



STATE OF MICHIGAN
ENTERPRISE PROCUREMENT
 Department of Technology, Management, and Budget
 525 W. ALLEGAN ST., LANSING, MICHIGAN 48913
 P.O. BOX 30026 LANSING, MICHIGAN 48909

CONTRACT CHANGE NOTICE

Change Notice Number **6**

to

Contract Number **071B3200064**

CONTRACTOR	IBM Corporation
	196 Crescent Road
	East Lansing, MI 48824
	Megan O'Donnell
	215-664-1696
	omegan@us.ibm.com
	*****1985

STATE	Program Manager	Baker Linda	DTMB
		517-636-0435	
		bakerl@michigan.gov	
	Contract Administrator	Mike Breen	DTMB
		(517) 284-7002	
		breenm@michigan.gov	

CONTRACT SUMMARY				
MOBILE DEVICE MANAGEMENT (MDM) SOLUTION				
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW	
December 26, 2012	February 25, 2016	5 - 1 Year	February 25, 2019	
PAYMENT TERMS		DELIVERY TIMEFRAME		
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING	
<input type="checkbox"/> P-Card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other		<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
MINIMUM DELIVERY REQUIREMENTS				
DESCRIPTION OF CHANGE NOTICE				
OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input checked="" type="checkbox"/>	12 months	<input type="checkbox"/>		February 25, 2019
CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE		
\$1,673,040.00	\$0.00	\$1,673,040.00		
DESCRIPTION				
Effective with mutual signature the contract is amended to exercise an option to 2/25/2019. all other terms and condtions remain the same.				



STATE OF MICHIGAN ENTERPRISE PROCUREMENT

Department of Technology, Management, and Budget
525 W. ALLEGAN ST., LANSING, MICHIGAN 48913
P.O. BOX 30026 LANSING, MICHIGAN 48909

CONTRACT CHANGE NOTICE

Change Notice Number **005**
to
Contract Number **071B3200064**

CONTRACTOR	IBM Corporation
	196 Crescent Road
	East Lansing, MI 48824
	Megan O'Donnell
	215-664-1696
	omeagan@us.ibm.com
	*****1985

STATE	Program Manager	Baker Linda	DTMB
		517-636-0435	
		bakerl@michigan.gov	
	Contract Administrator	Mike Breen	DTMB
		(517) 284-7002	
		breenm@michigan.gov	

CONTRACT SUMMARY			
DESCRIPTION: Mobile Device Management (MDM) Solution			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
December 26, 2012	February 25, 2016	5 - 1 Year	February 25, 2017
PAYMENT TERMS		DELIVERY TIMEFRAME	
ALTERNATE PAYMENT OPTIONS		EXTENDED PURCHASING	
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other		<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
MINIMUM DELIVERY REQUIREMENTS			
DESCRIPTION OF CHANGE NOTICE			
OPTION	LENGTH OF OPTION	EXTENSION	REvised EXP. DATE
<input checked="" type="checkbox"/>	12 months	<input type="checkbox"/>	February 25, 2018
CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE	
\$1,673,040.00	\$ 0.00	\$1,673,040.00	

DESCRIPTION: Exercise one year option on the contract to 2/25/2018 with the removal of the State Administrative fee with all other terms and conditions remaining the same.



STATE OF MICHIGAN ENTERPRISE PROCUREMENT

Department of Technology, Management, and Budget
525 W. ALLEGAN ST., LANSING, MICHIGAN 48913
P.O. BOX 30026 LANSING, MICHIGAN 48909

CONTRACT CHANGE NOTICE

Change Notice Number 4
to
Contract Number 071B3200064

CURRENT CONTRACTOR	Fiberlink
	1787 Sentry Park Way West Building 18
	Blue Bell, PA 19422
	Megan O'Donnell
	215-664-1696
	omeagan@us.ibm.com
	*****3924

NEW CONTRACTOR	IBM Corporation
	196 Crescent Road
	East Lansing, MI 48824
	Megan O'Donnell
	215-664-1696
	omeagan@us.ibm.com
	*****1985

STATE CONTACTS			
Program Manager	Linda Baker	DTMB	Contract Administrator
	517-636-0435		
	bakerl@michigan.gov		
	Mike Breen	DTMB	
	(517) 284-7002		
	breenm@michigan.gov		

CONTRACT SUMMARY			
DESCRIPTION: Mobile Device Management (MDM) Solution			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
December 26, 2012	February 25, 2016	5 - 1 Year	February 25, 2017
PAYMENT TERMS		DELIVERY TIMEFRAME	
N/A		N/A	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS			
N/A			

DESCRIPTION OF CHANGE NOTICE				
OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input type="checkbox"/>		<input type="checkbox"/>		
CURRENT VALUE	VALUE OF CHANGE NOTICE		ESTIMATED AGGREGATE CONTRACT VALUE	
\$1,673,040.00	0		\$1,673,040.00	

DESCRIPTION: Effective May 9, 2016, this contract is assigned from Fiberlink to IBM Corporation as a result of IBM's acquisition of Fiberlink, including support terms. All other terms, conditions, specifications, and pricing not modified herein remain the same. Per Fiberlink, IBM Corporation, Agency, and DTMB Procurement approval.

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

CHANGE NOTICE NO. 3
 to
CONTRACT NO. 071B3200064
 between
THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF CONTRACTOR	PRIMARY CONTACT	EMAIL
Fiberlink Communications 1787 Sentry Park Way West Building 18, Suite 200 Blue Bell, PA 19422	Megan O'Donnell	omeagan@us.ibm.com
	PHONE	CONTRACTOR'S TAX ID NO. (LAST FOUR DIGITS ONLY)
	(215) 664-1696	3924

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
PROGRAM MANAGER / CCI	DTMB	Linda Baker	517-636-0435	bakerl@michigan.gov
CONTRACT ADMINISTRATOR	DTMB	Mike Breen	517-284-7002	breenm@michigan.gov

CONTRACT SUMMARY			
DESCRIPTION: Mobile Device Management (MDM) Solutions			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
December 26, 2012	February 25, 2016	5, one year	February 25, 2016
PAYMENT TERMS		DELIVERY TIMEFRAME	
N/A		N/A	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS			
N/A			

DESCRIPTION OF CHANGE NOTICE				
EXERCISE OPTION?	LENGTH OF OPTION	EXERCISE EXTENSION?	LENGTH OF EXTENSION	REVISED EXP. DATE
X	1 year	<input type="checkbox"/>		February 25, 2017
CURRENT VALUE		VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE	
\$1,223,040.00		\$450,000.00	\$1,673,040.00	

DESCRIPTION: Effective with mutual contract authorization, this contract is amended exercising contract option year February 25, 2016 to February 25, 2017 and adding \$450,000.00 for current license costs and the acquisition of new licenses as additional mobile units are added. All other terms, conditions, specifications and pricing remain the same, per contractor and agency agreement, DTMB Procurement approval and State Administrative Board approval on November 17, 2015.

