement, judgments, interest and penalties), arising from or in connection with any of the following:

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

Patent/Copyright Infringement Indemnification

To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold harmless the State, its employees and agents from and against all losses, liabilities, damages (including taxes), and all related costs and expenses (including reasonable attorneys' fees and disbursements and costs of investigation, litigation, settlement, judgments, interest and penalties) incurred in connection with any action or proceeding threatened or brought against the State to the extent that such action or proceeding is based on a claim that any piece of equipment, software, commodity or service supplied and created by the Contractor or its subcontractors, or the operation of such equipment, software, commodity or service, or the use or reproduction of any documentation provided with such equipment, software, commodity or service infringes any United States or foreign patent, copyright, or trade secret or trademark of any person or entity, which right is enforceable under the laws of the United States. In addition, should the equipment, software, commodity, or service, or the operation thereof, become or in the Contractor's opinion be likely to become the subject of a claim of infringement, the Contractor shall at the Contractor's sole expense (i) procure for the State the right to continue using the equipment, software, commodity or service or, if such option is not reasonably available to the Contractor, (ii) replace or modify the same with equipment, software, commodity or service of substantially 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 for the infringing equipment, software, commodity or service.

The foregoing shall be the State's sole and exclusive remedy for any infringement covered under this provision. Contractor will not indemnify State, however, if the claim of infringement is caused by (1) State's misuse or modification of the Deliverable or Software; (2) State's failure to use corrections or enhancements of the Deliverable or Software made available by Contractor; (3) State's distribution, marketing or use of the Deliverables or Software outside of its organization for the benefit of third parties; or (4) information, direction, specification, or materials provided to Contractor by State or any third party except for third party subcontractors and vendors of Contractor; (5) the State's use of the



Software or Deliverable with other software or hardware or service or other product or item if without such use the Software or Deliverable would be non-infringing; (6) the State's use of open source technology either provided by Contractor or otherwise received by the State; provided, however, that if the open source technology becomes or, in the Contractor's opinion, is likely to become the subject of a claim of infringement, the Contractor shall, at the Contractor's sole expense, provide the State with one of the remedies listed above in the immediately preceding paragraph this Section.

Code Indemnification

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

Indemnification Obligation Not Limited

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

Continuation of Indemnification Obligation

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

Indemnification Procedures

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

- (a) After receipt by the State of notice of the action or proceeding involving a claim in respect of which it will seek indemnification, the State shall promptly notify Contractor of such claim in writing and take or assist Contractor in taking, as the case may be, any reasonable action to avoid the imposition of a default judgment against Contractor. No failure to so notify Contractor shall relieve Contractor of its indemnification obligations except to the extent that Contractor can demonstrate damages attributable to such failure. Within ten (10) days following receipt of written notice from the State relating to any claim, Contractor shall notify the State in writing whether Contractor agrees to assume control of the defense and settlement of that claim (a "Notice of Election"). After notifying Contractor of a claim and prior to the State receiving Contractor's Notice of Election, the State shall be entitled to defend against the claim, at Contractor's expense, and Contractor will be responsible for any reasonable costs incurred by the State in defending against the claim during such period.
- (b) If Contractor delivers a Notice of Election relating to any claim: (i) the State shall be entitled to participate in the defense of such claim and to employ counsel at its own expense to assist in the handling of such claim and to monitor and advise the State about the status and progress of the Defense; (ii) Contractor shall, at the request of the State, demonstrate to the reasonable satisfaction of the State, Contractor's financial ability to carry out its defense and indemnity obligations under this Contract; (iii) Contractor shall periodically advise the State about the status and progress of the defense and shall obtain the prior written approval of the State (not to be unreasonably withheld by the State) before entering into any settlement of such claim or ceasing to defend against such claim and (iv) to the extent that any principles of Michigan governmental or public law may be involved or challenged, the State shall have the right, at its own expense, to control the defense of that portion of such claim involving the principles of Michigan governmental or public law. Notwithstanding the foregoing, the State may retain control of the defense and settlement of a claim by written notice to Contractor given within ten



(10) days after the State's receipt of Contractor's information requested by the State pursuant to clause (ii) of this paragraph if the State determines that Contractor has failed to demonstrate to the reasonable satisfaction of the State Contractor's financial ability to carry out its defense and indemnity obligations under this Section. Any litigation activity on behalf of the State of Michigan, or any of its subdivisions pursuant to this Section, must be coordinated with the Department of Attorney General. In the event the insurer's attorney represents the State pursuant to this Section, the insurer's attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.

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

2.306 LIMITATION OF LIABILITY

The Contractor's liability for damages to the State shall be limited to two times the fees paid for the order under this Contract giving rise to the claim or \$200,000 which ever is higher. The foregoing limitation of liability shall not apply to claims for infringement of United States patent, copyright, trademarks or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; or to Contractor's indemnification obligations relative to the two foregoing exclusions of this paragraph; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on this Contract.

2.307 CONTRACT DISTRIBUTION

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

2.308 FORM, FUNCTION, AND UTILITY

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

2.309 ASSIGNMENT OF ANTITRUST CAUSE OF ACTION

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

2.310 RESERVED

2.311 TRANSITION ASSISTANCE

If this Contract is not renewed at the end of this term, or is canceled prior to its expiration, for any reason, the Contractor must provide for up to 180 days after the expiration or cancellation of this Contract, all reasonable transition assistance requested by the State, to allow for the expired or canceled portion of the Services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such services to the State or its designees. Such transition assistance will be deemed by the parties to be governed by the terms and conditions of this Contract, (notwithstanding this expiration or cancellation) except for those Contract terms or conditions that do not reasonably apply to such transition assistance. The State shall pay the Contractor for any resources utilized in performing such transition assistance at the most current rates provided by the Contract for Contract performance.



2.312 WORK PRODUCT

Work Products are licensed to the State as set forth in Section 5.2.3 of the MLA. If the parties hereto sign a Statement of Work providing ownership of the Work Product to the State, then such Work Products shall be considered works made by the Contractor for hire by the State and shall belong exclusively to the State and its designees, unless specifically provided otherwise by mutual agreement of the Contractor and the State. If by operation of law any of the Work Product, including all related intellectual property rights, is not owned in its entirety by the State automatically upon creation thereof, the Contractor agrees to assign, and hereby assigns to the State and its designees the ownership of such Work Product, including all related intellectual property rights. The Contractor agrees to provide, at no additional charge, any assistance and to execute any action reasonably required for the State to perfect its intellectual property rights with respect to the aforementioned Work Product.

Notwithstanding any provision of this Contract to the contrary and subject to the State's payment to Contractor of all applicable Service fees, any preexisting work or materials including, but not limited to, any routines, libraries, tools, methodologies, processes or technologies (collectively, the "Development Tools") created, adapted or used by the Contractor in its business generally, including any and all associated intellectual property rights, shall be and remain the sole property of the Contractor, and the State shall have no interest in or claim to such preexisting work, materials or Development Tools, except as necessary to exercise its rights in the Work Product. Such rights belonging to the State shall include those set forth in Section 5.2.3 of the MLA.

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

2.313 PROPRIETARY RIGHTS

A. Software Ownership

Ownership of Work Product by State.

All Deliverables shall be owned by the State and shall be considered works made for hire by the Contractor for the State. The State shall own all United States and international copyrights, trademarks, patents or other proprietary rights in the Deliverables.

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

Cross-License.

License to the Contractor. The State grants to the Contractor, the royalty-free, world-wide, non-exclusive right and license under any Deliverable now or in the future owned by the State, or with respect to which the State has a right to grant such rights or licenses, to the extent required by the Contractor to market the Deliverables and exercise its full rights in the Deliverables, including, without limitation, the right to make, use and sell products and services based on or incorporating such Deliverables.



License to the Contractor. The State grants to the Contractor, the royalty-free, world-wide, non-exclusive right and license under any Deliverable and/or Derivative Work now or in the future owned by the State, or with respect to which the State has a right to grant such rights or licenses, to the extent required by the Contractor to market the Deliverables and/or Derivative Work and exercise its full rights in the Deliverables and/or Derivative Work, including, without limitation, the right to make, use and sell products and services based on or incorporating such Deliverables and/or Derivative Work.

Preexisting Works. In the event that any Deliverable constitutes a Derivative Work of any preexisting work, the bidder shall ensure that their proposal pertaining to such Deliverable so indicates by references to (1) the nature of such preexisting work, (2) its owner, (3) any restrictions or royalty terms applicable to the Bidder's use of such preexisting work or State's marketing of the Deliverable as a Derivative Work, and (4) the source of Bidder's authority to employ the preexisting work in the preparation of the Deliverable.

Unless otherwise specifically agreed to by the State, before initiating the preparation of any Deliverable that is a Derivative of a preexisting work, the Contractor shall cause the State to have and obtain the irrevocable, nonexclusive, worldwide, royalty-free right and license to (1) use, execute, reproduce, display, perform, distribute internally or externally, sell copies of, and prepare Derivative Works based upon all preexisting works and Derivative Works thereof, and (2) authorize or sublicense others from time to time to do any or all of the foregoing.

Software License

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

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

The State may copy each item of Software to multiple hard drives or networks.

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

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

B. *Source Code Escrow*

In the event of a bankruptcy proceeding resulting in the liquidation of all or substantially all of Contractor's assets, or in the event of a transfer of all or substantially all of Contractor's business and assets, whether by merger, sale of assets, sale of stock or otherwise, Contractor will exercise best commercial efforts to transition technical support requirements under this Contract to an entity capable of providing comparable support to that currently offered by Contractor. Contractor will use best commercial efforts to provide any such entity with all information and Software documentation necessary to fulfill such support obligations.

2.314 WEBSITE INCORPORATION

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



2.4 Contract Review and Evaluation

2.401 CONTRACT COMPLIANCE INSPECTOR

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

Dale N. Reif
Department Of Information Technology
Contracts and Procurement Services
Constitutional Hall
(517) 373-3993
reifd@michigan.gov

2.402 PERFORMANCE REVIEWS

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

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

2.403 AUDIT OF CONTRACT COMPLIANCE/ RECORDS AND INSPECTIONS

- (a) Inspection of Work Performed. The State's authorized representatives shall at all reasonable times and with ten (10) days prior written request, have the right to enter Contractor's premises, or any other places, where the Services are being performed, and shall have access, upon reasonable request, to interim drafts of Deliverables or work-in-progress. Upon ten (10) 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 seven (7) years following the creation of the material (collectively, the "Audit Period"), shall, upon twenty (20) 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 the Contract and with applicable laws and rules, including the State's procurement rules, regulations and procedures, and actual performance of the 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 the 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 the Contract and to the Services, equipment, and commodities provided under the



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.

- (d) **Audit Resolution.** If necessary, the Contractor and the State shall meet to review each audit report promptly after issuance. The Contractor will respond to each audit report in writing within thirty (30) days from receipt of such report, unless a shorter response time is specified in such report. The Contractor and the State shall develop and agree upon an action plan to promptly address and resolve any deficiencies, concerns, and/or recommendations in such audit report.
1. **Errors.** If the audit demonstrates any errors in the statements provided to the State, then the amount in error shall be reflected as a credit or debit on the next invoice and in subsequent invoices until the amount is paid or refunded in full. However, a credit or debit may not be carried for more than four (4) quarterly statements. If a balance remains after four (4) quarterly statements, then the remaining amount will be due as a payment or refund within forty-five (45) days of the last quarterly statement that the balance appeared on or termination of the contract, whichever is earlier.
 2. In addition to other available remedies, the difference between the payment received and the correct payment amount is greater than ten (10%), then the Contractor shall pay all of the reasonable costs of the audit.

2.5 Quality and Warranties

2.501 PROHIBITED PRODUCTS

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

2.502 RESERVED

2.503 RESERVED

2.504 GENERAL WARRANTIES (Software and Deliverables)

Warranties and Disclaimers for the Software and Deliverables shall be pursuant to Section 10 of the MLA.

2.505 CONTRACTOR WARRANTIES

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

1. The Contractor will perform all services in accordance with professional standards in the industry;
2. The Contractor will use adequate numbers of qualified individuals with suitable training, education, experience and skill to perform the services;
3. The Contractor will use commercially reasonable efforts to use efficiently any resources or services necessary to provide the services that are separately chargeable to the State;
4. The Contractor will use commercially reasonable efforts to perform the services in the most cost effective manner consistent with the required level of quality and performance;
5. The Contractor will perform the services in a manner that does not infringe the proprietary rights of any third party;



6. The Contractor will perform the services in a manner that complies with all applicable laws and regulations;
7. The Contractor has duly authorized the execution, delivery and performance of the Contract;
8. The Contractor is capable in all respects of fulfilling and shall fulfill all of its obligations under this contract.
9. The contract appendices, attachments, and exhibits identify all equipment and software services necessary for the deliverable(s) to perform and operate in compliance with the contract's requirements.
10. The Contractor is the lawful owner or licensee of any Deliverable licensed or sold to the state by Contractor or developed by Contractor under this contract, and Contractor has all of the rights necessary to convey to the state the ownership rights or license use, as applicable, of any and all Deliverables.
11. If, under this Contract, Contractor procures any equipment, software or other Deliverable for the State (including equipment, software and other Deliverables manufactured, re-marketed or otherwise sold by Contractor under Contractor's name), then in addition to Contractor's other responsibilities with respect to such items as set forth in this Contract, Contractor shall assign or otherwise transfer to the State or its designees, or afford the State the benefits of, any manufacturer's warranty for the Deliverable.
12. The contract signatory has the power and authority, including any necessary corporate authorizations, necessary to enter this contract, on behalf of Contractor.
13. The Contractor is qualified and registered to transact business in all locations where required.
14. Neither the Contractor nor any Affiliates, nor any employee of either, has, shall have, or shall acquire, any contractual, financial, business, or other interest, direct or indirect, that would conflict in any manner or degree with Contractor's performance of its duties and responsibilities to the State under this Contract or otherwise create an appearance of impropriety with respect to the award or performance of this Agreement. Contractor shall notify the State within two (2) days of any such interest that may be incompatible with the interests of the State.
15. All financial statements, reports, and other information furnished by Contractor to the State as part of its response to the ITB or otherwise in connection with the award of this Contract fairly and accurately represent the business, properties, financial condition, and results of operations of Contractor as of the respective dates, or for the respective periods, covered by such financial statements, reports, other information. Since the respective dates or periods covered by such financial statements, reports, or other information, there have been no material adverse changes in the business, properties, financial condition, or results of operations of Contractor. All written information furnished to the State by or behalf of Contractor in connection with this Contract, including its bid, 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.

2.506 STAFF

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

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



2.507 SOFTWARE WARRANTIES

Software warranties and remedies are pursuant to section 10 of the MLA, and the following warranties are in addition to those in the MLA:

(a) Performance Warranty

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

(b) No Surreptitious Code Warranty

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

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

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

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

(c) Calendar Warranty

INTENTIONALLY LEFT BLANK.

(d) Third-party Software Warranty

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

2.508 EQUIPMENT WARRANTY

N/A

2.509 PHYSICAL MEDIA WARRANTY

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



2.6 Breach of Contract

2.601 BREACH DEFINED

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

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

2.602 NOTICE AND THE RIGHT TO CURE

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

2.603 EXCUSABLE FAILURE

1. Neither party shall be liable for any default or delay in the performance of its obligations under the Contract if and to the extent such default or delay is caused, directly or indirectly, by: fire, flood, earthquake, elements of nature or acts of God; riots, civil disorders, rebellions or revolutions in any country; the failure of the other party to perform its material responsibilities under the Contract (either itself or through another contractor); injunctions (provided the injunction was not issued as a result of any fault or negligence of the party seeking to have its default or delay excused); or any other cause beyond the reasonable control of such party; provided the non-performing party and its subcontractors are without fault in causing such default or delay, and such default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing party through the use of alternate sources, workaroud plans or other means, including disaster recovery plans. In such event, the non-performing party will be excused from any further performance or observance of the obligation(s) so affected for as long as such circumstances prevail and such party continues to use its best efforts to recommence performance or observance whenever and to whatever extent possible without delay provided such party promptly notifies the other party in writing of the inception of the excusable failure occurrence, and also of its abatement or cessation.
2. If any of the above enumerated circumstances substantially prevent, hinder, or delay performance of the services necessary for the performance of the State's functions for more than 14 consecutive days, and the State determines that performance is not likely to be resumed within a period of time that is satisfactory to the State in its reasonable discretion, then at the State's option: (a) the State may procure the affected services from an alternate source, and the State shall not be liable for payments for the unperformed services under the Contract for so long as the delay in performance shall continue; (b) the State may cancel any portions of the Contract so affected and the charges payable hereunder shall be equitably adjusted to reflect those services canceled; or (c) the Contract will be canceled without liability of the State to the Contractor as of the date specified by the State in a written notice of cancellation to the Contractor. The Contractor will not have the right to any additional payments from the State as a result of any excusable failure occurrence or to payments for services not rendered as a result of the excusable failure condition. Defaults or delays in performance by the Contractor which are caused by acts or omissions of its subcontractors will not relieve the Contractor of its obligations under the Contract except to the extent that a subcontractor is itself subject to any excusable failure condition described above and the Contractor cannot reasonably circumvent the effect of the subcontractor's default or delay in performance through the use of alternate sources, workaroud plans or other means.