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

CHANGE NOTICE NO. 2
 to
CONTRACT NO. 071B3200064
 between
THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF CONTRACTOR	PRIMARY CONTACT	EMAIL
Fiberlink Communications 1787 Sentry Park Way West Building 18, Suite 200 Blue Bell, PA 19422	Megan O'Donnell	omeagan@us.ibm.com
	PHONE	CONTRACTOR'S TAX ID NO. (LAST FOUR DIGITS ONLY)
	(215) 664-1696	3924

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
PROGRAM MANAGER / CCI	DTMB	Linda Baker	517-636-0435	bakerl@michigan.gov
CONTRACT ADMINISTRATOR	DTMB	Mike Breen	517-284-7002	breenm@michigan.gov

CONTRACT SUMMARY			
DESCRIPTION: Mobile Device Management (MDM) Solutions			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
December 26, 2012	February 25, 2016	5, one year	February 25, 2016
PAYMENT TERMS		DELIVERY TIMEFRAME	
N/A		N/A	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS			
N/A			

DESCRIPTION OF CHANGE NOTICE				
EXERCISE OPTION?	LENGTH OF OPTION	EXERCISE EXTENSION?	LENGTH OF EXTENSION	REVISED EXP. DATE
<input type="checkbox"/>		<input type="checkbox"/>		
CURRENT VALUE		VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE	
\$1,223,040.00		\$0.00	\$1,223,040.00	

DESCRIPTION: Effective August 7, 2015, this contract is hereby amended to include previous identified option of MaaS360 bundled services protecting devices against mobile malware. This is per request by Design and Delivery – Smart Device Support, approval of DTMB Procurement and the vendor. All other terms, conditions, pricing and specifications remain the same.

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

July 15, 2013

CHANGE NOTICE NO. 1
 to
CONTRACT NO. 071B3200064
 between
THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Fiberlink Communications 1787 Sentry Park Way West Building 18, Suite 200 Blue Bell, PA 19422	Jim Jakary	jjakary@fiberlink.com
	TELEPHONE	CONTRACTOR #, MAIL CODE
	(734) 369-4578	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR	DTMB	Linda Baker	(517) 636-0435	BakerL@michigan.gov
BUYER	DTMB	Steve Motz	(517) 241-3215	MotzS@michigan.gov

CONTRACT SUMMARY:			
DESCRIPTION: Mobile Device Management (MDM) Solution			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
12/26/2012	2/25/2016	5 One-Year	2/25/2016
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
N/A	N/A	N/A	N/A
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MiDEAL PARTICIPANTS
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS:			
N/A			

DESCRIPTION OF CHANGE NOTICE:				
EXTEND CONTRACT EXPIRATION DATE	EXERCISE CONTRACT OPTION YEAR(S)	EXTENSION BEYOND CONTRACT OPTION YEARS	LENGTH OF OPTION/EXTENSION	EXPIRATION DATE AFTER CHANGE
<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	<input type="checkbox"/>	<input type="checkbox"/>	N/A	2/25/2016
VALUE/COST OF CHANGE NOTICE:		ESTIMATED REVISED AGGREGATE CONTRACT VALUE:		
\$0.00		\$1,223,040.00		
Effective immediately this contract is amended to include the optional MaaS360 bundle services described in the attached Statement of Work.				
All other terms, conditions, specifications and pricing remain unchanged.				

The following additional MaaS360 bundle options are added to Attachment 1 to the Contract to:

- provide option to assist Michigan's BYOD program and
- extend to other entities) authorized to purchase the Licensed Services under the Contract.

MaaS360 Secure Productivity Suite Bundle*: \$3.50 per Device Per Month in addition to existing MaaS360 Mobile Device and Application Management cost.

1. Includes MaaS360 Secure Mail,
2. MaaS360 Secure Document Sharing,
3. MaaS360 Secure Browser,
4. MaaS360 Mobile Application Security and
5. MaaS360 Mobile Enterprise Gateway for Secure Browser.

* Requires MaaS360 Mobile Device Management and MaaS360 Mobile Application Management.

Descriptions of the individual components are provided below:

(Note: These are not being offered individually at this time, just part of the bundle)

1. MaaS360 Secure Mail

MaaS360 Secure Mail provides a separate and secure office productivity application for users to access and manage email, calendar, and contacts. Provides Licensee the ability to control emails and attachments to prevent data leakage by restricting the ability to forward or move content to other applications, enforcing authentication, restricting copy/cut/paste, and locking down email attachments for view only. Supports Android 4.0 and iOS 5.0 or above.

2. MaaS360 Secure Document Sharing

MaaS360 Secure Document Sharing allows the Licensee to add documents and distribute them to supported devices managed by MaaS360 MDM. Includes MaaS360 Doc Catalog, an on-device application that provides users secure access to view shared documents. Each document can have its own security policies such as require authentication, restrict copy/paste functionality, and block from being opened or shared in other applications. Licensee will be responsible for all document content and formatting. Licensee shall be allotted document distribution rights to a certain number of devices in accordance with the licensed quantity. Supports iOS and Android devices.

3. MaaS360 Secure Browser

MaaS360 Secure Browser is a full featured web browser for iOS and Android devices. Licensee can define URL filtering and security policies, ensuring that users only access approved web content. Includes ability to disable native and 3rd party web browsers either through application policy or blacklisting when combined with MaaS360 MDM. Supports Android 4.0 and iOS 5.0 or above.