2.7 Remedies

2.701 CANCELLATION

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

1. Material Breach by the Contractor. In the event that the Contractor breaches any of its material duties or obligations under the Contract, which are either not capable of or subject to being cured, or are not cured within the time period specified in the written notice of breach provided by the State, or pose a serious and imminent threat to the health and safety of any person, or the imminent loss, damage or destruction of any real or tangible personal property, the State may, having provided written notice of cancellation to the Contractor, cancel this Contract in whole or in part, for cause, as of the date specified in the notice of cancellation.

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

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

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

2. Cancellation For Convenience By the State. The State may cancel this Contract for its convenience, in whole or part, if the State determines that such a cancellation is in the State's best interest. Reasons for such cancellation shall be left to the sole discretion of the State and may include, but not limited to (a) the State no longer needs the services or products specified in the Contract, (b) relocation of office, program changes, changes in laws, rules, or regulations make implementation of the Contract services no longer practical or feasible, and (c) unacceptable prices for additional services requested by the State. The State may cancel the Contract for its convenience, in whole or in part, by giving the Contractor written notice 30 days prior to the date of cancellation. If the State chooses to cancel this Contract in part, the charges payable under this Contract shall be equitably adjusted to reflect those services that are cancelled; provided, however, annual Maintenance services would be provided for the balance of the term for which they were paid without right of refund.
3. Non-Appropriation. In the event that funds to enable the State to effect continued payment under this Contract are not appropriated or otherwise made available, the Contractor acknowledges that, if this Contract extends for several fiscal years, continuation of this Contract is subject to appropriation or availability of funds for this project. If funds are not appropriated or otherwise made available, the State shall have the right to cancel this Contract at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of cancellation to the Contractor. The State shall give the Contractor written notice of such non-appropriation or unavailability within 30 days after it receives notice of such non-appropriation or unavailability.
4. Criminal Conviction. In the event the Contractor, an officer of the Contractor, or an owner of a 25% or greater share of the Contractor, is convicted of a criminal offense incident to the application for or performance of a State, public or private Contract or subcontract; or convicted of a criminal offense including but not limited to any of the following: embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, attempting to influence a public employee to breach the ethical conduct standards for State of Michigan employees; convicted under State or federal antitrust statutes; or convicted of any other criminal offense which in the sole discretion of the State, reflects upon the Contractor's business integrity.



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

2.702 RIGHTS UPON CANCELLATION

A. Rights and Obligations Upon Termination

- (1) 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.
- (2) 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.
- (3.) If any such termination by the State is for cause, the State shall have the right to set-off against any amounts due Contractor the amount of any damages for which Contractor is liable to the State under this Contract or pursuant to law or equity. Notwithstanding the foregoing, Contractor has the right to challenge any set-off claimed by the State.
- (4.) 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.

B. Termination Assistance

If the 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) calendar 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 the 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 Labor Rates indicated within Contractors pricing section. If the 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.

C. Reservation of Rights

Any termination of the 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.

D. End of Contract Transition

In the event the 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 the 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 calendar days. These efforts shall include, but are not limited to, the following:

- (1) **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 the Contract. In addition, during or following the transition period, in the event the State requires the Services of the Contractor's subcontractors, as necessary to meet its needs, Contractor agrees to reasonably, and with good-faith, work with the State to use the Services of Contractor's subcontractors.
- (2) **Knowledgeable Personnel**. Contractor will make available to the State or a Third Party Provider knowledgeable personnel familiar with the operational processes and procedures used to deliver products and services to the State. The Contractor personnel will work with the State or third party to help develop a mutually agreeable transition plan, work to transition the process of ordering, shipping and invoicing equipment and services to the State.
- (3) **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 the Contract. The Contractor will also provide any licenses required to perform the Services under the Contract.
- (4) **Software**. - The Contractor shall reasonably assist the State in the acquisition of any Contractor software required to perform the Services under the Contract. This shall include any documentation being used by the Contractor to perform the Services under the 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.
- (5) **Payment** - If the transition results from a termination for any reason, reimbursement shall be governed by the termination provisions of the 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). The hourly rates or fixed price to be charged will be agreed upon prior to the work commencing.
- (6) **Single Point of Contact**. Contractor will maintain a Single Point of Contact (SPOC) for the State after termination of the Contract until all product and service obligations have expired.



E. Transition out of this Contract

- (1) 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;
 - (v) 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;
 - (vi) Freezing all non-critical software changes;
 - (vii) Notifying all of the Contractor’s subcontractors of procedures to be followed during the transition out phase;
 - (viii) Assisting with the communications network turnover, if applicable;
 - (ix) Assisting in the execution of a parallel operation until the effective date of termination of this Contract
 - (x) Answering questions regarding post-migration services;
 - (xi) Delivering to the State any remaining owed reports and documentation still in the Contractor’s possession.

- (2) 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.

2.703 LIQUIDATED DAMAGES
N/A

2.704 STOP WORK

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

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



3. If the stop work order is not canceled and the work covered by the stop work order is canceled for reasons other than material breach, the State shall allow reasonable costs resulting from the stop work order in arriving at the cancellation settlement.
4. If a stop work order is not canceled and the work covered by the stop work order is canceled for material breach, the State shall not allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop work order.

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

2.705 SUSPENSION OF WORK

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

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

A claim under this clause shall not be allowed:

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

2.8 Changes, Modifications, and Amendments

2.801 APPROVALS

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

2.802 TIME EXTENTIONS

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

2.803 MODIFICATION

Acquisition Services reserves the right to modify this contract at any time during the contract term. Such modification may include changing the locations to be serviced, additional locations to be serviced, method or manner of performance of the work, number of days service is to be performed, addition or deletion of tasks to be performed, addition or deletion of items, and/or any other modifications deemed necessary. Any



changes in pricing proposed by the Contractor resulting from the proposed changes are subject to acceptance by the State. Changes may be increases or decreases. IN THE EVENT PRICES ARE NOT ACCEPTABLE TO THE STATE, THE CONTRACT SHALL BE SUBJECT TO COMPETITIVE BIDDING BASED UPON THE NEW SPECIFICATION.

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

2.804 AUDIT AND RECORDS UPON MODIFICATION

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

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

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

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

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

2.805 CHANGES

- (a) The Contract Administrator may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a change order, make changes in the work within the general scope of the contract, including changes:
 - (1) In the specifications (including drawings and designs);
 - (2) In the method or manner of performance of the work;
 - (3) In the Government-furnished facilities, equipment, materials, services, or site; or
 - (4) Directing acceleration in the performance of the work.
- (b) Any other written or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from the Contract Administrator that causes a change shall be treated as a change order under this clause; Provided, that the Contractor gives the Contract Administrator written notice stating:
 - (1) The date, circumstances, and source of the order; and
 - (2) That the Contractor regards the order as a change order.
- (c) Except as provided in this clause, no order, statement, or conduct of the Contract Administrator shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment.



Article 3 – Certifications and Representations

All bidders shall complete this section and submit with their bid or proposal. Failure or refusal to submit any of the information requested in this section may result in the bidder being considered non-responsive and therefore ineligible for award consideration. The State may also pursue debarment vendors that fail or refuse to submit any of the requested information.

In addition, if it is determined that a business purposely or willfully submitted false information, the bidder will not be considered for award, the State will pursue debarment of the vendor, and any resulting contract that was established will be cancelled.

3.0 Vendor/Contractor Information

3.001 TAXPAYER IDENTIFICATION NUMBER (TIN)

Vendor Name: _____

() TIN: _____

() TIN has been applied for

() TIN is not required because:

() Vendor/Contractor is a nonresident, alien, foreign business that does not have income effectively connected with the conduct of a trade or business in the U.S. and does not have an office or place of business or a fiscal agent in the U.S.

() Vendor/Contractor is an agency or instrumentality of a foreign government. If checked, which foreign government _____

() Vendor/Contractor is an agency or instrumentality of a federal, state, or local government. If checked, which government _____

() Other basis: _____

() Bidder is not owned or controlled by a common parent as described below. Common Parent means a corporate entity that owns or controls an affiliated group of corporations that files its Federal income tax returns on a consolidated basis, and of which bidder is a member.

() Bidder is owned or controlled by a common parent

() Name and TIN of common parent

Name: _____

TIN: _____

3.002 EXPATRIATED BUSINESS ENTITY

DEFINITIONS: "Expatriated business entity" means a corporation or an affiliate of the corporation incorporated in a tax haven country after September 11, 2001, but with the United States as the principal market for the public trading of the corporation's stock, as determined by the Director of the Department of Management and Budget

"Tax haven country" means each of the following: Barbados, Bermuda, British Virgin Islands, Cayman Islands, Commonwealth of the Bahamas, Cyprus, Gibraltar, Isle of Man, the Principality of Liechtenstein, the Principality of Monaco, and the Republic of the Seychelles.

Vendor hereby certifies that it IS _____, IS NOT _____ an expatriated business entity located in a tax haven country.

Vendor hereby certifies that it IS _____, IS NOT _____ an affiliate of an expatriated business located in a tax haven country.



3.003 DATA UNIVERSAL NUMBERING SYSTEM (DUNS) NUMBER

Vendor is not required to have a DUNS number. If vendor does have a DUNS number it must be listed below.

DUNS No.: _____
(nine digit number assigned by Dun & Bradstreet)

DUNS+4 No.: _____
(DUNS + a 4-character suffix)

If the contractor/vendor does not have a DUNS number and would like to, it should contact Dun & Bradstreet directly to obtain one. Contractor may obtain a DUNS number by calling Dun & Bradstreet at 1-866-705-5711 or via the Internet at www.dnb.com.

3.004 RESERVED for Vendor Registration Into a Central Database

3.005 RESERVED for annual certifications and representations in Central Data Base

The bidder has (check the appropriate block):

() Submitted to the contracting office issuing this solicitation, annual representations and certifications dated _____ (*insert date of signature on submission*), which are incorporated herein by reference, and are current, accurate, and complete as of the date of this bid, except as follows (*insert changes that affect only this solicitation; if "none," so state*):

() Enclosed its annual representations and certifications.

3.006 EXTENDED PURCHASING TO LOCAL UNITS OF GOVERNMENT/INSTITUTIONS OF HIGHER LEARNING

Act Number 431 of the Public Acts 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, nonprofit hospital, institution of higher learning, or community or junior colleges. As a result of the enactment of this legislation, the Extended Purchasing Program has been developed. This program extends the use of State contracts to program members. The 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 policy of Acquisition Services, Department of Management and Budget, that the final approval to utilize any such Contract in this manner must come from the Contract vendor.

In such cases, Contract vendors supply merchandise at the established State of Michigan Contract prices and terms. Inasmuch as these are non-State agencies, all purchase orders will be submitted by, invoices will be billed to, and the authorized Extended Purchasing member on a direct and individual basis in accordance with Contract terms will remit payment.

Therefore, it is required that all bidders indicate, by checking the appropriate box below, whether they will (first box) or will not (second box) honor orders on any Contract resulting from this Request for Quotation from State of Michigan authorized Extended Purchasing members. It is the responsibility of the Contractor to ensure the non-State agency is an authorized Extended Purchasing member prior to extending the State Contract price.

BIDDER MUST CHECK ONE BOX BELOW

() Commodities and/or services on this Request for Quotation will be supplied to State of Michigan departments and agencies, and authorized Extended Purchasing Program members in accordance with the terms and prices quoted. Upon request, a complete listing of eligible participants in the Extended Purchasing Program will be provided if this option is selected.



() Commodities and/or services on the Request for Quotation will not be supplied to State of Michigan authorized Extended Purchasing members. We will supply to State of Michigan departments and agencies only.

Authorized Agent Name (print or type)

Authorized Agent Signature

Please Visit Mi DEAL at www.mi.gov/localgov.

3.1 Disclosure Issues
3.101 CONFIDENTIALITY

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

Protection of Confidential Information

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

News releases

News releases (including promotional literature and commercial advertisements) pertaining to the ITB and Contract or project to which it relates shall not be made without prior written State approval, and then only in accordance with the explicit written instructions from the State. No results of the activities associated with the ITB and Contract are to be released without prior written approval of the State and then only to persons designated.



Exclusions

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

No Implied Rights

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

Remedies

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

Survival

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

Destruction of Confidential Information

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

_____ (Initial)

3.102 FREEDOM OF INFORMATION ACT

All information in a bidder's proposal and the Contract is subject to the provisions of the Freedom of Information Act, 1976 Public Act No. 442, as amended, MCL 15.231, et seq

_____ (Initial)

3.103 DISCLOSURE OF LITIGATION

The Contractor shall notify the State in its bid proposal, if it, or any of its subcontractors, or their officers, directors, or key personnel under this Contract, have ever been convicted of a felony, or any crime involving moral turpitude, including, but not limited to fraud, misappropriation or deception. Contractor shall promptly notify the State of any criminal litigation, investigations or proceeding which may have arisen or may arise involving the Contractor or any of the Contractor's subcontractor, or any of the foregoing entities' then current officers or directors during the term of this Contract and three years thereafter.

The Contractor shall notify the State in its bid proposal, and promptly thereafter as otherwise applicable, of any civil litigation, arbitration, proceeding, or judgments that may have arisen against it or its subcontractors during the five years preceding its bid proposal, or which may occur during the term of this Contract or



three years thereafter, which involve (1) products or services similar to those provided to the State under this Contract and which either involve a claim in excess of \$250,000 or which otherwise may affect the viability or financial stability of the Contractor, or (2) a claim or written allegation of fraud by the Contractor or any subcontractor hereunder, arising out of their business activities, or (3) a claim or written allegation that the Contractor or any subcontractor hereunder violated any federal, state or local statute, regulation or ordinance. Multiple lawsuits and or judgments against the Contractor or subcontractor, in any an amount less than \$250,000 shall be disclosed to the State to the extent they affect the financial solvency and integrity of the Contractor or subcontractor.

All notices under subsection 1 and 2 herein shall be provided in writing to the State within fifteen business days after the Contractor learns about any such criminal or civil investigations and within fifteen days after the commencement of any proceeding, litigation, or arbitration, as otherwise applicable. Details of settlements, which are prevented from disclosure by the terms of the settlement, shall be annotated as such. Semi-annually, during the term of the Contract, and thereafter for three years, Contractor shall certify that it is in compliance with this Section. Contractor may rely on similar good faith certifications of its subcontractors, which certifications shall be available for inspection at the option of the State.

Assurances - In the event that such investigation, litigation, arbitration or other proceedings disclosed to the State pursuant to this Section, or of which the State otherwise becomes aware, during the term of this Contract, causes the State to be reasonably concerned about:

- a. The ability of the Contractor or its subcontractor to continue to perform this Contract in accordance with its terms and conditions, or
- b. Whether the Contractor or its subcontractor in performing services is engaged in conduct which is similar in nature to conduct alleged in such investigation, litigation, arbitration or other proceedings, which conduct would constitute a breach of this Contract or violation of Michigan or Federal law, regulation or public policy, then

The Contractor shall be required to provide the State all reasonable assurances requested by the State to demonstrate that: (a) the Contractor or its subcontractors hereunder will be able to continue to perform this Contract in accordance with its terms and conditions, (b) the Contractor or its subcontractors will not engage in conduct in performing services under this Contract which is similar in nature to the conduct alleged in any such litigation, arbitration or other proceedings.

*** The Contractor's failure to fully and timely comply with the terms of this section, including providing reasonable assurances satisfactory to the State, may constitute a material breach of this Contract.

_____ (Initial)

3.2 Vendor/Contractor Compliance with Laws

3.201 GENERALLY

Contractor/vendor shall keep informed of federal, state, and local laws, ordinances, rules, regulations, orders, and decrees of bodies or tribunals having any jurisdiction/authority that in any manner affects those engaged in or employed on the work done under this agreement or that in any manner affects the conduct of the work done under this agreement. Contractor shall observe and comply with such laws, ordinances, rules, regulations, orders, and decrees. Contractor shall indemnify the state for any civil claim or liabilities arising from a violation of such laws, ordinances, rules, regulations, orders, or decrees, whether by itself or its employees, even if wholly or in part caused by a violation of such laws, ordinances, rules, regulations, orders, or decrees by the state or its agents or representatives.

3.202 INDEPENDENT PRICE DETERMINATION

- 1. By submission of a proposal, the bidder certifies, and in the case of a joint proposal, each party thereto certifies as to its own organization, that in connection with this proposal:
 - a. The prices in the proposal have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition as to any matter relating to such prices with any other bidder or with any competitor; and



- b. Unless otherwise required by law, the prices which have been quoted in the proposal have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to award directly or indirectly to any other bidder or to any competitor; and
 - c. No attempt has been made or will be made by the bidder to induce any other person or firm to submit or not submit a proposal for the purpose of restricting competition.
2. Each person signing the proposal certifies that she/he:
- a. Is the person in the bidder's organization responsible within that organization for the decision as to the prices being offered in the proposal and has not participated (and will not participate) in any action contrary to l. a., b., and c. above; or
 - b. Is not the person in the bidder's organization responsible within that organization for the decision as to the prices being offered in the proposal but has been authorized, in writing, to act as agent for the persons responsible for such decision in certifying that such persons have not participated (and will not participate) in any action contrary to l. a., b., and c. above.
3. Should a bidder be awarded a Contract resulting from this CONTRACT, and be found to have failed to abide by the provisions set forth in this section, said entity will be in default of the Contract. Consequences may include cancellation of the Contract (see section I-U Cancellation).

3.203 VENDOR/CONTRACTOR COMPLIANCE WITH STATE AND FEDERAL LAW AND DEBARMENT

The bidder certifies, to the best of its knowledge that within the past (3) years, the bidder, an officer of the bidder, or an owner of a 25% or greater interest in the vendor:

- 1) Has _____, Has Not _____ been convicted of a criminal offense incident to the application for or performance of a state contract or subcontract;
- 2) Has _____, Has Not _____ been convicted of any offense which negatively reflects on the vendor's business integrity, including but not limited to embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, state or federal antitrust statutes;
- 3) Has _____, Has Not _____ been convicted of any other offense, violated any other state or federal law, as determined by a court of competent jurisdiction or an administrative proceeding, which, in the opinion of the Department, indicates that the vendor is unable to perform responsibly or which reflects a lack of integrity that could negatively impact or reflect upon the State of Michigan. An offense or violation under this paragraph may include, but is not limited to, an offense under or violation of: Natural Resources and Environmental Protection Act, 1994 PA 451, MCL §§ 324.101 – 324.90106; the Michigan Consumer Protection Act, 1976 PA 331, MCL §§ 445.901 – 445.922; 1965 PA 390 (law relating to prevailing wages on state projects), MCL §§ 408.551 – 408.558; 1978 PA 390 (law relating to payment of wages and fringe benefits) MCL §§ 408.471 – 408.490; or a willful or persistent violation of the Michigan Occupational Safety and Health Act, 1974 PA 154, MCL §§ 408.1001 – 408.1094;
- 4) Has _____, Has Not _____ failed to substantially perform a state contract or subcontract according to its terms, conditions, and specifications within specified time limits;
- 5) Has _____, Has Not _____ violated Department bid solicitation procedures or violated the terms of a solicitation after bid submission;
- 6) Has _____, Has Not _____ refused to provide information or documents required by a contract including, but not limited to information or document necessary for monitoring contract performance;
- 7) Has _____, Has Not _____ failed to respond to requests for information regarding vendor performance, or accumulated repeated substantiated complaints regarding performance of a contract/purchase order; and



- 8) Has _____, Has Not _____ failed to perform a state contract or subcontract in a manner consistent with any applicable state or federal law, rule, regulation, order, or decree.
- 9) The vendor certifies and represents, to the best of his knowledge that the supplier and/or any of it's Principles:
 - A. Are _____, Are Not _____ presently debarred, suspended, proposed for debarment, or declared ineligible for the award of a purchase by any state or federal agency
 - B. Has _____, Has Not _____ not with in a 3-year period preceding this bid, been convicted or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) purchase.
 - C. Are _____, Are Not _____ presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, the commission of the any of the offenses enumerated in section 3.1(c) of this contract.
 - D. The vendor Has _____, Has Not _____ within a 3-year period preceding this solicitation had one or more purchases terminated for default by any state or federal agency.

3.204 CERTIFICATION REGARDING DEBARMENT AND PROPOSED DEBARMENT

- 1) Principals for purposes of section 3.203(9) means officers, directors, owners, partners, and any other persons having primary management or supervisory responsibilities within a business entity
- 2) The supplier shall provide immediate written notice to the state if, at any time before the purchase award, the supplier learns that its certification was erroneous when submitted or has since become erroneous because of changed circumstances
- 3) A certification that any of the items in paragraph 3.203(9)(A) of this provision exists will not necessarily result in withholding an award under this solicitation. However, the certification will be considered in connection with a determination of the supplier's responsibility. Failure to furnish the certification or provide such information as requested by the state may render the supplier non-responsive
- 4) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph 3.203(9)(a) of this provision. The knowledge and information of a supplier is not required to exceed that which is normally possessed by a prudent person in the ordinary course of commercially reasonable dealings.
- 5) If it is later determined that supplier knowingly rendered an erroneous certification under this provision, in addition to the other remedies available to the state, the state may terminate this purchase for default.

VENDOR CAN REVIEW THE STATE'S DEBARMENT POLICY AT: www.michigan.gov/doingbusiness
 (click on the link to Debarment Policy)

3.205 DEBARMENT OF SUB-CONTRACTORS

Contractor shall require each primary sub-contractor, whose sub contract will exceed \$25,000, to disclose to the contractor, in writing, whether as of the time of the award of the sub contract, the sub-contractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the State of Michigan. The contractor shall then inform the state of the sub-contractor's status and reasons for contractor's decision to use such sub-contractor, if contractor so decides.



3.206 ETHICS: GRATUITIES and INFLUENCE

Gratuities

The right of the contractor to proceed may be terminated by written notice, if the contracting agency head or contract administrator determines that the contractor, its agent, or its representative has offered or gave a gratuity, kickback, money, gift, or any thing of value to an officer, official, or employee of the state intended, by the gratuity, to obtain a contract or favorable treatment under a contract.

Vendor/Contract Has _____, Has Not _____ given or offered to give a gratuity, kickback, money, gift, or any thing of value to a state official, officer, or employee intended to effectuate the awarding of a contract or favorable treatment under a contract.

Influence

The vendor/contractor by signing its proposal/bid hereby certifies to best of his or her knowledge that no funds have been given to any state officer, official, or employee for influencing or attempting to influence such officer, official, or employee of the state.

3.3 Vendor/Contractor Workplace Fitness

3.301 DRUG-FREE WORK PLACE

The vendor/contractor certifies and agrees that it will provide a drug-free workplace by:

- A. Publishing and providing to all of its employees a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the vendor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; and
- B. Establishing a drug-free awareness program to inform employees about (1) the dangers of drug abuse in the workplace; (2) the vendor's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation, and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the work place; and
- C. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment the employee will (1) abide by the terms of the statement; and (2) notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction; and
- D. Notifying the contracting state agency with in 15 days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction; and
- E. Within 30 days after receiving notice under subdivision (C)(2), imposing the proper sanctions as communicated to the employee through the statement required by subparagraph (A); and
- F. Making a good-faith effort to maintain a drug-free work place through the implementation of sub paragraphs (A) through (E) above.

_____ (Initial)

3.302 WORKPLACE SAFETY

- 1. In performing work under this Contract on State premises, the Contractor shall conform to any specific safety requirements contained in the Contract or as required by law or regulation. The Contractor shall take any additional precautions as the State may reasonably require for safety and accident prevention purposes. Any violation by the Contractor of such safety requirements, rules, laws or regulations shall be a material breach of the Contract subject to the cancellation provisions contained herein.



2. In performing services for the State pursuant to this Contract, the Contractor shall comply with Department of Civil Service Rules 2-20 regarding Workplace Safety and 1-8.3 regarding Discriminatory Harassment. In addition, the Contractor shall comply with Civil Service Regulations governing workplace safety and discriminatory harassment and any applicable state agency rules on these matters that the agency provides to the Contractor. Department of Civil Service Rules and Regulations can be found on the Department of Civil Service website at www.michigan.gov/mdcs.

_____ (Initial)

3.303 WORKPLACE DISCRIMINATION

The Contractor represents and warrants that in performing services for the State pursuant to this Contract, the Contractor agrees not to discriminate against any employee or applicant for employment, with respect to their 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 handicap or disability. The Contractor further agrees that every subcontract entered into for the performance of any Contract or purchase order resulting here from 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 37.2201, 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 the Contract or purchase order.

Vendor hereby represents that in performing this contract it will not violate The Civil Rights Act of 1964, USCS Chapter 42, including, but not limited to, Title VII, 42 USCS §§ 2000e et seq.; the Americans with Disabilities Act (ADA), 42 USCS §§ 12101 et seq.; or The Age Discrimination in Employment Act of 1967 (ADEA), 29 USCS §§ 621, 623 et seq.; the Old Workers Benefit and Protection Act of 1990 (OWBPA), 29 USCS §§ 626 et seq.; the Family Medical Leave Act of 1993 (FMLA), 29 USC §§ 651 et seq.; or the Fair Labor Standards Act (FLSA), 29 USC §§ 201 et seq.

_____ (Initial)

3.304 LABOR RELATIONS

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. 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 the Contractor as an employer, or the name of the subcontractor, manufacturer or supplier of the Contractor appears in the register.

The Contractor represents and warrants that the company does not appear in the current register of employers failing to correct an unfair labor practice.

_____ (Initial)

3.305 RESERVED

3.306 AFFIRMATIVE ACTION

Vendor represents that it Has _____, Has Not _____ developed and has on file an entity wide affirmative action program.

3.307 LIABILITY INSURANCE

A. Insurance

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



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

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

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

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

See www.michigan.gov/cis

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

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

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

1. Commercial General Liability with the following minimum coverage:

\$2,000,000	General Aggregate Limit other than Products/Completed Operations
\$2,000,000	Products/Completed Operations Aggregate Limit
\$1,000,000	Personal & Advertising Injury Limit
\$1,000,000	Each Occurrence Limit
\$500,000	Fire Damage Limit (any one fire)

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

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

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



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

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

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

4. Employers liability insurance with the following minimum limits:

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

B. Subcontractors

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



C. Certificates of Insurance and Other Requirements

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

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

3.308 ENVIRONMENTAL AWARENESS

Definition - '*Environmentally preferable products*' means products that have a lesser or reduced effect on human health and the environment when compared with competing products that serve the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product.

Environmental Purchasing Policy - Bidders able to supply products containing recycled and environmentally preferable materials that meet performance requirements are encouraged to offer them in bids and proposals.

- A. **Recycled Packaging.** Bidders may offer some or all of the following items listed below or provide alternative proposal as to how packaging materials can be reduced, eliminated or otherwise made more environmentally preferable. It is desirable that Bidders offer packaging which:
- is made from recycled content which meets or exceeds all federal and state recycled content guidelines (currently 35% post-consumer for all corrugated cardboard)
 - minimizes or eliminates the use of polystyrene or other difficult to recycle materials
 - minimizes or eliminates the use of disposable containers such as cardboard boxes
 - provides for a return program where packaging can be returned to a specific location for recycling
 - contains materials which are easily recyclable in Michigan..

- B. **Recycled Content of Products Offered.** Bidders are expected to offer products using recovered materials suitable for the intended use whenever possible. The following definitions apply to 'Recovered Material':

'Post-Consumer Waste', is defined as any products generated by a business or consumer which have served their intended end use, and which have been separated or diverted from solid waste for the purpose of recycling into a usable commodity or product

'Secondary Waste', is defined as industrial by-products and wastes generated after completion of a manufacturing process that would normally be disposed.



All Bidders are requested to indicate below an estimate of the percentage of recycled materials, if any, contained in each item bid. Higher percentages of recycled materials are preferred. All recycled products and packaging are required to perform at the level outlined in bid requests.

_____ % (Total estimated percentage of recovered material)

_____ % (Estimated percentage of post-consumer material)

_____ % (Estimated percentage of secondary waste)

Certification

I, _____ (name of certifier), am an officer or employee responsible for the performance of this contract and hereby certify that the percentage of recovered material content for EPA-designated products met the applicable contract specifications.

_____ (Initial)

C. Clean Air and Water

Vendor certifies that any facility to be used in the performance of this contract IS _____, IS NOT _____ listed on the Environmental Protection Agency (EPA) List of Violating facilities.

The vendor will immediately notify the state, before award, of the receipt of any communication from the EPA or the state, indicating that any facility that the vendor proposes to use in the performance of this contract is under consideration to be listed on the EPA List of Violating Facilities or any enforcement action.

D. Mercury Content. It is the clear intent of state agencies to avoid purchasing products that contain mercury whenever possible. Bidders shall offer mercury-free products when available. Should mercury-free alternatives not exist, as presently is the case with fluorescent lamps, bidders shall offer the lowest mercury content available. Bidders shall disclose whenever products contain added mercury by using the following format.

() Product does not contain Mercury

() Product does contain Mercury (attach an explanation that includes: the amount or concentration of mercury, and justification as to why that particular product is being proposed)

Bidders shall ensure that mercury added products containing mercury in excess of 1 gram or 250 ppm, shall be labeled: "contains mercury".

E. Polybrominated Flame Retardents (BFR). Bidders shall disclose whether the products being offered contain toxic flame retardants. Bidders are encouraged to provide BFR-free alternatives when available.

() Product does not contain BFR's

() Product does contain BFR's (attach an explanation)

F. Hazardous Material Identification. 'Hazardous material', as used in this clause, includes any material defined as hazardous under the latest version of Federal Standard No. 313 (including revisions adopted during the term of the contract).

(1) The bidder must list any hazardous material, as defined in paragraph (a) of this clause, to be delivered under this contract. The hazardous material shall be properly identified and include any applicable identification number, such as National Stock Number or Special Item Number.



This information shall also be included on the Material Safety Data Sheet submitted under this contract.

Material (if none, insert 'None')	Identification Number

- (2) This list must be updated during performance of the contract whenever the Contractor determines that any other material to be delivered under this contract is hazardous.
- (3) The apparently successful bidder agrees to submit, for each item as required prior to award, a **Material Safety Data Sheet** for all hazardous material identified in paragraph (1) of this clause. Data shall be submitted in accordance with Federal Standard No. 313, whether or not the apparently successful bidder is the actual manufacturer of these items. Failure to submit the Material Safety Data Sheet prior to award may result in the apparently successful bidder being considered non-responsive and ineligible for award.
- (4) If, after award, there is a change in the composition of the item(s) or a revision to Federal Standard No. 313, which renders incomplete or inaccurate the data submitted under paragraph (3) of this clause, the Contractor shall promptly notify the Contracting Officer and resubmit the data.
- (5) Neither the requirements of this clause nor any act or failure to act by the Government shall relieve the Contractor of any responsibility or liability for the safety of Government, Contractor, or subcontractor personnel or property.
- (6) Nothing contained in this clause shall relieve the Contractor from complying with applicable Federal, State, and local laws, codes, ordinances, and regulations (including the obtaining of licenses and permits) in connection with hazardous material.
- (7) The Government's rights in data furnished under this contract with respect to hazardous material are as follows:
 - (a) To use, duplicate and disclose any data to which this clause is applicable. The purposes of this right are to:
 - (i) Apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous materials;
 - (ii) Obtain medical treatment for those affected by the material; and
 - (iii) Have others use, duplicate, and disclose the data for the Government for these purposes.
 - (b) To use, duplicate, and disclose data furnished under this clause, in precedence over any other clause of this contract providing for rights in data.
 - (c) The Government is not precluded from using similar or identical data acquired from other sources.

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



'Recycling', means the series of activities by which materials that are no longer useful to the generator are collected, sorted, processed, and converted into raw materials and used in the production of new products." This definition excludes the use of these materials as a fuel substitute or for energy production.

'Waste prevention', means any action undertaken to eliminate or reduce the amount, or the toxicity, of materials before they enter the waste stream. This action is intended to conserve resources, promote efficiency, and reduce pollution." Waste prevention includes reduction and reuse, but not recycling.

'Waste reduction', means any practice, such as an equipment or technology modification, a process or procedure modification, a reformulation or redesign of a produce, a substitution of raw materials, or improved management, training, or inventory control, which practice is undertaken by a person to directly or indirectly reduce the volume or quantity or toxicity of waste that may be released into the environment or that is treated at a location other than the location where it is produced.

'Pollution Prevention', is defined as the practice of minimizing the generation of waste at the source and, when wastes can not be prevented, utilizing environmentally sound on-site or off-site recycling or reuse. The term includes equipment or technology modifications, process or procedure modifications, product reformulation or redesign, and raw material substitutions. Waste treatment, control, management, and disposal are not considered pollution prevention, per the definitions under Part 143, Waste Minimization, of the Natural Resources and Environmental Protection Act (NREPA), 1994 PA 451, as amended.