4. MaaS360 Mobile Application Security

MaaS360 Mobile Application Security provides additional data protection for enterprise applications. Licensee can upload applications (.ipa), provisioning profiles, and signing certificates to MaaS360 and add security features such as user authentication, restrict copy/cut/paste, restrict back-ups, and enforce device compliance. Distribution to supported devices is provided using MaaS360 Mobile Application Management. Use of MaaS360 Mobile Application Security requires purchase of MaaS360 Mobile Application Management. Supports iOS 5 or above

5. MaaS360 Mobile Enterprise Gateway for Secure Browser

MaaS360 Mobile Enterprise Gateway for Secure Browser allows supported devices to access approved internal web sites without requiring a full device level VPN connection. Use of MaaS360 Mobile Enterprise Gateway for Secure Browser requires purchase of MaaS360 Secure Browser. Supports Android 4.0 and iOS 5.0 or above.

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

December 28, 2012

CONTRACT NO. 071B3200064
 between
THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Fiberlink Communications 1787 Sentry Park Way West Building 18, Suite 200 Blue Bell, PA 19422	Jim Jakary	jjakary@fiberlink.com
	TELEPHONE	CONTRACTOR #, MAIL CODE
	734-667-2979	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR:	DTMB	Linda Baker	(517) 636-0435	BakerL@michigan.gov
BUYER:	DTMB	Steve Motz	(517) 241-3215	motzs@michigan.gov

CONTRACT SUMMARY:			
DESCRIPTION:			
Mobile Device Management (MDM) Solution			
INITIAL TERM	EFFECTIVE DATE	INITIAL EXPIRATION DATE	AVAILABLE OPTIONS
38 Months	12/26/2012	2/25/2016	Five One-Year
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
Net 45	Shipment	N/A	N/A
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MiDEAL PARTICIPANTS
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
MINIMUM DELIVERY REQUIREMENTS:			
N/A			
MISCELLANEOUS INFORMATION:			
N/A			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION:			\$1,223,040.00

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

CONTRACT NO. 071B3200064
 between
THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Fiberlink Communications 1787 Sentry Park Way West Building 18, Suite 200 Blue Bell, PA 19422	Jim Jakary	jjakary@fiberlink.com
	TELEPHONE	CONTRACTOR #, MAIL CODE
	734-667-2979	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR:	DTMB	Linda Baker	(517) 636-0435	BakerL@michigan.gov
BUYER:	DTMB	Steve Motz	(517) 241-3215	motzs@michigan.gov

CONTRACT SUMMARY:			
DESCRIPTION:			
Mobile Device Management (MDM) Solution			
INITIAL TERM	EFFECTIVE DATE	INITIAL EXPIRATION DATE	AVAILABLE OPTIONS
38 Months	12/26/2012	2/25/2016	Five One-Year
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
Net 45	Shipment	N/A	N/A
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MiDEAL PARTICIPANTS
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
MINIMUM DELIVERY REQUIREMENTS:			
N/A			
MISCELLANEOUS INFORMATION:			
N/A			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION:			\$1,223,040.00

THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the solicitation #071I3200012. Orders for delivery will be issued directly by the Department of Technology, Management & Budget through the issuance of a Purchase Order Form.

Notice of Contract #:071B3200064

FOR THE CONTRACTOR:

Fiberlink Communications

Firm Name

Authorized Agent Signature

Authorized Agent (Print or Type)

Date

FOR THE STATE:

Signature

Jeff Brownlee, Chief Procurement Officer

Name/Title

DTMB, Procurement

Enter Name of Agency

Date



STATE OF MICHIGAN
Department of Technology, Management and Budget
Procurement

Contract No. [071B3200064](#)
Mobile Device Management

Buyer Name: [Steve Motz](#)
Telephone Number: [517-241-3215](#)
E-Mail Address: motzs@michigan.gov



Table of Contents

Article 1 – Statement of Work (SOW)	9
1.000 Project Identification	9
1.001 Project Request	9
1.002 Background	9
1.100 Scope of Work and Deliverables	9
1.101 In Scope	9
1.102 Out Of Scope	9
1.103 Environment	9
1.200 Roles and Responsibilities	18
1.201 Contractor Staff, Roles, And Responsibilities	18
1.202 State Staff, Roles, And Responsibilities	19
1.300 Project Plan	19
1.301 Project Plan Management	19
1.302 RESERVED	20
1.400 Project Management	20
1.401 RESERVED	20
1.402 RESERVED	20
1.403 Change Management	20
1.500 Acceptance	21
1.501 Criteria	21
1.600 Compensation and Payment	21
1.601 Compensation And Payment	21
1.602 RESERVED - Holdback	22
Article 2, Terms and Conditions	23
2.000 Contract Structure and Term	23
2.001 Contract Term	23
2.002 Options to Renew	23
2.003 Legal Effect	23
2.004 Attachments & Exhibits	23
2.005 Ordering	23
2.006 Order of Precedence	23
2.007 Headings	23
2.008 Form, Function & Utility	23
2.009 Reformation and Severability	24
2.010 Consents and Approvals	24
2.011 No Waiver of Default	24
2.012 Survival	24
2.020 Contract Administration	24
2.021 Issuing Office	24
2.022 Contract Compliance Inspector	24
2.023 Project Manager	25
2.024 Change Requests	25
2.025 Notices	25
2.026 Binding Commitments	25
2.027 Relationship of the Parties	26
2.028 Covenant of Good Faith	26
2.029 Assignments	26
2.030 General Provisions	26
2.031 Media Releases	26
2.032 Contract Distribution	26
2.033 RESERVED - Permits	26
2.034 Website Incorporation	26
2.035 reserved - Future Bidding Preclusion	27
2.036 Freedom of Information	27
2.037 reserved - Disaster Recovery	27
2.040 Financial Provisions	27