H. Ozone Depleting Substances

'Ozone-depleting substance', as used in this clause, means any substance the Environmental Protection Agency designates in 40 CFR part 82 as:

- (1) Class I, including, but not limited to, chlorofluorocarbons, halos, carbon tetrachloride, and methyl chloroform; or
- (2) Class II, including, but not limited to, hydro chlorofluorocarbons.

The Contractor shall label products which contain or are manufactured with ozone-depleting substances in the manner and to the extent required by 42 U.S.C. 7671j (b), (c), and (d) and 40 CFR part 82, Subpart E, as follows:

'**Warning:** Contains (or manufactured with, if applicable) _____ (insert the name of the substance(s).), a substance(s) which harm(s) public health and environment by destroying ozone in the upper atmosphere.'

I. Refrigeration and Air Conditioning

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

J. Emergency Planning and Community Right-to-Know Reporting - By signing this offer, the bidder certifies that:

- (1) The owner or operator of facilities that will be used in the performance of this contract is in compliance with the filing and reporting requirements described in sections 302, 304, 311, 312 and 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11001, et. seq.) and section 6607 of the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13101, et. seq.). EPCRA filing and reporting requirements include emergency planning notification, release reporting, hazardous chemical inventory reporting, and toxic chemical release inventory (TRI) reporting.



- (2) The owner or operator of facilities that will be used in the performance of this contract will maintain compliance with the filing and reporting requirements described in sections 302, 304, 311, 312 and 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11001, et. seq.) and section 6607 of the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13101, et. seq.) for the life of the contract.

_____ (Initial)

3.309 KNOWLEDGE OF CHILD LABOR FOR LISTED END PRODUCTS

- (a) 'Forced or indentured child labor', means all work or service:
 - (1) Exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or
 - (2) Performed by any person under the age of 18 pursuant to a contract the enforcement of which can be accomplished by process or penalties.
- (b) *Listed end products.* The following end product(s) being acquired under this solicitation is (are) included in the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor, identified by their country of origin. There is a reasonable basis to believe that listed end products from the listed countries of origin may have been mined, produced, or manufactured by forced or indentured child labor.

Listed End Product	Listed Country of Origin

- (c) *Certification.* The State will not make award to a bidder unless the bidder, by checking the appropriate block, certifies to one of the following:
 - () The bidder will not supply any end product listed in paragraph (b) of this provision that was mined, produced, or manufactured in a corresponding country as listed for that end product.
 - () The bidder may supply an end product listed in paragraph (b) of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product. The bidder certifies that it has made a good faith effort to determine whether forced or indentured child labor was used to mine, produce, or manufacture such end product. On the basis of those efforts, the bidder certifies that it is not aware of any such use of child labor.

3.310 FORCED LABOR, CONVICT LABOR, OR INDENTURED SERVITUDE MADE MATERIALS

Contractor hereby represents and certifies that, to the best of his /her knowledge and belief no foreign (outside of the U.S.) made equipment, materials, or supplies, furnished to the state under this agreement, have been produced in whole or in part by forced labor, convict labor, or indentured servitude.

_____ (Initial)

3.4 Vendor/Contractor Demographics

3.401 SMALL BUSINESS REPRESENTATION

The vendor represents and certifies that it IS _____, IS NOT _____ a small business concern and that all _____, NOT ALL _____ end items to be furnished will be manufactured or produced by a small business concern in the US, its territories or possessions, Puerto Rico, or the Trust Territory of the Pacific Islands

Provide the following information:



_____ (Estimate # of employees)

\$_____ (Estimate of annual revenue)

3.402 WOMEN, MINORITY, OR VETERAN-OWNED SMALL BUSINESS REPRESENTATION

DEFINITIONS:

'Women-owned business', means a small business that is at least 51% owned by a woman or women who are US citizens and who control and operate the business

The vendor represents that it IS _____, IS NOT _____ a women-owned small business.

'Minority-owned business', means a small business that is at least 51% owned by a minority or minorities who are US citizens and who control and operate the business

The vendor represents that it IS _____, IS NOT _____ a minority owned small business.

'Veteran-owned business', means a small business that is at least 51% owned by a veteran or veterans who are U.S. citizens and who control and operate the business

The vendor represents that it IS _____, IS NOT _____ a veteran owned small business.

The Contractor represents and warrants that the company meets the above (when checked) and can provide supportive documentation upon request.

3.403 OWNERS AND OFFICERS

Vendor must list all owners or officers that hold a 25% interest or more in the company (use attachment if necessary):

Name and Title	% of Interest or Ownership

3.404 RESERVED

3.5 State Concerns

3.501 GENERAL COMPANY DEMOGRAPHICS

1. Company Name: _____

2. Company Address: _____

3. Principle Place of Business (zip code): _____

4. Organization type
- () Limited Liability Company
 - () Limited Liability partnership
 - () Corporation
 - () Partnership
 - () Health Care Provider
 - () Hospital or extended care facility



- () Sole Proprietorship
- () Other: _____

5. Year of establishment _____

3.502 BUSINESS OWNED BY PERSONS WITH DISABILITIES

DEFINITION: 'Business owned by persons with disabilities', means a business in which all of the following apply:

1. More than 50% of the voting shares or interest in the business is owned, controlled, and operated by 1 or more persons with disabilities
2. More than 50% of the net profit or loss is attributable to the business accrues to shareholders who are persons with disabilities
3. More than 50% of the employees of the business are residents of this State of Michigan DMB

The vendor represents that it IS _____, IS NOT _____ a small business owned by persons with disabilities.

Fraudulently representing information about the use of businesses owned by persons with disabilities to procure this contract is a violation of the Business Opportunity Act For Persons with Disabilities of 1988, PA 112, MCL 450.791 – 450.795. A person who knowingly violated this act is guilty of a felony, punishable by imprisonment up to 2 years in prison, or a fine not less than \$5,000. A person found guilty of violating this act shall be barred from obtaining future contracts with the state.

3.503 COMMUNITY REHABILITATION ORGANIZATION (Formerly Sheltered workshops)

DEFINITION: 'Community rehabilitation organization', means a charitable organization or institution conducted not for profit, but for the purpose of carrying out a recognized program of rehabilitation for handicapped workers, which provides those individuals with remunerative employment or other occupational rehabilitating activity of an educational or therapeutic nature.

The vendor represents that it IS _____, IS NOT _____ a community rehabilitation organization

3.504 CERTIFICATION OF A MICHIGAN BASED BUSINESS

DEFINITION: To qualify as a Michigan business, vendor must have during the 12 months immediately preceding this bid deadline, or if the business is newly established, for the period the business has been in existence, it has (check all that apply):

- () Filed a Michigan single business tax return showing a portion or all of the income tax base allocated or apportioned to the State of Michigan pursuant to the Michigan Single Business Tax Act, 1975 PA 228, MCL §§ 208.1 – 208.145; or
- () Filed a Michigan income tax return showing income generated in or attributed to the State of Michigan; or
- () Withheld Michigan income tax from compensation paid to the bidder's owners and remitted the tax to the Department of Treasury; or

I certify that I **have personal knowledge** of such filing or withholding, that it was more than a nominal filing for the purpose of gaining the status of a Michigan business, and that it indicates a significant business presence in the state, considering the size of the business and the nature of its activities.



I authorize the Michigan Department of Treasury to verify that the business has or has not met the criteria for a Michigan business indicated above and to disclose the verifying information to the procuring agency.

Authorized Agent Name (print or type)

Authorized Agent Signature

Fraudulent Certification as a Michigan business is prohibited by MCL 18.1268 § 268. A BUSINESS THAT PURPOSELY OR WILLFULLY SUBMITS A FALSE CERTIFICATION THAT IT IS A MICHIGAN BUSINESS OR FALSELY INDICATES THE STATE IN WHICH IT HAS ITS PRINCIPAL PLACE OF BUSINESS IS GUILTY OF A FELONY, PUNISHABLE BY A FINE OF NOT LESS THAN \$25,000.

Bidder shall also indicate one of the following:

- Bidder qualifies as a Michigan business (provide zip code: _____)
- Bidder does not qualify as a Michigan business (provide name of State: _____)
- Principle place of business is outside the State of Michigan, however service/commodity provided by a location within the State of Michigan (provide zip code: _____)

3.505 PLACE OF PERFORMANCE

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

- (a) The bidder, in the performance of the contract, INTENDS _____, DOES NOT INTEND _____ to use one or more plants or facilities located at a different address from the address of the bidder as indicated in this bid.
- (b) If the bidder checks "intends" in paragraph (a) of this provision, it shall insert in the spaces provided below the required information:

Place of Performance Full address	Owner/Operator of facility to be used	Percent (%) of Contract value to be Performed at listed Location

3.506 FORMER STATE EMPLOYEES

Vendor certifies that there ARE _____, ARE NOT _____ former state employees involved in the performance of this contract.

If former state employees are involved in the performance of this contract, vendor must provide the following information



Vendor hereby represents that the following employees involved in the performance of this contract are former state employees (use attachment if necessary).

Name	Department, Division	Date of Employment

3.507 DOMESTIC END PRODUCT

DEFINITION: ‘Domestic end product’, means one that is manufactured within the United States and the cost of the domestic components exceeds 50% of the cost of all the components.

The vendor hereby certifies that the product to be provided, **except those listed below**, are a domestic end product, and that components of unknown origin have not been mined, produced, or manufactured outside the United States (use attachment if needed):

Excluded End Products	Country of Origin

_____ (Initial)

3.508 USE TAX

Companies (and their affiliated organizations) that are awarded contracts are required to be registered and to remit sales and use taxes on taxable sales of tangible personal property or services **delivered into the state of Michigan**. This is required of all companies that are awarded contracts. Those companies that lack sufficient “presence” in Michigan to be required to register and pay tax must do so as a “volunteer”. This requirement extends to: (1) ALL MEMBERS OF ANY CONTROLLED GROUP AS DEFINED IN § 1563(A) OF THE Internal Revenue Code and applicable regulations of which the company is a member, and (2) all organizations under common control as defined in § 414(c) of the Internal Revenue Code and applicable regulations of which the company is a member that make **sales at retail for delivery into the state of Michigan** are registered with the State of Michigan for the collection and remittance of sales and use taxes. In applying treasury regulations defining “two or more trades or businesses under common control” the term “organization” means sole proprietorship, a partnership (as defined in § 701(a)(2) of the Internal Revenue Code), a trust, an estate, a corporation, or a limited liability company.

The requirement of remittance could be limited to the bidder only without including affiliate companies.

Contractors and their affiliates as defined in the paragraph above must register for and remit sales and use tax on all taxable sales of tangible personal property or services **delivered to the state of Michigan**.

_____ (Initial)

3.509 TAX EXCLUDED FROM PRICE

Contract price excludes all State and local taxes levied on or measured by the contract or sales price of the services or completed supplies furnished under this contract. The Contractor shall state separately on its invoices taxes excluded from the contract price, and the Government agrees either to pay the amount of the taxes to the Contractor or provide evidence necessary to sustain an exemption.

_____ (Initial)



3.510 TAX PAYMENT

Contractors are expected to collect and pay all applicable federal, state, and local employment taxes for all persons involved in the resulting Contract.

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

Vendor hereby certifies that all applicable state taxes are paid as of the date of bid submission, and that vendor owes no outstanding debt to the State of Michigan.

_____ (Initial)

3.511 USE OF OTHER SOURCES AS SUBCONTRACTORS

The State has sources of supply and services that are mandatory. The state may use the information provided under this section and 3.502 and 3.503 in determining future awards and vendor standing with the state.

(1) Persons with disabilities

See Paragraph 3.502 for definition and penalty for fraudulent represents this information.

Vendor IS ____, IS NOT ____ purchasing supplies and/or service from a business owned by persons with disabilities in the performance of this contract.

Vendor has contracted for ____% of supplies and services needed for the performance of this contract, which equals \$_____, from a business owned by persons with disabilities (estimates or approximates are acceptable).

Vendor(s) Name: _____

(2) Community Rehabilitation Organizations (CRO) (formerly sheltered workshops)

See Paragraph 3.503 for definition.

Vendor IS ____, IS NOT ____ purchasing supplies and/or service from a community rehabilitation organization in the performance of this contract.

Vendor has contracted for ____% of supplies and services needed for the performance of this contract, which equals \$_____, from a community rehabilitation organization (estimates or approximates are acceptable).

Vendor(s) Name: _____

3.512 UTILIZATION OF BUSINESS CONCERNS

It is the policy of the State of Michigan that small business concerns, veteran-owned small business concerns, persons with disabilities-owned small business concerns, small disadvantaged business concerns, minority-owned small business concerns, and women-owned small business concerns shall have the maximum practicable opportunity to participate in performing contracts let by any state agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems.

The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the State of Michigan or the awarding agency of the State of Michigan as may be necessary to determine the extent of the Contractor's compliance with this clause.



3.513 RESERVED

3.514 RESERVED

3.515 PLACE OF SUBCONTRACTING

Indicate below **ALL** work to be subcontracted under this agreement (use additional attachment if necessary; estimates are acceptable):

Description of Work to be sub-contracted	Percent (%) of total contract value to be sub-contracted	Sub-contractor's name and principal place of business (City and State)

3.516 RESERVED

3.517 SERVICES NEEDED IN PERFORMANCE

Vendor hereby certifies that services to be purchased to enable vendor to perform this agreement will be purchased from a business having its principle place of business in the State of Michigan, **except those listed below** (use additional attachment if necessary; estimates are acceptable):

Description of Service to be purchased	Percent (%) of total contract value to be purchased	Service providers principal place of business (City and State)

3.518 EMPLOYEE AND SUBCONTRACTOR CITIZENSHIP

Vendor hereby certifies that all employees, contractors, subcontractors, and any other individual involved in the performance of this contract, **except those listed below**, are citizens of the United States, legal resident aliens, or individuals with valid visa (use additional attachment if necessary; estimates are acceptable):

Employee Name	Title



3.6 Changes to Disclosures

If any of the certifications, representations, or disclosures indicated in this document change after awarding of a contract, the Contract is required to report those changes immediately to the Department of Management and Budget, Acquisition Services.

3.7 State Assertions

If the state finds that grounds to debar exist, it shall send notice to the vendor of proposed debarment indicating the grounds for proposed debarment and the procedures for requesting a hearing. If the vendor does not respond with a written request for a hearing within twenty (20) calendar days, the state shall issue the decision to debar without a hearing. The debarment period may be of any length up to eight (8) years. After the debarment period expires, the vendor may reapply for inclusion on bidder lists through the regular application process. Authority given by Executive order 2003-1.

ANY FALSE CERTIFICATION OF ANY OF THE PRECEEDING PROVISIONS IS GROUNDS FOR DEBARMENT AND WILL GIVE THE STATE THE RIGHT TO INVOKE ALL REMEDIES AVAILBLE TO IT UNDER THIS CONTRACT.

I HEREBY CERTIFY TO THE BEST OF MY KNOWLEDGE AND BELIEF, THAT THE REPRESENTATIONS AND CERTIFICATIONS MADE HEREIN BY THE VENDOR/CONTRACTOR/SUPPLIER ARE ACCURATE AND CURRENT AS OF THE DATE INDICATED BELOW

Name of Vendor/contractor/supplier

Address of supplier

Telephone and fax No. of supplier

Signature of supplier's authorized representative

Title of Supplier representative

Date

Attachment A to Contract # 084r4001934

the “Master Contract for Software/Maintenance and Limited Consulting Services”

between the State of Michigan Department of Information Technology and Novell, Inc.