2.041	Fixed Prices for Services/Deliverables	27
2.042	reserved - Adjustments for Reductions in Scope of Services/Deliverables	27
2.043	Services/Deliverables Covered	27
2.044	Invoicing and Payment – In General	27
2.045	Pro-ration	28
2.046	Antitrust Assignment	28
2.047	Final Payment	28
2.048	Electronic Payment Requirement	28
2.050	Taxes	29
2.051	Employment Taxes	29
2.052	Sales and Use Taxes	29
2.060	Contract Management	29
2.061	Contractor Personnel Qualifications	29
2.062	Contractor Key Personnel	29
2.063	Re-assignment of Personnel at the State's Request	30
2.064	Contractor Personnel Location	30
2.065	Contractor Identification	30
2.066	Cooperation with Third Parties	30
2.067	Contract Management Responsibilities	30
2.068	Contractor Return of State Equipment/Resources	30
2.070	Subcontracting by Contractor	30
2.071	Contractor full Responsibility	31
2.072	State Consent to delegation	31
2.073	Subcontractor bound to Contract	31
2.074	Flow Down	31
2.075	Competitive Selection	31
2.080	State Responsibilities	31
2.081	RESERVED - Equipment	31
2.082	Facilities	31
2.090	Security	32
2.091	Background Checks	32
2.092	Security Breach Notification	32
2.093	PCI DATA Security Standard	32
2.100	Confidentiality	33
2.101	Confidentiality	33
2.102	Protection and Destruction of Confidential Information	33
2.103	Exclusions	33
2.104	No Implied Rights	33
2.105	Respective Obligations	33
2.110	Records and Inspections	34
2.111	Inspection of Work Performed	34
2.112	Examination of Records	34
2.113	Retention of Records	34
2.114	Audit Resolution	34
2.115	Errors	34
2.120	Warranties	35
2.121	Warranties and Representations	35
2.122	RESERVED - Warranty of Merchantability	35
2.123	RESERVED - Warranty of Fitness for a Particular Purpose	36
2.124	Warranty of Title	36
2.125	RESERVED - Equipment Warranty	36
2.126	RESERVED - Equipment to be New	36
2.127	RESERVED - Prohibited Products	36
2.128	Consequences for Breach	36
2.130	Insurance	36
2.131	Liability Insurance	36
2.132	Subcontractor Insurance Coverage	37
2.133	Certificates of Insurance and Other Requirements	38
2.140	Indemnification	38
2.141	General Indemnification	38
2.142	Code Indemnification	38



2.143	Employee Indemnification	38
2.144	Patent/Copyright Infringement Indemnification	38
2.145	Continuation of Indemnification Obligations	39
2.146	Indemnification Procedures	39
2.150	Termination/Cancellation	40
2.151	Notice and Right to Cure	40
2.152	Termination for Cause	40
2.153	Termination for Convenience	40
2.154	Termination for Non-Appropriation	41
2.155	Termination for Criminal Conviction	41
2.156	Termination for Approvals Rescinded	41
2.157	Rights and Obligations upon Termination	41
2.158	Reservation of Rights	41
2.160	Termination by Contractor	41
2.161	Termination by Contractor	41
2.170	Transition Responsibilities	42
2.171	Contractor Transition Responsibilities	42
2.172	RESERVED - Contractor Personnel Transition	42
2.173	RESERVED - Contractor Information Transition	42
2.174	RESERVED - Contractor Software Transition	42
2.175	Transition Payments	42
2.176	State Transition Responsibilities	42
2.180	Stop Work	42
2.190	Dispute Resolution	43
2.191	In General	43
2.192	Informal Dispute Resolution	43
2.193	Injunctive Relief	43
2.194	Continued Performance	44
2.200	Federal and State Contract Requirements	44
2.201	Nondiscrimination	44
2.202	Unfair Labor Practices	44
2.203	Workplace Safety and Discriminatory Harassment	44
2.204	reserved - Prevailing Wage	44
2.210	Governing Law	44
2.211	Governing Law	44
2.212	Compliance with Laws	44
2.213	Jurisdiction	44
2.220	Limitation of Liability	45
2.221	Limitation of Liability	45
2.230	Disclosure Responsibilities	45
2.231	Disclosure of Litigation	45
2.232	RESERVED - Call Center Disclosure	46
2.233	Bankruptcy	46
2.240	Performance	46
2.241	Time of Performance	46
2.242	reserved - Service Level Agreement (SLA)	46
2.243	RESERVED - Liquidated Damages	46
2.244	Excusable Failure	46
2.250	Approval of Deliverables	47
2.251	Delivery of Deliverables	47
2.252	reserved - Contractor System Testing	47
2.253	RESERVED - Approval of Deliverables, In General	47
2.254	reserved - Process for Approval of Written Deliverables	47
2.255	reserved - Process for Approval of MDM Deliverables	47
2.256	Final Acceptance	47
2.260	Ownership	47
2.261	reserved - Ownership of Work Product by State	47
2.262	reserved - Vesting of Rights	47
2.263	Rights in Data	47
2.264	Ownership of Materials	48



2.270	State Standards	48
2.271	Existing Technology Standards	48
2.272	Acceptable Use Policy	48
2.273	reserved - Systems Changes	48
2.280	Extended Purchasing	49
2.281	MiDEAL (Michigan Delivery Extended Agreements Locally)	49
2.282	RESERVED – State Employee Purchases	49
2.283	COOPERATIVE PURCHASING	49
2.290	Environmental Provision	49
2.291	Environmental Provision	49
2.300	Deliverables	51
2.301	Software AS A SERVICE	51
2.302	RESERVED - Hardware	51
2.310	Software Warranties	51
2.311	Performance Warranty	51
2.312	No Surreptitious Code Warranty	51
2.313	Calendar Warranty	52
2.314	Third-party Software Warranty	52
2.315	reserved - Physical Media Warranty	52
2.320	Software Licensing	52
2.321	Software and service license	52
2.330	RESERVED - Source Code Escrow	53
	Glossary	54
	Attachment 1 – MDM Services Description	56
	Attachment 2 – Order Form	60



Article 1 – Statement of Work (SOW)

1.000 Project Identification

1.001 PROJECT REQUEST

The State of Michigan (State), through the Michigan Department of Technology, Management & Budget (DTMB) has issued this Contract for a Software as a Service (SAAS) Mobile Device Management (MDM) solution.

1.002 BACKGROUND

The State does not currently have an existing mobile device management solution. Due to the proliferation of mobile devices in the State's environment (Currently there are over 5,000 Tablets & Smartphones in use) the State needs a tool to allow them to manage and support these devices. This number is expected to grow in the future, however there is no guarantee of future volumes.

The Office Automation Services is responsible for supporting these devices, but has no automated solution. Support requires manual intervention on all service calls and installations of mobile applications.

1.100 Scope of Work and Deliverables

1.101 IN SCOPE

This project consists of the following scope:

- A. MDM Solution Requirements
- B. Configuration of the MDM Solution
- C. Training
- D. Operation Services / Maintenance and Support

A more detailed description of the software, services (work) and deliverables sought for this project is provided in Article 1, Section 1.104, Work and Deliverables.

1.102 OUT OF SCOPE

- Support and management of the devices will be provided by the State.

1.103 ENVIRONMENT

All services and products provided must comply with all applicable State-provided IT policies procedures and standards outlined in Article 2 of the Contract.

1.104 Work And Deliverable

I. Services and Deliverables To Be Provided

The system will be available for use by the State **within sixty days** of Contract Start Date. These deliverables are not all inclusive. Contractors may propose other deliverables.

Installation. The State is responsible for installing any components required for the Services on its computers, laptops or other devices in accordance with this Contract and for obtaining and maintaining all computer hardware, software and communications equipment and services needed to access the Services.

State Responsibilities. The State will choose or will be given all applicable passwords to use in connection with the Services. The State is entirely responsible for maintaining the confidentiality of such passwords and of its accounts (including, if applicable, the passwords and accounts of each of the Users accessing the Services



by means of an account established by State). Furthermore, the State is entirely responsible for any and all activities that occur under any account established. The State shall notify Contractor promptly of any unauthorized use of any such licenses or of any other breach of security occurring as a result of any activities of any User or of any vulnerabilities that the State believes are contained in or caused by the Services such that Contractor may take or recommend appropriate remedial measures. Contractor shall have no liability for any loss or damage arising from State's failure to comply with the provisions of this Section.

A. MDM Solution Requirements

The Contractor shall perform the following activities:

1. Verification and validation (not identification) of requirements found in 1.104.II – MDM Solution Requirements.

Deliverable(s) for Business Requirements

- Updated Documentation, as required or "As Is" Acceptance
 - Updated Requirements Specification
 - Updated Requirements Traceability Matrix

B. Configuration of the MDM Solution

The Contractor shall perform the following activities:

1. Configuration of their MDM Solution to meet the requirements found in 1.104.II – MDM Solution Requirements.
2. The Contractor will work with the State of Michigan to create the initial MaaS360 portal environment, enroll first devices, understand key platform elements and processes. Live WebEx sessions with Contractor Customer Solution Engineers (as well as recorded webinars and other resources) will be made available to State of Michigan to share best practices, answer questions, provide expertise and help ensure success with MaaS360 deployment.

The Fiberlink Communications Corporation Product and Service Descriptions are provided in **Attachment 1**.

C. Training

The Contractor will provide between 1-2 days of training. Recurring webinars "getting the most out of your MaaS360 portal", along with State of Michigan specific WebEx sessions with subject matter experts will help ensure successful deployment of the MaaS360 solution.

The Contractor will provide access to Customer Success Engineer to walk State of Michigan administrators through setup, options, policies, reports, and best practices to use the MaaS360 platform for comprehensive and successful Mobile Device Management. Training shall include the following if relevant:

- *Basic Administrator Training including but not limited to:*
 - *Navigation,*
 - *Location Group,*
 - *User Management,*
 - *Enrollment, Dashboard,*
 - *Profile Management,*
 - *Applications,*
 - *Self Service,*
 - *Reports*
- *Advanced Administrator Training including but not limited to:*
 - *Advanced User Management,*
 - *Advanced Enrollment,*
 - *Device Management,*
 - *Compliance,*
 - *Secure Email Gateway,*
 - *Secure Content Management,*



- VPP,
- Secure Browser.
- Technical Training including but not limited to:
 - Installation Prerequisites and procedures,
 - Virtualized and non-virtualized configurations,
 - High availability and DR Solutions,
 - API Integration,
 - SDK usage,
 - Environment Monitoring and Maintenance,
 - Troubleshooting.

Training will occur remotely through webinars.

In addition to any training materials utilized in the training sessions, the Contractor shall also provide User and Technical Manuals in an electronic format.

D. Operation Services / Maintenance and Support

See Section 2.041 for description of Support and Maintenance. In the event of any conflicting language, Section 2.041 shall prevail.

The Operation Services shall include all ongoing software and hardware hosting as well as any maintenance, support and upgrades that will be ongoing through the life of this Contract.

For the first year and all subsequent Contract years, the following services shall be provided for the current version and one previous version of any Software provided with the deliverables, commencing upon installation of the deliverables or delivery of the Software:

1. **Error Correction.** Upon notice by State of a problem with the Software (which problem can be verified), reasonable efforts to correct or provide a working solution for the problem.
2. **Material Defects.** The State will be notified of any material errors or defects in the deliverables known, or made known to Contractor from any source during the Contract term that could cause the production of inaccurate, or otherwise materially incorrect, results and shall initiate actions as may be commercially necessary or proper to effect corrections of any such errors or defects.
3. **Updates.** All new releases and bug fixes (collectively referred to as “Changes”) for any software deliverable developed or published by Contractor and made generally available to its other customers at no additional charge will be provided to the State at no additional charge.

The Contractor shall provide the following services/deliverables:

1. Hosting
2. Systems management
3. Disaster recovery
4. Security administration services
5. Storage services
6. Maintenance of hardware
7. Maintenance of software
 - The software maintenance program includes all future software updates and system enhancements applicable to system modules licensed without further charge.
8. Support
 - Help Desk
 - Technical