PRICING DURING THE INITIAL 3-YEAR TERM OF CONTRACT 084r4001934 (the “Contract”)

1. Pricing is pursuant to Section 6.2 of the Master License Agreement - Exhibit A of the Contract (the “MLA”).
2. Technical support is pursuant to Section 5.1 of the MLA. For ease of reference, some prices of premium support offerings are listed on page A-2 of this Attachment and the List Prices are the same as those contained in the July 2004 MLA Price List.
3. The Novell July 2004 MLA Price List is considered attached hereto as Appendix A to this Attachment A. For ease of reference, some product pricing is listed on page A-3 of this Attachment and the List Prices are the same as those contained in the July 2004 MLA Price List.
4. Provided Novell receives net annual Maintenance renewal fees from the State of Michigan Department of Information Technology (the “DIT”) under the Contract of at least \$2,138,000 for each 01 October through 30 September yearly period throughout the initial 3-year term of the Contract, the State shall receive a discount of 50% off MLA Price List prices for Software licenses and Maintenance during the initial 3-year term of the Contract. Should such \$2,138,000 in net fees not be met, said discount of 50% shall revert to that for which the State qualifies under the then-current Novell MLA program.
5. For the 01 October 2004 through 30 September 2005 DIT Maintenance renewal (the “FY2005 Renewal”), the following applies:
 - a) The Maintenance renewal from the DIT for the period 01 October 2003 through 30 September 2004 under Novell MLA 125400 was for roughly \$2,138,000 in net fees to Novell (the “FY2004 Renewal”). If the FY2005 Renewal results in at least \$2,138,000 in net fees to Novell, then Novell shall provide an additional 5% off the FY2005 Renewal MLA net discounted amount. By way of example: If the FY2005 Renewal carries a MLA List Price of \$5,000,000, then the MLA post-discount price would be \$2,500,000 and Novell would further reduce such \$2,500,000 price by \$125,000 and the final net fees to Novell for the FY2005 Renewal would be \$2,375,000.
 - b) If, in addition to the FY2005 Renewal, the State and Novell expect to have \$500,000 in business (software licenses and related services) for the period 01 October 2004 through 31 March 2005, Novell will invest \$50,000 (First Investment) to fund Novell software licenses and related services purchases by the State as the State and Novell direct for initiatives strategic to the State. This investment underlying the First Investment must be undertaken and/or completed by the end of May 2005.
 - c) If, in addition to the FY2005 Renewal and the First Investment, the State and Novell expect to have \$500,000 in business (software licenses and related services) for the period 01 April 2005 through 30 September 2005, Novell will invest \$50,000 (Second Investment) to fund Novell software licenses and related services purchases by the State as the State and Novell direct for initiatives strategic to the State. This investment underlying the Second Investment must be undertaken and/or completed by the end of November 2005.
 - d) The above will not affect the FY2004 Renewal in any way, and it assumes that the Contract will be signed by both Novell and the State on or before 26 July 2004.

Premium Support Pricing Example (as of July 2004)

(A) Premium 1000 (P1000) to Premium 5000 DSE (P5000 DSE) Pricing

	P1000	P2000	P3000	P3000 ASE	P4000 PSE	P5000 DSE
MLA Price List Price	\$5,800	\$16,000	\$38,000	\$65,000	\$155,000	\$375,000
Price After 10% MLA Program Discount	\$5,220	\$14,400	\$34,200	\$58,500	\$139,500	\$337,500
MLA Maintenance \$	\$23,200	\$64,000	\$152,000	\$260,000	\$620,000	\$1,500,000

“ASE” is Advantage Support Engineer. “PSE” is Prietary Support Engineer. “DSE” is Dedicated Support Engineer.

(B) Brief Descriptions of “P1000” to “P5000 DSE” Annual Technical Support Offerings

P1000: Access to technical support 12x5; up to ten incidents; TMRT four hours 12x5; one EV; one EdTk.

P2000: Access to technical support 24x7; up to twenty-five incidents; TMRT two hours 12x5; one EV; one EdTk.

P3000: Access to technical support 24x7; up to fifty incidents; one SAM; TMRT two hours 12x5; three EVs; one PRS.

P3000 ASE: Access to technical support 24x7; up to fifty incidents per year with the Advantage Team; one SAM; one ASE to whom calls are directly routed who has significant technical expertise; TMRT one hour 12x5; five EVs; one PRS.

P4000 PSE: Access to technical support 24x7; Up to fifty incidents per year with the Advantage Team; One SAM; One PSE who has significant technical expertise and who generally handles not more than three customer accounts and whose incidents don’t deplete the fifty incidents noted above; TMRT thirty minutes 12x5; six EVs; one PRS; one BrainShare admission.

P5000 DSE: Access to technical support 24x7; Up to fifty incidents per year with the Advantage Team; One SAM; One DSE who has significant technical expertise and who generally handles not more than one customer account and whose incidents don’t deplete the fifty incidents noted above; TMRT fifteen minutes 12x5; ten TVs; one PRS; two BrainShare admissions.

“12x5” means Monday through Friday from 8am to 8pm Eastern Standard Time (EST) in the United States.

“24x7” means Monday through Sunday 24 hours per day.

“TMRT” means Targeted Maximum Response Time from the time a Novell engineer receives a support call.

“SAM” means Service Account Manager.

“Advantage Team” means a support team with a higher level of technical expertise than lower level plans.

“EV” means Education Voucher.

“EdTk” means eDirectory Toolkit.

“PRS” means a Professional Resource Suite.

“TV” means Training Voucher.

(C) Purchasing Additional Engineering Support

	Additional ASE	Additional PSE	Additional DSE
MLA Price List Price	\$50,000	\$82,000	\$275,000
Price After 10% MLA Program Discount	\$45,000	\$73,800	\$247,500

NOTE: All Of The Above Are Commercially-Available Offerings Subject To Change From Time To Time.

Product Pricing Example (as of July 2004)

Software Product Name	Product Part Number	List Price (as of July 2004)	Price @ 50% State Discount
NetWare 6.5 & Prior Per User License Fee	879-000230-001	\$158.00	\$79.00
NetWare 6.5 Per User Maintenance Fee	MNT-005654-001	\$40.00	\$20.00
GroupWise 6.5 & Prior Per User License Fee	LIC-005894-001	\$130.00	\$65.00
GroupWise 6.5 Per User Maintenance Fee	MNT-005584-001	\$33.00	\$16.50
ZENworks 6.5 Suite Per User License Fee	879-000438-001	\$130.00	\$65.00
ZENworks 6.5 Suite Per User Maintenance Fee	MNT-005843-001	\$33.00	\$16.50
Novell BorderManager 3.8 & Prior Per User License Fee	879-000281-001	\$40.00	\$20.00
Novell BorderManager 3.8 Per User Maintenance Fee	MNT-005716-001	\$10.00	\$5.00
ZENworks 6.5 Server Management & Prior Per User License Fee	879-000446-001	\$59.00	\$29.50
ZENworks 6.5 Server Management Per User Maintenance Fee	MNT-005849-001	\$15.00	\$7.50

NOTE: Please refer to the latest Novell MLA Price List to ensure the prices above have not decreased since the July 2004 Novell MLA Price List was issued. The then-current Novell MLA Price List is typically issued at the beginning of each calendar month and can be found at <http://www.novell.com/licensing/price.html>.

Novell, Inc.		Statement of Work / CHR Implementation					
Local Novell Address: 24811 Northwestern Highway Suite 800 Southfield, MI 48034		Local Novell Phone Number: (734) 657.4565			Novell Fax Number: Contract Fax Number 801 437-2697		
Effective Date: 10/1/04		Expiration Date: 11/5/04			Project Number: 232715		
Customer Information		Customer Contacts					
Customer: Michigan State Police		Project Contact: Brad Stoddard			Phone/Ext. 517.336.6503		
Address: 714 South Harrison Road		Alternate Contact: Deb McClung			Phone/Ext. 517.336.6182		
City, State, Zip: East Lansing, MI 48823							
Billing Information		Account Team					
Customer: Michigan State Police	PO #:	Novell Sales Contact: Dawn Gunnell			Phone/Ext. 517.339.7776		
Address: 714 South Harrison Road		Novell Delivery Manager: Greg Dzewit			Phone/Ext. 248.359.3338		
City, State, Zip: East Lansing, MI 48823							
SCOPE OF SERVICES							
<p>The goal of this initiative is to integrate the product created by the CHR vendor (SAIC) into the EAI architecture at the State of Michigan. The State of Michigan requires that the CHR product be available from the public internet and outside the State Police network. The EAI architecture supports access to applications from both over the State's trusted networks, as well as over the public internet.</p> <p>The tasks involved with the development and Implementation phases, are described below.</p>							
Task No.	Task Description						Location:
1	<p>The specific areas to be addressed during development are listed below. Please note that these tasks and associated services estimates may be adjusted at the conclusion of the design phase.</p> <ul style="list-style-type: none"> - Implement UI extensions to Admin Tool (DIT) in development environment - Implement modifications to EAI schema in development environment - LDAP implementation in development environment - Portal Implementation in development environment - DirXML implementation in development environment - Unit/System Testing <p>Project Management including status reporting.</p>						East Lansing, MI
2	<p>The area addressed during the production phase are as follows:</p> <ul style="list-style-type: none"> - Move final development code to production - Finalize production iChain configuration - Assist in switch configuration. - Project management including status reporting. 						East Lansing, MI
ESTIMATED RESOURCES							
Task No.	Start Date	End Date	Unit (hours)	Labor Rate		Other Expenses	Estimated Charges
1	10/4/04	10/22/04	128	\$205/hr			\$23,000.00
2	10/25/04	10/29/04	50	\$205/hr			\$10,000.00
						Travel estimate	\$3,490
Alternative Service Hours / Billing Agreements: (If applicable)						Total Estimated Charges:	\$36,490.00
These Tasks will be performed on a T&M basis. Estimated Charges are estimates only. Customer will be invoiced based on actual time and expenses. Tasks not completed at the end of the services without extension of the project are Customer's responsibility.							

PURCHASE ORDERS

State of Michigan agrees to provide Novell with a separate purchase order for the services described in this Statement of Work. **If State of Michigan does not issue POs for services, please initial here_____.** The signer of this SOW must be an authorized Purchasing Agent, and the following information must be provided in this SOW: Billing Contact, Billing Address.

AUTHORIZATION

CUSTOMER ACKNOWLEDGES AND AGREES THAT THIS STATEMENT OF WORK SHALL BE GOVERNED BY THE TERMS AND CONDITIONS OF THE MLA BETWEEN NOVELL AND CUSTOMER, CONTRACT NUMBER 227749, AND THE ASSOCIATED LICENSING PROGRAM GUIDE. THE PARTIES EXPRESSLY ACKNOWLEDGE THAT PURCHASE ORDER TERMS WILL NOT APPLY. IN THE EVENT THE CUSTOMER IS REQUIRED BY LAW TO WITHHOLD TAXES, THE CUSTOMER AGREES TO FURNISH NOVELL ALL REQUIRED RECEIPTS AND DOCUMENTATION SUBSTANTIATING SUCH PAYMENT.

NOVELL, INC.: _____

CUSTOMER: _____

Date: _____

Date: _____

ACKNOWLEDGEMENT OF COMPLETION

Customer hereby acknowledges the Professional Services were completed as specified in this Statement of Work.

CUSTOMER: _____

Date: _____

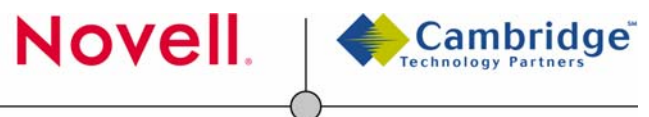
Novell Statement of Work

CVISN / EAI Integration Project

www.novell.com

March 10, 2004
Project Number: XXXXX

Prepared for: Michigan Department of Information Technology
714 South Harrison Road
East Lansing MI 48823



Statement of Work

This Statement of Work (SOW) describes the solution planned between Novell, Inc. ("Novell") and Michigan Department of Information Technology ("Customer"). The SOW includes the following sections:

Contact Information	Contact information for authorized representatives of Novell and Customer involved in this solution
Introduction	An overall description of the solution, including Customer technical and business goals
Services and Deliverables	Describes the scope of the solution
Project Assumptions	Novell assumptions for the proposed solution, including Customer responsibilities, cancellation and rescheduling and working hours
Estimated Schedule	Required signing date, and estimated start and end dates for the solution
Costs	Detailed solution costs and estimated expenses
Terms and Conditions	Contract terms that govern this Statement of Work
Signatures	Indicates mutual acceptance of this Statement of Work
Exhibit A	Acknowledgement of Completion form, to be signed by Customer as Services and Deliverables are completed

Submission Process

Please print two copies of the Statement of Work, sign, and send, or FAX, to the following address:

Novell Contract Management
Mailstop: PRV-D-231
1800 South Novell Place
Provo, Utah 84606

E-mail: Consulting@novell.com
FAX: (801) 437-2697 or (801) 861-2855

Customer Information

To assist Novell in making this solution successful, please provide the following contact and background information:

Project Manager: Title: Voice: Fax: E-Mail:	Signature Authority: Title: Voice: Fax: E-mail:
Billing Address:	Michigan Department of Information Technology 714 South Harrison Road East Lansing MI 48823
Agreement Type: Contract No.:	MLA <input checked="" type="checkbox"/> CLA <input type="checkbox"/> CMA <input type="checkbox"/> MSA <input type="checkbox"/> Other <input type="checkbox"/> _____ 125438

Novell Information

Services Manager: Voice: Fax: E-mail:	Gregory Dziewit 734.945.8768 240.282.6484 Greg.Dziewit@novell.com	Project Manager: Voice: Fax: E-Mail:	Greg Dooley 734.657.4565 greg.dooley@novell.com
Account Manager: Voice: E-Mail:	Dawn Gunnell 517.339.7776 Dawn.Gunnell@novell.com	Contract Specialist: Voice: E-Mail:	Dave Alvin 781-464-8064 dalvin@novell.com
Sales Engineer: Voice: Fax:		Other: Voice: Fax:	

Introduction

The goal of this initiative is to integrate the product created by the CVISN vendor (Cambridge Systematics) within the EAI architecture at the State of Michigan. The State of Michigan requires that the CVISN product be available from the public internet and outside the State of Michigan trusted network. The EAI architecture supports access to applications from both over the State's trusted networks, as well as over the public internet.

This Statement of Work will cover time and expenses allocated to several phases of work. The following phases will be conducted during the lifecycle of this project:

- Development & Test
- Production
- Post Production Consulting Support

Services:

Below is a description of the services that will be delivered within each phase of this program. It should be stressed that these activities are being estimated based upon our experience delivering projects such as this at the State of Michigan, and in particular, making extensions to the existing EAI architecture. It is possible that the activities addressed during each phase may change depending on requirements and/or issues discovered as the project progresses. Changes in the scope of the project will be managed individually.

1. Development. During this project phase, the team will take the design documentation and build the designed additions and changes to the existing EAI system into a development environment. These are estimated to be the tasks required during the development phase, although it is possible that these tasks may change depending on what is discovered during the design phase:
 - Implement User Interface extensions to Admin Tool in development environment
 - Implement modifications to EAI schema in development environment
 - Implement modifications to Portal in development environment
 - Assist vendor in LDAP calls to EAI
 - Update design documentation where necessary
 - Assist customer in developing roll-out strategy
 - Conduct unit testing
 - Conduct weekly status meetings
2. Production. The goal of this phase is to move the changes and additional features that were created to support the CVISN application, to the production environment. In particular, it is envisioned that the following tasks will be performed during this phase:
 - Perform Final testing and review
 - Assist in Switch configuration
 - Conduct weekly status meetings.
3. Post-Production Support. The goal of this phase is oversee and provide support to the production environment. Experts from the Novell consulting team will be onsite to monitor the production system and to provide knowledge transfer to DIT and SOM staff.

Novell Project Resources

The following skill sets will be provided by Novell during this project:

1. **Architect/Technical Lead:** Requires a detailed technical knowledge of the Novell products used within the proposed architecture. Responsible for implementing the design in the development environment. The architect will be dedicated to each project phase full time throughout the program.
2. **Business Analyst:** Skills include group facilitation and strong communication. Able to extract and document business requirements from relevant subject-matter experts during facilitated sessions, from existing documentation and from interviews. The business analyst will be leveraged during the design phase, and possibly during testing.
3. **Project Manager:** The skills required are general project management skills such as workplan creation and management, status reporting and the ability to communicate effectively to the internal project team and relevant support groups. The project manager will be part time throughout the program.
4. **Technical Specialist(s):** As required, specialized technical resources may be brought into the project to assist the architect with particular Novell components of the EAI architecture, which may include Portal, eDirectory, iChain and DirXML. It is anticipated that a technical specialist, most likely an expert in DirXML and exteNd director 5.0, will be staffed full time for the development and production phases.

Estimated Schedule

Following is a required signing date and an estimated solution schedule. The Services and Costs described in this SOW are subject to change if this SOW is not executed by Customer and received by Novell on or before the required signing date or within 60 days from the date on the front page of this SOW, whichever is later.

Required Signing Date By:	October 1, 2004
Estimated Start Date:	October 11, 2004
Estimated End Date:	December 22, 2004

Costs

To provide these services, we estimate that the following resources will be required:

Hourly Team Rate: (\$205/hour)		<input checked="" type="checkbox"/> Time & Materials
Program Phase (Duration):	Resources Required:	Estimated Cost:
Development (5 weeks)	Senior Architect (50%) Project Manager/Business Analyst (50%) Senior Technical Specialist (100%) Senior Technical Specialist #2 (50%)	\$144,600.00
Production (2 weeks)	Senior Architect (50%) Project Manager/Business Analyst (50%) Senior Technical Specialist (100%) Senior Technical Specialist #2 (50%)	\$65,300.00
Post-Production Support (2 weeks)	Senior Architect (50%) Project Manager/Business Analyst (50%) Senior Technical Specialist (100%)	\$43,100.00
Project Travel Expense Estimate		\$22,000.00
Total		\$275,000.00

Project Assumptions

The Services described in this SOW constitute the entire solution. If Customer requests services in addition to the Services identified in this SOW, the performance of such additional services will require a modification to the solution Deliverables and any adjustment to the schedule and/or fees to be paid by Customer. The Novell project manager or lead consultant can track such requests via Change Order and arrange for such services to be rendered.