II. MDM Solution Requirements

#	Requirement
1	Section 1. -- Platform Architecture
1.A	The solution must be a SaaS (Software as a Service) Solution.
1.B	The solution must provide a Web-based Administrative Console.
1.C	The solution should have a Multi-tenant Architecture with Delegated Administration and Automatically release license when the device is removed from MDM.
1.D	The solution should allow Role Based Access Control with customizable roles including AD / LDAP Integration for User Roles.
1.E	The solution should provide a Web-based Self Service Portal.
1.F	The solution should provide Device Ownership Management including Managing Corporate Devices, Employee-Owned Devices, and Shared Devices.
1.G	The solution should provide Self Service Capabilities including Allowing or Restricting access to the Self-Service Portal, Self-Service through browser, the ability to Launch Self-Service from device shortcut, the ability to View all enrolled devices for a specific user, Query the Device, Send a Message to the device, Lock Device, Clear Passcode, Full Device Wipe, Selective Wipe, Viewing Device Hardware Information, Viewing Device Encryption Information, Viewing Device Network Information, Viewing Device Passcode Compliance, Viewing Device Enrollment Status, Viewing Device Certificates, Viewing Date to Certificate Expiration, Viewing Profile Status (Installed, Pending, Removed, etc.), Viewing Profile Details (Type, Name, Description, Version, etc.), Remotely install / remove profiles, Viewing Application Status (Installed, Pending, Removed, etc.), Viewing Application Details (Type, Name, Description, Version, etc.), and Tracking the device on map.
1.H	The solution should provide Integrated Reporting including Reporting on sub-groups, Exporting reports to PDF, XLS, CSV, XML, Report Subscriptions/Scheduling, and Integration with SSRS (SQL Server Reporting Services). <u>Contractor Comments:</u> MaaS360 provides a comprehensive real-time reporting system featuring ad-hoc queries, watch list dashboard, business intelligence, and advanced comparative industry mobile reporting.
1.I	The solution should provide Custom Dashboards.
2	Section 2. - Enterprise Integration
2.A	The solution must provide integration with Directory Services including AD and LDAP.
2.B	The solution must provide Wi-Fi Configuration including WEP, WPA/ WPA2 personal, WEP Enterprise, WPA/WPA2 Enterprise, Auto-Join, and Proxy Settings.
2.C	The solution should provide Certificate Authority Integration including SCEP (Simple Certificate Enrollment Protocol), and PKI (Public-Key Infrastructure).
2.D	The solution should provide Strong Authentication including Smart Card, Token, and Two Factor.
2.E	The solution should provide Email Integration including Exchange, and Office 365.
2.F	The solution should provide VPN (Virtual Private Network) Management including Cisco SSL (Secure Socket Layer).
3	Section 3. -- Device Support
3.A	The solution must provide Device Support including Apple iOS (iPhone, iPad), Android, Windows Mobile and Windows Phone.
3.B	The solution should provide Device Support including Blackberry and Apple MAC OS.
4	Section 4. -- Mobile Device Management Functional Requirements



#	Requirement
4.A	The solution must provide Self-Service Enrollment, Bulk Enrollment, and Device Staging by Admin.
4.B	The solution must provide Automatic Profile Distribution upon Enrollment.
4.C	The solution must provide the ability to Automatically Install Applications upon Enrollment.
4.D	The solution must provide the ability to detect Compromised Devices (jailbreak /rooted).
4.E	The solution must provide the ability to manage Passcode Settings including Require Passcode, Minimum Length, Alphanumeric Password, Minimum Complex Characters, Maximum Password Attempts, Maximum Inactivity Time Lock, Password History, Password Expiration, Password Grace Period, Clear Password, and Get Passcode Policy from Device.
4.F	The solution must provide the ability to Enable Device Encryption.
4.G	The solution must provide the ability to remotely lock the device.
4.H	The solution must provide the ability to Selective Wipe including removing access to State resources and automatically revoking access when MDM (Mobile Device Management) is removed.
4.I	The solution must provide the ability to manage Certificates including installing Certificates for Mobile Email, installing Certificates for Wi-Fi, installing Certificates for VPN, installing Client SSL Certificates, installing Root Certificates, removing Certificates from Device, and Listing installed Certificates.
4.J	The solution must provide the ability to Track and Manage Compliance including Enforcement of compliance policies with automated actions, Enforcement of passcode compliance, Enforcement of encryption compliance, Enforcement of OS compliance, Enforcement of Application compliance, Notify Admin / End-User of compliance via Email, Notify Admin / End-User of compliance via Push Notification, Notify Admin / End-User of compliance via SMS, Block non-compliant devices from state resources, Wipe state profiles from non-compliant devices, and Wipe all data from non-compliant devices.
4.K	The solution should provide Agent-based Enrollment and Web-based Enrollment.
4.L	The solution should provide Enrollment restrictions to block users or devices based on platform, version, etc.
4.M	The solution should provide the ability to require EULA (End User Licensing Agreement) Acceptance, including Custom EULA.
4.N	The solution should support Push Notifications.
4.O	The solution should provide the ability to perform a Full Wipe.
4.P	The solution should provide the ability to send a message to the user.
4.Q	The solution should provide the ability to configure Web Browser Security & Settings including disabling Native Browser, restricting Use of 3rd Party Browsers, Web Browser Security Restrictions, Whitelist/Blacklist Websites, setting Kiosk Mode, Creating shortcuts to web sites on device home screen, Creating web applications on device (full-screen Web clips).
4.R	The solution should provide the ability to Set Device Restrictions including Disabling cloud backup, Disabling cloud backup of photos, Change APN (Access Point Name) settings (for GPRS carrier (General Packet Radio Service)), Disabling personal assistant (e.g. Siri), Disabling personal assistant when device is locked, Disabling user changing settings, Disabling Voice Dialer, Disabling YouTube, Manage Cellular Settings, Prevent explicit music & podcasts download restrictions, Restrict use of music downloading center, Set allowed content ratings for movies, TV shows, apps, Force user to enter password for all purchases, Prevent multiplayer gaming, Prevent adding contacts for multiplayer gaming, Disabling Camera, Disabling Screen Captures, and Disabling Videoconferencing.
4.S	The solution should provide the ability to Track Assets including Device Name, Device UDID, Phone Number, IMEI/MEID number, Device Serial Number, IMSI number, Device Local Time, Device Model, Device Model Name (Friendly), Manufacturer, OS Version, OS Build, Firmware / Kernel Version, and device errors.
4.T	The solution should provide the ability to track Device Status including Battery Available, Battery Capacity, Memory Available and Memory Capacity.



#	Requirement
4.U	The solution should provide the ability to track Location including GPS tracking, Cell Tower Triangulation, and Remotely Play Sound on Device.
4.V	The solution should provide the ability to track Network items including Wi-Fi IP Address, Wi-Fi MAC, Carrier Settings Version, Cellular Technology (none, GSM, CDMA), Current Carrier Network, Current MMC, Current MNC, SIM Card Number, SIM Carrier Network, SIM PIN Enabled, Subscriber MMC, Subscriber MNC, Bluetooth MAC, Bluetooth Signal strength, and Bluetooth Paired Devices.
5	Section 5. -- Mobile Application Management
5.A	The solution should provide the ability to remotely install applications.
5.B	The solution should provide the ability to do OTA (over the air) application Updates.
5.C	The solution should provide the ability to remove managed applications.
5.D	The solution should provide the ability to configure application settings (from MDM).
5.E	The solution should provide the ability to enable the installation of internal enterprise applications.
5.F	The solution should provide the ability to silently remove managed applications.
5.G	The solution should provide the ability to silently remove public applications.
5.H	The solution should provide the ability to apply license key (e.g. redemption code) for purchased applications.
5.I	The solution should provide the ability to manage blacklisted and whitelisted Applications.
5.J	The solution should provide the ability to enable/disable application installs.
5.K	The solution should provide the ability to track Applications including viewing installed applications, Viewing application versions, and capturing Application Status.
5.L	The solution should provide the ability Application Security including wiping application data, Requiring a passcode to access applications, requiring passcode complexity, minimum passcode length, Minimum number of complex characters, Maximum passcode age (days), Passcode history, Maximum number of failed attempts, Grace period for lock, Auto-lock, Allow same passcode for all apps, Allow single sign-on (SSO) across applications, Prevent access from compromised devices, Prevent restoring backup to another device, Allow offline mode, Maximum allowed offline duration, Maximum number of offline uses, Prevent access to application, Lock application (require authentication), and display a message on an application.
5.M	<p>The solution should provide the ability to integrate with Apple VPP (Volume Purchase Program) including Order apps through the Apple Volume Purchase portal, Track VPP orders (order date, number, status), Monitor licenses purchased (redeemed and remaining), Associate orders to a purchase order number, Associate orders to a department, Associate orders to cost center, Upload and store redemption codes, Allocate redemption codes to authorized users / groups, Distribute codes via email, Distribute codes via SMS (Short Message Service/test message), Distribute codes via App Catalog, Notify users of available application license for download, Define allocation rules (quotas and push mode), Confirm the redemption of codes, Confirm successful installation of apps, Authenticate users before allowing them to view and download enterprise apps, Enable authorized users to view and download purchased apps in App Catalog, and Remove applications upon de-enrollment.</p> <p>Contractor Comments: MaaS360 fully supports Apple VPP integration. MaaS360 is also extremely clear where functionality is operating system version specific (such as iOS 5 or higher to control iCloud, Siri, and automatically remove pushed applications).</p> <p>MaaS360 has a strong track record of delivering ongoing true-SaaS software elevations to allow day 0 support for the latest mobile devices, operating systems, APIs and applications. This permits Fiberlink customers to get and stay ahead of rapid mobile industry advances without the need for IT change management projects. Our speed to market provides added security to our customers.</p>
6	Section 6. -- Mobile Content Management



#	Requirement
6.A	The solution should provide the ability to automatically download content (push).
6.B	The solution should provide the ability to manage download date - pre-stage content on device before it can be accessed.
6.C	The solution should provide the ability to download to device to allow offline viewing.
6.D	The solution should provide the ability to require online viewing only.
6.E	The solution should provide the ability to require Wi-Fi only (prevent download over cellular).
6.F	The solution should provide the ability to categorize content.
6.G	The solution should provide a content download queue with support for download prioritization and ordering.
6.H	The solution should provide the ability to notify users when updated or new content is available.
6.I	The solution should provide the ability to show content that has an updated version available.
6.J	The solution should provide the ability to support on-demand download (pull).
6.K	The solution should provide the ability to update all content. Contractor Comments: This is currently a planned feature as part of the MaaS360 product roadmap.
6.L	The solution should provide the ability to encrypt content stored on device.
6.M	The solution should provide the ability to require password to access content.
6.N	The solution should provide the ability to manage effective date - prevent accessing before certain date.
6.O	The solution should provide the ability to manage expiration date - automatically remove from device after date.
6.P	The solution should provide the ability to disable copy and paste when viewing content.
6.Q	The solution should provide the ability to disable screen capture when viewing content.
6.R	The solution should provide the ability to allow/prevent "Open In" to other applications.
6.S	The solution should provide the ability to allow/prevent sharing content via email.
6.T	The solution should provide the ability to prevent deletion of mandatory content.
6.U	The solution should provide the ability to track user activity on device (report when content is deleted/read/installed).
6.V	The solution should provide the ability to support offline viewing of content.
6.W	The solution should provide the ability to show new content, recent content and favorite content.
6.X	The solution should provide the ability to display content information (metadata from content files).
6.Y	The solution should provide the ability to search available content and browse available content.
6.Z	RESERVED
6.AA	The solution should provide the ability to search text within documents.
6.BB	Based on Native device support, the solution should provide the ability to support documents (including MS Office, iWorks, PDF, HTML, RTF, and XML).
6.CC	Based on Native device support, the solution should provide the ability to support table of contents and links within PDF documents.
6.DD	Based on Native device support, the solution should provide the ability to view all pages within PDF documents as thumbnails.
6.EE	Based on Native device support, the solution should provide the ability to support audio/video files (including MP4, MOV, MP3, AAC, and ALAC).



#	Requirement
6.FF	Based on Native device support, the solution should provide the ability to support images (including PNG, JPG).
6.GG	The solution should provide the ability to distribute and manage ePubs.
7	Section 7. -- Mobile Email Management
7.A	The solution should provide the ability to provision email settings and user credentials OTA (Over the Air).
7.B	The solution should provide the ability to install and remove certificates for email.
7.C	The solution should provide the ability to require device encryption before granting email access.
7.D	The solution should provide the ability to define whitelist/blacklist rules for devices connecting to email.
7.E	The solution should provide the ability to enable device whitelist/blacklist overrides for any restrictive policies.
7.F	The solution should provide the ability to allow or block access based on device model, OS or email client.
7.G	The solution should provide the ability to configure compliance policies to existing corporate email infrastructure.
7.H	The solution should provide the ability to prevent compromised devices from accessing corporate email.
7.I	The solution should provide the ability to view all devices, managed and unmanaged, connecting to corporate email.
7.J	The solution should provide the ability to monitor device interactions, commands and date/time of sync attempts.
7.K	The solution should provide the ability to view Compliance Details.
7.L	RESERVED
7.M	RESERVED
7.N	The solution should provide the ability to manage EAS (Exchange ActiveSync) Configuration.
7.O	The solution should provide the ability to setup Multiple EAS Accounts.
7.P	The solution should provide the ability to configure S/MIME (Secure/Multipurpose Internet Mail Extensions).
7.Q	The solution should provide the ability to require Encrypted S/MIME Messages.
7.R	The solution should provide the ability to disable Export to 3rd Party Widgets/Apps.
7.S	The solution should provide the ability to maximum Email Age.
7.T	The solution should provide the ability to require Manual Mail Syncing when Roaming.
7.U	The solution should provide the ability to manage POP(PostOfficeProtocol)/IMAP(Internet Message Access Protocol) Email Configuration.
8	Section 8. -- Telecom Management
8.A	The solution should provide the ability to enable Data Roaming.
8.B	The solution should provide the ability to disable data roaming.
8.C	The solution should provide the ability to disable voice roaming.
8.D	The solution should provide the ability to enable Voice Roaming.
8.E	The solution should provide the ability to track data usage through cellular network.
8.F	The solution should provide the ability to track data usage through Wi-Fi network.
	<p>Contractor Comment: Support is based on native device capabilities. MaaS360 web services enables integration with other back office systems.</p>