- Unless otherwise negotiated between the parties, Novell will generally require two to three weeks lead-time to start a solution. Requests for Novell resources and schedules are managed by the Project Manager and will be assigned based on mutual agreement, the skill set needed for the solution, and availability of consultants possessing the required skill set.
- Subject to approval from DIT, Novell may subcontract with a qualified consulting partner to fulfill portions of this solution.
- Unless specifically enumerated in this SOW, all licenses for software products associated with this solution must be purchased separately.
- Planning, design, or deployment of products or technologies, other than those enumerated in this SOW, are not included.

I. Customer Responsibilities

Michigan Department of Information Technology shall be solely responsible for the following:

- Arranging for frequent access to Michigan State Police Emergency Management Division (MSP EMD) subject matter experts, as well as SAIC vendor functional and technical CVISN specialists.
- Appointing and making available a project manager to work with Novell for the duration of the Services. (This person must have authority to act on behalf of the Customer.)
- Furnishing Novell consultants with information and data on Michigan Department of Information Technology operations, activities, and existing systems, as reasonably required to achieve the solution objectives.

- Providing Novell consultants with necessary security access to networking systems and Michigan Department of Information Technology facilities during the performance of Services.
- Providing adequate workspace and power sources at each facility where Services will be performed.
- Providing suitable server platforms, with properly installed and patched network operating system (NOS) software, and obtaining any other commercial software licenses necessary for Novell to complete the Services described in this SOW.
- Contracting for any necessary telecommunications facilities (data communications circuit, analog phone lines, wiring, etc.), and for the costs associated with such facilities.

II. Cancellation and Rescheduling Policy

For any cancellations made by Customer within 5 business days of the start day of Services, Customer will incur a cost of half of the total time scheduled. For any cancellations made by Customer within 2 business days of the start day of Services, Customer will incur the full cost of the total time scheduled. For any rescheduling of Services requested by Customer within 5 business days of the start day of such Services, Customer will incur all costs to modify travel arrangements and other related expenses. The invoice for additional costs will be issued against the existing Purchase Order. When and if the solution is started, the customer agrees to issue an amended Purchase Order to cover the additional costs.

III. Standard Working Hours

This SOW covers Services performed during standard business hours of Monday through Friday 8:00 a.m. to 5:00 p.m. Depending on the type of solution, any on-site Services performed after the standard business hours will be charged at one and a half (1½) times the standard rate. Any work performed during weekends or holidays will be charged at two (2) times the standard rate. Weekend and holiday hours begin at 7:00 p.m. on the day before any weekend or holiday and end at 7:00 a.m. the day following the weekend or holiday.

Terms and Conditions

BY SIGNING BELOW, CUSTOMER ACKNOWLEDGES AND AGREES THAT THIS STATEMENT OF WORK SHALL BE GOVERNED BY THE TERMS AND CONDITIONS OF THE MLA BETWEEN NOVELL AND THE MICHIGAN STATE POLICE, CONTRACT NUMBER 125438, AND THE ASSOCIATED LICENSING PROGRAM GUIDE

Purchase Orders

CUSTOMER AGREES TO PROVIDE NOVELL WITH A SEPARATE PURCHASE ORDER FOR THE SERVICES DESCRIBED IN THIS STATEMENT OF WORK. THE PARTIES EXPRESSLY ACKNOWLEDGE THAT PURCHASE ORDER TERMS WILL NOT APPLY.

In the event the Customer is required by law to withhold taxes, the Customer agrees to furnish Novell all required receipts and documentation substantiating such payment.

EACH OF THE PARTIES agrees to the terms of this Statement of Work and has caused this SOW to be executed by its duly authorized representative.

Signatures

NOVELL, INC.

CUSTOMER

Signature:

Signature:

Name:

Name:

Title:

Title:

Date:

Date:

End of Statement of Work



Exhibit A Acknowledgement of Completion

Customer Name:	Michigan Department of Information Technology	Date:	4/11/04
Project Manager:	Lisa Irwin	Project #:	TBD

This acknowledges that Novell has completed all Services and Customer has received the Deliverables identified in this Statement of Work.

Deliverables	Authority	Acknowledgement	
		Customer Initials	Date
Development integration of CVISN Product into the EAI infrastructure	Lisa Irwin		
Customer sign-off of development version of CVISN integration.	Lisa Irwin		
Customer sign-off of Production integration of CVISN product into the EAI infrastructure	Lisa Irwin		
Delivery of weekly status reports.	Lisa Irwin		

Remarks:

Customer Signature:

Upon project completion, fax this completed form to Novell Contract Management at (801) 437-2697 or (801) 861-2855.

Novell Statement of Work

State of Michigan Secure Partner Portal

www.novell.com

Date: 17 March 2004

SOW Number: 228353 UNKNOWN

Prepared for:



Michigan State Police
4000 Collins Road
Lansing MI

4890948933

Novell®

Statement of Work

This Statement of Work (SOW) describes the solution planned between Novell, Inc. ("Novell") and Michigan State Police ("Customer"). The SOW includes the following sections:

Contact Information	Contact information for authorized representatives of Novell and Customer involved in this solution
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Novell Contract Management
Mailstop: PRV-D-231
1800 South Novell Place
Provo, Utah 84606

E-mail: Consulting@novell.com
FAX: (801) 437-2697 or (801) 861-2855

Contact Information

To assist Novell in making this solution successful, please provide the following contact and background information:

Customer

Project Manager: Rich Reasner Title: Project Manager Voice: 517.333.5007(517) 373-8176 Fax: E-mail: stoddarb@michigan.gov reasnerr@michigan.gov	Signature Authority: Dan Laws Title: Deputy Director Infrastructure Services Voice: (517) 373-1006 Fax: E-mail:
Billing Contact: Jerold Zaikowski Voice: (517) 241-5041 Fax: (517) 373-9722 E-mail: ZaikowskiJ@michigan.gov	Other: Voice: Fax: E-mail:
Billing Address: Michigan State Police 4000 Collins Road 116 W. Allegan St Lansing MI 4890948933	
Agreement Type: MLA <input checked="" type="checkbox"/> CLA <input type="checkbox"/> MSA <input type="checkbox"/> Other <input type="checkbox"/> _____ Contract #: 227749	
If payment will be made through a Novell authorized reseller: Reseller Name: _____	

Novell

Services Manager: Greg Dooley Voice: 734.657.4565 Fax: E-mail: greg.dooley@novell.com	Project Manager: Voice: Fax: E-mail:
Sales Account Manager: Rob Montgomery Voice: 248.760.1268 E-mail:	Contract Manager: Rob Montgomery Voice: 248.760.1268 E-mail:
Technical Account Manager: Steve Paver Voice: 248.514.7025 Email:	Other: Matt Weiberg Voice: 248.705.1950 Email:

Project Objective

The State of Michigan Department of Information Technology (hereinafter also referred to as "DIT" or "Customer") has many initiatives underway leveraging its investment in Novell Solutions. This Statement of Work (SOW) will focus on providing a consulting resource(s) to act in an Architect role to work with DIT on Architecting and Designing strategic projects focused around Novell solutions. The consultant(s) will be assigned for a maximum of 604 hours to be consumed during Customer's fiscal Year ending 30 September 2004.

The key role of the consultant will be to:

- Assure that the agencies within the State of Michigan understand and follow Novell's best-practices during design, planning and implementation of Novell technologies
- Leverage Customer's existing investment in Novell products, allowing the state to increase its return on current software investments from Novell.
- Provide access to and expedite problem resolution through Novell's Consulting Resolution team for pre-production projects.
- Provide first-hand knowledge of Novell tactical and strategic product offerings and present options to DIT to effectively solve business problems
- Provide master facilitation to Customer's personnel and
- Provide communication to Novell's back-end engineering group on problems and opportunities specifically focusing on Customer's needs
- Provide State of Michigan Department of Information Technology high-level Architectural design, "White boarding", and demonstrating Novell Solutions abilities to solve Customer's business problems.
- Provide Architectural leadership in centralizing the EAI architecture to Customer's centralized control to provide authentication and access to other agency applications.

The consultant will bring new technologies to the attention of State of Michigan Department of Information Technology, and assist in a consulting role for those products as directed by State of Michigan Department of Information Technology. The consultant will assist in finalizing the design, planning, and implementation phase of each agreed-upon project, as directed by State of Michigan Department of Information Technology management, and to assist with deployment, as requested. State of Michigan Department of Information Technology will appoint an individual in a management role to give direction to the Novell consultant.

Project Scope of Work

The scope of work will include continued efforts to ensure that Novell components for any State of Michigan Department of Information Technology project are implemented in keeping with the holistic design strategies set forth by State of Michigan Department of Information Technology and Novell. The Novell Consultant will provide continued design/planning recommendations for Novell's product line, with integration into third-party products, as specified and agreed upon by Novell and State of Michigan Department of Information Technology management.

The Consultant will focus on the following:

- Assist the State of Michigan Department of Information Technology with leveraging the investment in the EAI Portal Framework developed by Novell Consulting in conjunction with the Michigan State Police. This work will include articulating the technology to agencies across the state and assisting with outlining integration points and benefits for each agency. This includes, but is not limited to:

EAI Portal Framework

1. Design high level application migration strategy
2. Develop high level project structures, delineating technology focus areas that leverage DIT & Novell area of responsibilities, leveraging Novell resources only where necessary
3. Provide Architectural oversight between Novell Consulting teams and State of Michigan teams ensuring solutions co-developed adhere to best-practice standards.

- Assist the Department of Information Technology with the transition to move the Enterprise Application Infrastructure from the Michigan State Police environment into an Enterprise model supported by DIT.
- Maintain a detailed understanding of the State of Michigan Department of Information Technology infrastructure in order to identify and address issues related to the future integration of Novell technology within State of Michigan Department of Information Technology. These technologies will include, but not be limited to:
 1. eDirectory
 2. DirXML
 3. iChain
 4. Novell SecureLogin (Single Sign-on)
 5. Extend Director
 6. other Novell product offerings.
- Participate with State of Michigan Department of Information Technology in the testing and validation of new products within State of Michigan Department of Information Technology's integration facility.
- Act as a liaison to Novell's Engineering and Development teams as State of Michigan Department of Information Technology's advocate to address issues identified in the points outlined above.
- Provide key expertise in the integration of the above Novell products and solutions with other vendor's products, as directed (co-operatively) by State of Michigan Department of Information Technology and Novell management.
- From time to time, the consultant will be expected to make formal written recommendations in the form of research reports and/or white papers as a part of their strategic advisory role. Research and writing may be performed off site.

Project Deliverables

This consulting project includes:

- Off-site research and writing
- Written report based on engagement results
- On-site consultation with highly focused and trained Consultant(s)
- Consultant(s) performing in an advisory role providing management teams timely research on related technologies, while assisting in tactical and strategic planning.
- Consultant(s) will perform system level consultation in regard to the design, planning and piloting of advanced networking technologies.
- Executive Summary or Customer presentation based on engagement results will be provided, if necessary.
- Meetings and skills transfer sessions will be conducted at the Customer's facilities during regular M-F working hours.
- Assistance with the architectural design required to transition EAI from the MSP environment to an Enterprise model

The standard Project Milestones Exhibit is not applicable for this project, but the Consultant(s) shall furnish periodic status reports to both Customer and Novell describing activities, commitments, challenges, and accomplishments with Customer upon completion of the engagement to ensure all Deliverables, as specified in the Statement of Work, have been completed.

Estimated Schedule

Following is a required signing date and an estimated solution schedule. The Services and Costs described in this SOW are subject to change if this SOW is not executed by Customer and received by Novell on or before the required signing date below.

Required Signing Date By:	4/01/2004
Estimated Start Date:	4/23/2004
Estimated End Date:	9/30/2004

Costs

The fees associated with this solution are shown in the following table:

Type of Solution:	Up to 604 Hours	<input checked="" type="checkbox"/> Fixed Price
Novell Consultant	\$123,820.00	
Sub Total		\$123,820.00*
Travel and other Expense Estimate: <small>Expenses are estimates only. Customer will be invoiced for actual expenses incurred.</small>		\$2,860.00
Total Cost (including estimated expenses)		\$126,680.00

* The \$123,820 will be invoiced over the six-month term of this SOW at a rate of \$20,636.66/month or as actual hours are consumed per month, whichever is greater. Each such invoice shall be paid by Customer within thirty (30) days of the invoice date.

Project Assumptions

The Services described in this SOW constitute Novell's entire obligation. If Customer requests services in addition to the Services identified in this SOW, the performance of such additional services will require a modification to the solution Deliverables and any adjustment to the schedule and/or fees to be paid by Customer. The Novell project manager or lead consultant can track such requests via Change Order and arrange for such services to be rendered.

- Unless otherwise negotiated between the parties, Novell will generally require two to three weeks lead-time to start a solution. Requests for Novell resources and schedules are managed by the Project Manager and will be assigned based on mutual agreement, the skill set needed for the solution, and availability of consultants possessing the required skill set.
- Novell does not assume any liability, or make any representation or warranty, regarding or relating to third party products or Novell's compatibility or interoperability with any third party products
- Novell may subcontract with a qualified consulting partner to fulfill portions of this solution.
- Unless specifically enumerated in this SOW, all licenses for commercial software associated with this solution must be purchased separately.

I. Customer Responsibilities

Customer shall be solely responsible for the following:

- Appointing and making available a manager to work with Novell for the duration of the Services. This person must have authority to act on behalf of the Customer.
- Furnishing Novell consultants with information and data on Customer operations, activities, and existing systems, as reasonably required to achieve the solution objectives.
- Providing Novell consultants with necessary security access to networking systems and Customer facilities during the performance of Services.
- Providing adequate workspace and power sources at each facility where Services will be performed.
- Providing suitable server platforms, with properly installed and patched network operating system (NOS) software.
- Contracting for any necessary telecommunications facilities (data communications circuit, analog phone lines, wiring, etc.), and for the costs associated with such facilities.

II. Standard Working Hours

This SOW covers Services performed during standard business hours of Monday through Friday 8:00 a.m. to 5:00 p.m. Customer will not be assessed non-standard hours without the PRIOR written consent of Customer. Depending on the type of solution, any on-site Services performed after the standard business hours will be charged at one and a half (1 1/2) times the standard rate. Any work performed during weekends or holidays will be charged at two (2) times the standard rate. Weekend and holiday hours begin at 7:00 p.m. on the day before any weekend or holiday and end at 7:00 a.m. the day following the weekend or holiday.

Terms and Conditions

BY SIGNING BELOW, CUSTOMER ACKNOWLEDGES AND AGREES THAT THIS STATEMENT OF WORK SHALL BE GOVERNED BY THE TERMS AND CONDITIONS OF THE MLA BETWEEN NOVELL AND CUSTOMER, CONTRACT NUMBER 227749, AND ASSOCIATED PROGRAM GUIDE.

Purchase Orders

Customer agrees to provide Novell with a separate purchase order for the services described in this Statement of Work. The parties expressly acknowledge that any purchase order terms will not modify or supplement the SOW and governing contract terms.

IF CUSTOMER DOES NOT ISSUE PURCHASE ORDERS FOR SERVICES, PLEASE INITIAL HERE. THIS SOW MUST CONTAIN A BILLING CONTACT AND BILLING ADDRESS.

_____ Customer Initial

In the event the Customer is required by law to withhold taxes, the Customer agrees to furnish Novell all required receipts and documentation substantiating such payment.

EACH OF THE PARTIES agrees to the terms of this SOW and has caused this SOW to be executed by its duly authorized representative.

Signatures

NOVELL, INC.

CUSTOMER

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

End of Statement of Work



Acknowledgement of Completion and Acceptance

Customer Name:	Michigan State Police DIT	Date:	
Project Manager:	Brad Stoddard	Project #:	UNKNOW N228353

This acknowledges that Novell has completed all Services and Deliverables in accordance with this Statement of Work, and Customer has received and accepted the Services and Deliverables.

Deliverables	Consultant	Acknowledgement	
		Customer Initials	Date

Services and Project Deliverables are completed.
Final project report has been delivered. Outstanding issues/concerns have been addressed.

Remarks:

Customer Signature: _____

Upon project completion, fax this completed form to Novell Contract Management at (801) 437-2697 or (801) 861-2855.

Exhibit A

Master License Agreement

1. **INTRODUCTION.** Novell has created three volume licensing programs: the Volume License Agreement ("VLA"), the Corporate License Agreement ("CLA"), and the Master License Agreement ("MLA") programs. These programs allow Prime Customer and its Subsidiaries and Affiliates to obtain software licenses and services through volume purchasing, which includes discounts and other benefits. This Master License Agreement ("Agreement") applies to the MLA Program, which is referred to below as the "Program."
2. **DEFINITIONS.** Capitalized terms used in this Agreement are defined as follows:
 - 2.1 Affiliate means an entity that does not meet the definition of a Subsidiary, but has an organizational relationship with Prime Customer and is permitted by Novell to participate in the Program.
 - 2.2 Annual Period means the period beginning on the first day of the month following the Effective Date and ending one year later, and each consecutive one-year period thereafter during the Agreement Term.
 - 2.3 Customer means Prime Customer or each of its parent company, Subsidiaries, or Affiliates that participates in the Program.
 - 2.4 Documentation means any user documentation and manuals (including electronic versions) provided by Novell with a Software product.
 - 2.5 Effective Date means the date Your Application Form (the Novell form you complete, sign and submit to Novell to join the Program) is accepted by Novell and a contract number is issued to You.
 - 2.6 Internal Use means use (a) for Your internal business, provided that persons not employed by You do not have access to the Novell Software through input devices, and (b) by Your consultants and contractors only while performing work for Your internal business.
 - 2.7 Membership Level means the Program level, which is determined by Prime Customer's purchase history during the most recent Term and determines the discount range Novell will offer You for Software purchases (licenses and Maintenance) under this Agreement.
 - 2.8 Novell means the Novell entity that enters into this Agreement with You, as defined on Your Application Form.
 - 2.9 Price List means the product availability and price list for the Program as published by Novell from time to time. The then-current Price List can be downloaded at <http://www.novell.com/licensing/price.html> or obtained from your local Novell office.
 - 2.10 Prime Customer means the first Customer entity that enters into this Agreement with Novell.
 - 2.11 Software means the Novell commercial software licensed to You under this Agreement.
 - 2.12 Subsidiary means a company that is majority-owned by Prime Customer or Prime Customer's parent company, only so long as such control exists. For government customers, Subsidiary means any organization under direct and full control or supervision of Prime Customer.
 - 2.13 Term means two consecutive Annual Periods as described in section 8.1.
 - 2.14 Update means a fix or compilation of fixes released by Novell to correct operation defects (program bugs) in the Software.
 - 2.15 Upgrade means any new version of Novell Software which bears the same product name, including version changes evidenced by a number immediately to either the left or right of the decimal (e.g. for GroupWise 5.5 to 6.0). If a question arises as to whether a product offering is an Upgrade or a new product, Novell's opinion will prevail, provided that Novell treats the product offering the same for its end users generally.
 - 2.16 You (or Your) means, individually, each Customer that participates in the Program.
3. **LICENSING.** The license grants and restrictions for the Software are contained in the End User License Agreement ("EULA") accompanying the Software. A copy of the EULA is available from Novell upon request or can be obtained at <http://www.novell.com/licensing/eula/>. Subject to Your payment of the applicable fees and compliance with this Agreement and the applicable EULA, Your licenses to use the Software (but not to make copies from Master Software) will be perpetual, except as expressly provided otherwise (such as with beta products or products licensed on a subscription basis). To the extent of any conflict between the terms and conditions of this Agreement and the EULA, the terms and conditions of this Agreement will prevail. Ownership of Novell Software is held by Novell, Inc. and/or its licensors. If You obtain the Software in Europe, the Middle-East or Africa, any license under this Agreement or applicable EULA is granted to You by, or on behalf of, Novell Ireland Software Limited.
4. **VOLUME LICENSING PROGRAM.**
 - 4.1 Program Changes. The Program is described in Novell's Program Guide, which is available at <http://www.novell.com/licensing/> and forms an integral part of this Agreement. To the extent of any conflict between the terms and conditions of this Agreement and the Program Guide, the terms and conditions of this Agreement will prevail. To make the Program open for enhancements or changes, Novell may modify the Program, with any changes becoming effective 30 days after Novell notifies You in writing of the changes. Any changes will apply only to purchases made after the effective date of the changes. If any material change to the Program has an adverse effect on Your participation in it, You will be entitled to terminate Your Agreement by giving written notice to Novell within 30 days after receiving notice from Novell of such a change.
 - 4.2 Parents and Subsidiaries. Prime Customer's parent company and Subsidiaries may receive Program benefits and privileges through Prime Customer (i.e., without completing a separate Application Form) if Prime Customer orders on their behalf using its own contract number. In this situation, Prime Customer is responsible with such Subsidiaries and parent company for compliance with this Agreement and the Program. If a Subsidiary or parent company wishes to maintain a separate ordering location, it must submit its own Application Form.
 - 4.3 Affiliates. An Affiliate may participate in the Program only by submitting an Application Form to Novell. By submitting an Application Form, an Affiliate confirms that it has the consent of Prime Customer to join Prime Customer's Program membership and that it has an organizational relationship with Prime Customer.
 - 4.4 Unique Number and Acceptance. Upon entering the Program, each entity is assigned a unique contract number. The number assigned to You is personal and unique to You. You may not disclose or allow this number to be disclosed to third parties (except Your Novell-authorized Fulfillment Agent if You have appointed one) or allow it to be used by third parties. Novell's acceptance of Your participation in this Agreement is conditioned upon Novell assigning a unique number to You under this Agreement.
 - 4.5 Customer Acceptance. By completing and signing an Application Form for the Program and submitting it to Novell, You agree to be bound by the terms of this Agreement. If You submit Your Application Form electronically, You represent that the person signing the Application Form has authority to commit Customer to the Agreement provisions, and You agree that its electronic submission of the Application Form will have the same contractual effect as if You had signed a paper original by hand and submitted the paper original to Novell.

5. OPTIONAL SERVICES.

- 5.1 Technical Support Services.** The technical support services available from Novell are as described in the then-current Premium Service Guide applicable to Your region, published on <http://www.novell.com/services/premium/>, the terms of which are incorporated into this Agreement. Novell may revise the Premium Service Guide from time to time, provided that any such change that materially diminishes Your level of support will only apply to services purchased after the changes are published. Unless otherwise agreed in a separate agreement specifically covering Novell technical support services, those services will be governed by this Agreement's terms.
- 5.2 Other Services.** Your optional purchase and Novell's delivery of Services, such as consulting or education ("Services") under the Agreement, are subject to the following terms, unless otherwise agreed in a separate agreement specifically covering those Services.
- 5.2.1 Statement of Work.** The parties may choose to enter into a mutually agreeable Statement of Work ("SOW") that describes the Services and may cover items such as project scope, code, documentation, media and other objects ("Deliverables"). Any such SOW will be governed by this Agreement's terms.
- 5.2.2 Acceptance.** Upon completion and delivery of the Services, You will have 30 days to notify Novell if the Services fail to comply with the relevant SOW. If Novell is not notified of any problems within this time period, the Services shall be deemed accepted by You.
- 5.2.3 License.** Subject to payment of applicable fees for Services and Deliverables, Novell grants You a nonexclusive, nontransferable, worldwide, perpetual, royalty-free license to use, reproduce, display and distribute the Deliverables internally within Your organization. All proprietary rights notices must be faithfully reproduced and included on all copies. Except as expressly provided otherwise in this Section, Novell (and/or its licensors) retains on an exclusive basis all right, title and interest in and to any intellectual property developed, delivered and/or used by Novell in the performance of any Services.
- 5.2.4 Term.** If a SOW extends beyond the term of the Agreement, this section 5.2 and sections 9, 10.4, 10.6, and 11 of this Agreement will continue in effect solely with respect to such SOW.

6. ORDERING AND DELIVERABLES.

- 6.1 Orders.** Except as otherwise provided, all orders must be submitted to Novell. You must place an order for the appropriate number of Software licenses (and associated Maintenance – see Section 13 below) within thirty (30) days after installation. A valid order is a completed and signed Novell MLA Order Form coupled with Your matching purchase order that is either signed by Your authorized representative or generated by Your automated ordering system. Novell's acceptance of an order does not suggest Novell's agreement in the accuracy of the quantities or other information set forth in the order or otherwise waive Novell's rights to enforce its rights under this Agreement. Novell reserves the right to invoice You in the absence of receiving a purchase order for fees otherwise owing under this Agreement. Novell may delay accepting orders, suspend technical support and/or eliminate any volume or program discount if You fail to satisfy Your obligations under this Agreement.
- 6.2 Price and Product Changes.** Novell may revise the Price List at any time to (a) change the list prices for Software, Maintenance, and other services or deliverables, and (b) add or delete Software licenses or other services or deliverables available for purchase. During an MLA Term, however, Your list price for available licenses or Maintenance shall remain at the price published by Novell the first month of such term (or whenever the product first became published on the price list during the term). This limited price protection will expire at the end of each Term. Any decrease in list prices will apply to Your orders received after publication of a new Price List. Novell's obligation to protect Your list prices will not apply to third-party products (branded as such), special promotions, licenses and Maintenance invoiced in non-U.S. currency, and does not guarantee product availability for the full Term.
- 6.3 Master Software.** Novell will make available Master Software for the Software products ordered from the Price List. "Master Software" means master media available from Novell from which You may make copies to install the Novell Software up to the number of licenses purchased. Upon termination of this Agreement, Your right to use Master Software ends and You must follow the termination procedures as outlined in section 8.5.
- 6.4 Copying.** During the term of this Agreement, You may make copies of the Software from Master Software for Your Internal Use, up to the number of licenses You purchase. You must reproduce the Master Software's serial numbers and all proprietary rights notices in any copies You make.
- 6.5 Payment.** All fees will be due and payable in U.S. Dollars within 30 days from the date of invoice. However, for Customer orders requesting shipment and billing to a country whose currency is the Euro, the fees may be paid in Euros for the amount set forth on Novell's invoice, provided Customer's MLA Order Form and purchase order were issued in Euros.
- 6.5.1 Late Payments.** Payments made later than the due date will accrue interest from the date due to the date paid at the lesser of the rate of 12% per year or the highest rate allowed by applicable law. You agree to pay reasonable costs and attorney's fees if Novell is required to pursue collection against You.
- 6.6 Taxes.** The MLA fees are exclusive of all applicable taxes. You will pay and bear the liability for taxes associated with MLA deliverables, including sales, use, excise, and added value taxes but excluding: (a) taxes based upon Novell's net income, capital, or gross receipts, or (b) any withholding taxes imposed if such withholding tax is allowed as a credit against income taxes of Novell such as a withholding tax on a royalty payment made by You where such withholding is required by law. In the event You are required to withhold taxes, You will furnish Novell all required receipts and documentation substantiating such payment. If Novell is required by law to remit any tax or duty on Your behalf or for Your account upon delivery, You agree to reimburse Novell within 30 days after Novell notifies You in writing of such remittance. You will provide Novell with valid tax exemption certificates in advance of any remittance otherwise required to be made by Novell on Your behalf or for Your account where such certificates are applicable.

7. RECORD-KEEPING AND AUDIT.

- 7.1 Self-Audits.** As part of the Program and to help You manage Your licenses of Novell Software, You agree to perform a self-audit at the end of each Annual Period and at the end of Your participation in the Program. The self-audit must identify (a) all Software copying and use subject to a license, (b) the number of licenses of Software and Maintenance purchased, and (c) whether You have paid for all Software licenses copied or used and all Maintenance due. The report will be made in the on-line self-audit tool or on the self audit form made available by Novell and must be provided to Novell on the last day of each Annual Period and within 30 days after termination of this Agreement. If Your self-audit information shows that You have copied or are using Software for which You are not licensed, You must submit to Novell a purchase order for the licenses and Maintenance, and provide a copy of the purchase order to Novell at the same time You submit the self-audit information to Novell. It is Your responsibility to provide the report without notice from Novell. If You are late in submitting a self-audit, Novell may delay accepting orders, suspend technical support and/or eliminate any volume or program discount on future orders until it receives the late report.
- 7.2 Formal Audits.** During the term of this Agreement and for two years afterward, You must keep complete and accurate records of the information referred to above in Section 7.1. During this period, Novell will have the right, at its expense and upon no fewer than 3 working days prior written notice, to audit Your use of the Software and Your related records and Program payments. As part of such audit, Novell is entitled to obtain physical and electronic data concerning all Software usage at each of Your offices, regardless of the countries or regions in which Your offices are located. An audit may be conducted either by Novell or by its authorized representative, will not interfere unreasonably with Your business activities, and will be conducted no more often than once per calendar year, unless a previous audit disclosed a material discrepancy. If such audit shows that You have understated Your actual use of the Novell Software or have otherwise underpaid amounts owing, You must immediately purchase from Novell sufficient licenses and Maintenance to support the actual use and copying and pay all amounts owing. If such audit shows that You have understated Your use of the Novell Software or underpaid amounts owing by more than five percent, You will also pay the reasonable expenses of the audit. Novell will use the information received during the audit solely for the purposes of this Agreement and will otherwise maintain the confidentiality of such information.

7.2.1 You may request that the formal audit described above be carried out by an independent third party who must be an accountant or qualified auditor approved by Novell. Novell will not unreasonably withhold its approval. In such a case, the expense of the audit will be borne entirely by You. Subject to the provisions of this section 7.2, Novell will have the right to determine the audit scope and required audit testing and to review the audit work prior to finalization of the audit.

8. TERM AND TERMINATION.

8.1 Term. This Agreement will begin on the Effective Date and will remain in effect for a Term, subject to earlier termination as stated below. If You are participating under a Prime Customer's membership under the Program, Your term is the same as the Term of the membership of Prime Customer. At the end of each Term, this Agreement will renew for an additional Term of two Annual Periods, unless either party gives notice in writing at least 30 days prior to the end of the Term that it does not wish to renew, or unless this Agreement terminated earlier as provided below. Your Membership Level for any renewed Term will be as stated in the then-current Program Guide.

8.2 Termination for Cause. Either party may terminate this Agreement (and Your Program membership) upon written notice for the substantial breach by the other party of any material term, if such breach is not cured within 30 days following receipt of written notice of breach from the non-breaching party.

8.3 Effect of Termination on Other Memberships. Any termination by You or Novell of Your membership will not terminate any other memberships under the Program. Should a Prime Customer's Program membership become terminated, You agree that Novell may, upon 30 days written notice, designate another Customer (ordinarily the one with the highest purchase history) to become the new Prime Customer.

8.4 Effect of Termination. Upon termination of this Agreement for any reason, all rights to copy the Software and to use or acquire Master Software will immediately terminate, except as provided in section 13.1.2 below. However, unless Your membership is terminated by reason of Your violation of Novell's intellectual property rights, Your right to continue to use any perpetual licenses will not be affected, except as explained in Section 8.5 below.

8.5 Transition to Standard Licenses. Upon termination of this Agreement, Novell reserves the right to replace any licenses obtained under this Agreement with standard licenses (those available to Novell's non-contract customers). Following termination, You will only be licensed on the then-current, standard license model for that Software and for the number of licenses specified by Novell which provide You equivalent functionality. Such standard licenses will be governed by the then-current standard EULA for that product. You may continue to use Master Software but must (for NetWare and other products specified by Novell) install limited user license certificates to authorize Your continued use of such products and thereafter remove from Your systems any unlimited user licenses obtained under the Program. Your costs for this transition will be any reasonable media and shipping costs incurred by Novell.

9. INTELLECTUAL PROPERTY INDEMNIFICATION.

9.1 Novell will defend any claim brought against You to the extent it is based on an allegation that a Novell Software product or service deliverable infringes a third-party patent or copyright of the country in which You take delivery of the Software or deliverable. Novell will pay any damages, costs, and expenses finally awarded (or agreed to by settlement) for any such claim. You must promptly notify Novell of the claim, give Novell control of the defense and related settlement negotiations, and provide Novell with the reasonable assistance (for which Novell shall pay Your reasonable out-of-pocket costs) in defending the claim. If You desire separate legal representation in any such action, You will be responsible for the costs and fees of Your separate counsel.

9.2 If a Novell Software product or service Deliverable is held to infringe and its use is prohibited or if, in Novell's reasonable opinion, is likely to become the subject of an infringement claim, You will permit Novell, at Novell's option and expense, to (a) procure for you the right to continue to use the Software or deliverable, or (b) replace or modify it so that it becomes non-infringing and has the same or additional functionality and comparable or improved performance characteristics, or (c) upon Your return of the infringing Software or deliverable, refund to You the amount paid for the Software or deliverable.

9.3 Novell will not be liable for infringement to the extent the infringement results from (a) Novell's compliance with Your designs, specifications or instructions, (b) use of other than the Software's current release, if the infringement would have been avoided by use of the current release and if the infringement occurs more than 90 days after Novell notifies You that a previous release may infringe, (c) a modification of the Software or deliverable not requested or authorized in writing by Novell, (d) its use or combination with non-Novell software, equipment, or data, other than as specified in the Documentation or otherwise approved by Novell in writing, (e) the furnishing to You of any information, service, or technical support by a third party, (f) third party software provided under this Agreement, (g) open source technology incorporated in or provided with Novell Software, or (h) non-licensed use of the Software or deliverable.

9.4 Indemnification Limitation. To the extent allowed by applicable law, Novell's liability under this section 9 is limited to the greater of three (3) times the amount You pay for the license or service giving rise to the claim, or US\$200,000. This limit does not apply to expenses incurred by Novell in defending a claim referred to in section 9.1. This section 9 states the exclusive obligation of Novell to Customer regarding any claim of infringement or misappropriation of any third party's intellectual property rights.

10. LIMITED WARRANTY.

10.1 Software. Novell warrants that the Software will conform substantially to the specifications in the Documentation, provided: (a) the Software is not modified by anyone other than Novell, unless authorized by Novell in writing; (b) You notify Novell in writing of the nonconformity within 90 days after license purchase; and (c) the Software is installed in a compatible environment. In this section, "conform substantially" means that the Software conforms to the vast majority of all specifications in the Documentation. Novell's only obligation under this warranty, at its option, is to either cause the Software to conform substantially with its specifications or to refund to You the amount paid to license such Software upon Your return of all the Software. In the event of a refund, Your license to use the Software will automatically expire.

10.2 Media and Documentation. Novell warrants that if either the media or the Documentation provided by Novell is in a damaged or physically defective condition at the time of delivery to You and if it is returned to Novell (postage prepaid) within 90 days of delivery, Novell will provide You replacements at no charge.

10.3 Beta Software. Any beta Software is provided to You "AS IS" without any warranty. You acknowledge that such Software has not been fully tested and may contain errors and bugs. You must determine the suitability of the use of such Software for any purpose. Use of beta Software must be restricted to test environments only. Novell does not guarantee that a commercial version of the Software or that associated products will be released. Novell will have no obligation to provide support for beta Software.

10.4 Services. Novell warrants that any optional services purchased under section 5 of the Agreement will be supplied in a professional manner in accordance with generally accepted industry standards. As files may be altered or damaged in the course of Novell providing technical services, You agree to take appropriate measures to isolate and back up Your systems. This warranty will be effective for 90 days following acceptance of the services. Upon any breach of this warranty, Novell's obligation, at its option, is to either correct the services so that they comply with this warranty or refund the amount You paid to Novell for the services.

10.5 Non-Novell Products. Novell does not warrant non-Novell products. Any such products are provided on an "AS IS" basis. Any technical or warranty service for non-Novell products is provided by the product manufacturer in accordance with any applicable manufacturer's warranty.

10.6 DISCLAIMER OF WARRANTIES. EXCEPT AS EXPRESSLY SET FORTH IN THESE LIMITED WARRANTY SUBSECTIONS, NOVELL MAKES NO WARRANTY OR REPRESENTATIONS REGARDING ANY SOFTWARE OR SERVICES. TO THE EXTENT ALLOWED BY APPLICABLE

LAW, NOVELL DISCLAIMS AND EXCLUDES ALL OTHER EXPRESS, IMPLIED, AND STATUTORY WARRANTIES OR CONDITIONS, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, GOOD TITLE, AND NON-INFRINGEMENT. NOVELL DOES NOT WARRANT THAT THE SOFTWARE OR SERVICES WILL BE WITHOUT DEFECT OR ERROR, SATISFY YOUR REQUIREMENTS, OR PROVIDE UNINTERRUPTED USE OF THE SOFTWARE.

11. LIABILITY LIMITATIONS.

11.1 Indirect Damages. TO THE EXTENT ALLOWED BY APPLICABLE LAW, NOVELL WILL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES WHETHER UNDER CONTRACT OR IN TORT (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR INTERRUPTION OF BUSINESS, LOSS OF BUSINESS, LOSS OF PROFITS AND LOSS OF USE OF DATA) RELATED TO OR ARISING OUT OF THIS AGREEMENT OR THE PROVISION OR DEFAULT OF PROVISION OF ANY SERVICES BY NOVELL OR ANY OTHER DELIVERABLE, EVEN IF NOVELL HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

11.2 Direct Damages. Novell's liability for damages of any type arising out of or related to this Agreement shall be limited to the greater of two (2) times the actual amounts paid by You for the licenses or service/deliverable in question, or US\$100,000. This subsection 11.2 does not apply to Novell's liability for intellectual property indemnification described in section 9, nor does it apply to any damages for personal injury or tangible property caused by the negligence or willful default of Novell.

11.3 Customer Liability. TO THE EXTENT ALLOWED BY APPLICABLE LAW, YOU WILL NOT BE LIABLE TO NOVELL FOR INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL LOSS OR DAMAGE (INCLUDING LOSS OF PROFITS, BUSINESS, OR DATA), WHETHER IN AN ACTION ARISING OUT OF BREACH OF WARRANTY OR CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, EVEN IF YOU HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS SECTION DOES NOT APPLY TO VIOLATIONS BY YOU OF NOVELL'S INTELLECTUAL PROPERTY RIGHTS.

12. GENERAL.

12.1 Choice of Law. The Agreement will be governed by the substantive laws of the State of Utah without regard to its choice of law provisions, unless the laws of the state, province, or country of Your domicile require otherwise, in which case the laws so required will govern.

12.1.1 However, as to a Customer that has its principal residence in (a) a member state of the European Union or (b) a member state of the European Free Trade Association or (c) the Republic of South Africa or Poland, the governing law is that of the country of that Customer's principal residence. For a Customer with principal residence in any other country in Europe the applicable law will be the law of the Federal Republic of Germany. For a Customer with principal residence in the Middle-East or Africa (except South Africa), the applicable law will be the law of England. To the extent allowed by applicable law, the terms of the United Nations Convention on the International Sale of Goods will not apply, even where adopted as part of the domestic law of the country whose law governs the relationship.

12.1.2 Each party will, at its own expense, comply with any applicable law, statute, administrative order or regulation. An action at law under this Agreement may only be brought before a court of appropriate jurisdiction in the state whose law governs this Agreement under the terms of this Section 12.1. If a party initiates legal proceedings related to this Agreement, the prevailing party will be entitled to recover reasonable attorney's fees.

12.2 Assignment. Neither party may transfer or assign any right or obligation set forth in this Agreement without the prior written consent of the other. Neither party will unreasonably withhold or delay its consent to an assignment of the Agreement to the parent company or a subsidiary of the other party. Either party may, with written notice to the other party, assign the Agreement to the surviving entity in the case of a merger or acquisition.

12.3 Confidentiality Obligations. The receiving party of Confidential Information will exercise reasonable care to protect any Confidential Information from unauthorized disclosure or use. The receiving party may disclose Confidential Information only to its employees or agents with a need to know such information and will inform such employees and agents by way of policy or agreement that they are bound by confidentiality obligations. "Confidential Information" means the terms of this Agreement and any other information that (i) if disclosed in tangible form, is marked in writing as confidential, or (ii) if disclosed orally or visually, is designated orally at the time of disclosure as "confidential." Confidential Information will not include information (a) already in the receiving party's possession without obligation of confidence; or (b) independently developed by the receiving party; or (c) that becomes available to the general public without breach of this Agreement; or (d) rightfully received by the receiving party from a third party without obligation of confidence; or (e) released for disclosure by the disclosing party with its written consent; or (f) required to be disclosed by law, regulation, or court order. These confidentiality obligations will survive three (3) years after expiration or termination of this Agreement. Novell retains the right to use its knowledge and experience (including processes, ideas, and techniques) learned or developed in the course of providing any services to You.

12.4 Publicity. You agree that Novell may use Your participation in the Program as a commercial reference and for direct marketing purposes unless You otherwise inform Novell in writing.

12.5 Entire Agreement. This Agreement sets forth the entire agreement and understanding between the parties as to its subject matter. This Agreement supersedes all prior and contemporaneous agreements, proposals and statements on this subject matter. Except as otherwise stated herein, this Agreement may only be modified in a writing signed by authorized representatives of each party. Purchase order terms will not modify the Agreement unless the parties agree otherwise in writing.

12.6 Severability/Waiver. If a provision is invalid or unenforceable, the remaining provisions will remain in effect and the parties will amend the Agreement to reflect the original agreement to the maximum extent possible. No waiver of any contractual right will be effective unless in writing by an authorized representative of the waiving party. No waiver of a right arising from any breach or failure to perform will be deemed a waiver of any future right.

12.7 Notices. Notices to a party must be in writing and sent to the party's address on the Application Form or such other address as a party may provide in writing. This includes e-mail notices, which must be sent to the e-mail address given in the Application Form or a replacement address subsequently provided in writing. Notices may be delivered in a format reasonably chosen by the notifying party.

12.8 Force Majeure. Neither party will be liable for delay or failure to perform that arises out of causes beyond the reasonable control and without the fault or negligence of such party. A party will give prompt notice of any condition likely to cause any delay or default.

12.9 Survival. The provisions of this Agreement, which by their nature extend beyond termination of the Agreement, will survive termination of the Agreement.

12.10 Intellectual Property Rights/Remedies. Nothing in this Agreement waives or limits extra-contractual rights or remedies available to Novell to protect its rights in the Software, including those available under U.S. copyright law, international treaties, or national copyright and intellectual property laws of the countries in which You may use the Software.

12.11 Export Compliance. Any person or entity exporting or re-exporting Novell products directly or indirectly and via any means, including electronic transfer, is wholly responsible for doing so in accordance with the U.S. Export Administration Regulations and the laws of host countries. Novell assumes no responsibility or liability for Your failure to obtain any necessary export approvals. Approvals are dependent upon an item's technical characteristics, the destination, end-use and end-user, as well as other activities of the end user. Specifically, no Novell product may be exported to embargoed or otherwise restricted countries or end users. Please consult the Bureau of Industry and Security web page (www.bxa.doc.gov/) and other sources before exporting Novell products from the U.S. and familiarize yourself with the laws of destination countries before re-exporting Novell products. This provision shall survive the expiration or earlier termination of this Agreement. Please refer to the export matrix for Novell

products for more information on exporting Novell Software. You can download a copy from <http://www.novell.com/info/exports/> or obtain a copy from Your local Novell office.

13. MAINTENANCE SERVICES

13.1 A fundamental purpose of the Program is to provide Customer access to the most current Software revision and Premium (technical support) Services. Accordingly, the Maintenance services described in this section (the provision of Upgrades, Updates and Premium Services) are a mandatory part of all Software licenses granted and owned under the Program, and discounted Maintenance fees must be paid for such services on all Software licenses for as long as this Agreement remains in effect. Unless otherwise permitted by Novell, Customer is not permitted to cease paying Maintenance fees on any Novell product license, nor reduce the license count on which Maintenance must be paid. During the period for which Maintenance is paid for a license, Novell will provide You with the following benefits for the license.

13.1.1 Upgrades and Updates. If Novell commercially releases any Upgrades and/or Updates during the period covered by Your Maintenance, Novell will make such Upgrades and/or Updates available to You within a reasonable period of time after they become commercially available. To obtain Updates and Upgrades, You will need to subscribe, at no extra cost, to Novell's Upgrade notification service available at <http://www.novell.com/licensing/upgfulfill/>. You will be entitled to install and use such Upgrades and/or Updates up to the number of licenses for which You have purchased Maintenance. Nothing in this Agreement implies that Upgrades or Updates will be produced for any product or, if produced, when such Upgrades or Updates will be made commercially available.

13.1.2 Rights on Termination. Following termination of Your Agreement (for any reason except termination by Novell for Your breach under section 8.2 above), You may continue to install Upgrades and Updates of Software to which You were entitled but did not actually install during the period of Maintenance, up to the number of licenses for which You purchased Maintenance.

13.1.3 Upgrade Restrictions. Use of Upgrades is subject to the restrictions of the EULA provided with the Upgrade, which provides, among other things, that an Upgrade license replaces the license on which the Upgrade is based.

13.1.4 Premium Services. Novell will provide to Customers Premium Services as described in the then-current Premium Service Guide. The level of Premium Services to which Customers are entitled during an Annual Period under this Agreement is determined on the basis of the accumulated discounted Maintenance fees paid by all Customers for that Annual Period. You may upgrade that level of service to suit Your needs by purchasing optional technical support services as provided in section 5.1 above.

13.1.5 Customer Contacts. You must identify on the Application Form the contact information of each of Your Premium Services contacts.

13.2 Installed Base. Your installed base (Novell Software licenses available under the Program which You purchased outside the Program) must be transitioned into the Program (be licensed under this Agreement at the product's most current version and receive Maintenance) through the purchase of Maintenance for the licenses, unless expressly allowed otherwise by Novell. You will pay Maintenance fees for products so transitioned for as long as this Agreement remains in effect. To transition licenses that are not at the current product version, You must upgrade, at the discounted Upgrade price, the licenses to the current version before purchasing the required Maintenance.

13.3 Ordering Maintenance. The discounted Maintenance fee will be calculated on an annual basis and paid annually in advance, each Maintenance period expiring at the end of each Annual Period, no matter when during such Annual Period the Maintenance was purchased. The initial discounted Maintenance fee for a license will be calculated from the first day of the month following the earlier of: (a) submission of the order form, or (b) making of a Software copy, through the end of the then-current Annual Period. If Maintenance is not purchased upon renewal of this Agreement, Your discount will be reduced to the level offered by Novell to non-MLA customers.

13.4 Ongoing Maintenance. Once the initial Maintenance is purchased for a license, for each subsequent Annual Period during this Agreement, You must order Maintenance on all product licenses by the start of the new Annual Period and pay the applicable discounted Maintenance fee. If You have not submitted an order for the Maintenance within thirty (30) days after the beginning of a new Annual Period, this Agreement will serve as Your authorization to be invoiced for such Maintenance, and Novell may automatically invoice You for the discounted Maintenance fees due. Novell's acceptance of an order for Maintenance does not suggest Novell's agreement in the accuracy of the quantity of Maintenance set forth in the order or otherwise waive Novell's rights to enforce its rights under this Agreement.

13.5 Optional Full-Term Payment. You may elect to purchase Maintenance for a full Term, rather than on an annual basis as described above. In such event, Your discounted Maintenance fees will be calculated through the end of the current Term.

13.6 Refunds. If this Agreement is terminated because of Novell's breach under section 8.2 above, Novell will refund any discounted Maintenance fees paid for the time period past the first day of the month following the termination date., Maintenance fees are not refundable unless expressly stated otherwise.

14. DELIVERY

14.1 Delivery Terms.

14.1.1 *For delivery from the U.S. to destinations within the U.S.A.,* delivery terms are FOB Novell's Dock (INCOTERMS 2000). Novell will ship ground only and prepay freight from Novell's Dock to Customer's forwarder or named destination. All other freight arrangements will be billed to You.

14.1.2 *For delivery from the U.S. to destinations outside the U.S.A.,* delivery terms are DDU-POE (Delivery Duty Unpaid – Port of Entry) as defined in INCOTERMS 2000. Novell will select a carrier and will prepay shipping and handling charges. You will be responsible for all applicable import duties and value added tax, goods and services tax, or other similar taxes and fees.

14.1.3 *For delivery within Europe, the Middle-East and Africa ("EMEA"),* delivery terms will be Carriage Paid To (C.P.T.) Destination, as defined in INCOTERMS 2000. Novell will select a carrier, prepay the freight and invoice You for freight and any handling costs. Destinations for E.U. countries will be Your nominated delivery point; for non-E.U. countries, destination will be the point of import. The term C.P.T. does not include the payment by Novell of taxes or any applicable import duties.

14.2 Title & Risk of Loss. *For shipment within the United States,* title to any deliverables, exclusive of Novell's rights to intellectual property, and risk of loss will pass to You upon delivery to Your carrier. *For shipments from the U.S. to outside the U.S.,* title to and risk of loss will remain with Novell until the shipment arrives at the importing country's entry port (or at a bonded warehouse within Canada or Mexico if Customer so requests shipment). *For shipments within EMEA (i.e. originating in Ireland),* title to and risk of loss passes to You at the Irish shipment point. If You insure shipment, the insurance will protect Novell's interest until title passes as set forth above. Notwithstanding the above provisions, no title to Master Software is transferred to Customer.

14.3 Fulfillment Agent. At Novell's discretion, You may designate a Fulfillment Agent (up to a total of 5 for all Customers under the Agreement and no more than 1 per Customer ordering location that has signed an Application Form) to assist You in fulfillment, by executing the then-current Fulfillment Agent Addendum with Novell and a reseller accepted by Novell.