#	Requirement
8.G	The solution should provide the ability to track phone call history. <u>Contractor Comment:</u> Support is based on native device capabilities. MaaS360 web services enables integration with other back office systems.
8.H	The solution should provide the ability to view Current Carrier Network and Current Network Status.
8.I	The solution should provide the ability to Detect Network/Cellular Settings.



1.200 Roles and Responsibilities

1.201 CONTRACTOR STAFF, ROLES, AND RESPONSIBILITIES

A. Contractor Staff

The Contractor has identified a Single Point of Contact (SPOC) on cover page of this agreement. The duties of the SPOC shall include, but not be limited to:

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

The State reserves the right to require a change in the current SPOC if the assigned SPOC is not, in the opinion of the State, adequately serving the needs of the State.

The Contractor shall provide the following personnel:

- Single Point of Contact
- MDM Expert
- Trainer

One individual may be utilized for multiple positions.

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

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

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

B. On Site Work Requirements

1. Location of Work

All work by the Contractor shall be performed at the Contractors location.

2. Hours of Operation:

- a. Normal State working hours are 8:00 a.m. to 5:00 p.m. EST, Monday through Friday, with work performed as necessary after those hours to meet project deadlines. No overtime will be authorized or paid.
- b. The State is not obligated to provide State management of assigned work outside of normal State working hours. The State reserves the right to modify the work hours in the best interest of the project.
- c. Contractor shall observe the same standard holidays as State employees. The State does not compensate for holiday pay.



3. Travel:

- a. No travel or expenses will be reimbursed. This includes travel costs related to training provided to the State by Contractor.
- b. Travel time will not be reimbursed.

4. Additional Security and Background Check Requirements – See Section 2.091

1.202 STATE STAFF, ROLES, AND RESPONSIBILITIES

The State project team will consist of the Smart Device Support Team. This will include approximately 7 individuals.

The Smart Device Support Team will be empowered to:

- Resolve project issues in a timely manner
- Review project plan, status, and issues
- Resolve deviations from project plan
- Utilize change control procedures
- Ensure timely availability of State resources
- Make key implementation decisions, as identified by the Contractor’s project manager, within 48-hours of their expected decision date.

State Project Manager

The State will provide a Project Manager who will be responsible for the State’s infrastructure and coordinate with the Contractor in determining the system configuration.

The State’s Project Manager will provide the following services:

- Coordinate the State resources necessary for the project
- Facilitate coordination between various external contractors
- Facilitate communication between different State departments/divisions
- Provide acceptance and sign-off of deliverable/milestone
- Review and sign-off of timesheets and invoices
- Resolve project issues
- Escalate outstanding/high priority issues
- Utilize change control procedures
- Conduct regular and ongoing review of the project to confirm that it meets original objectives and requirements
- Document and archive all important project decisions
- Arrange, schedule and facilitate State staff attendance at all project meetings.

Name	Agency/Division	Title
Linda Baker	DTMB / Office of Office Automation Services	Project Manager

DTMB shall provide a Contract Administrator whose duties shall include, but not be limited to, supporting the management of the Contract.

Name	Agency/Division	Title
Steve Motz	DTMB / Procurement	Contract Administrator

1.300 Project Plan

1.301 PROJECT PLAN MANAGEMENT

Orientation Meeting



The Contractor will be required to attend an orientation meeting remotely, to discuss the content and procedures of the Contract. The date and time will be mutually agreed to by the State and the Contractor.

1. The Contractor will carry out this project under the direction and control of the State.
2. Within 10 working days of the execution of the Contract, the Contractor will submit to the State project manager(s) for final approval of the project plan. This project plan must be in agreement with Article 1, Section 1.104 Work and Deliverables, and must include the following:
 - *The Contractor’s project organizational structure.*
 - *The Contractor’s staffing table with names and title of personnel assigned to the project. This must be in agreement with staffing of accepted proposal.*
 - *The project work breakdown structure (WBS) showing sub-projects, activities and tasks, and resources required and allocated to each.*
 - *The time-phased plan in the form of a graphic display, showing each event, task, and decision point in the WBS.*

The Contractor’s approach to supporting State of Michigan with successful project is to provide initial portal walk through session (where SaaS portal will be opened, initial devices enrolled, overview of best practices and workflows are reviewed with State MDM administration and project team). Follow up sessions will then be scheduled to continue knowledge transfer, support State of Michigan policy criteria, setting configurations, fine-tuning, refinement and full production readiness. Ongoing MaaS360 webinars (getting the most from your MaaS360 environment along with mobile industry-relevant and unique subject matter experts) are offered on a regular basis, along with real-time portal resources (such as “What’s New” online documentation and 7x24x365 support) are all available to help contribute to project success. State of Michigan MDM team will have full access to the online MaaS360 Center for additional blogs, data sheets, documentation, whitepapers and webinars as well as immediate help by phone, online or email.

1.302 RESERVED

1.400 Project Management

See Section 1.301

1.401 RESERVED

1.402 RESERVED

1.403 CHANGE MANAGEMENT

Change management is defined as the process to communicate, assess, monitor, and control all changes to system resources and processes. The State also employs change management in its administration of the Contract.

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

The Contractor must employ change management procedures to handle such things as “out-of-scope” requests or changing business needs of the State while the migration is underway.

The Contractor will employ the change control methodologies to justify changes in the processing environment, and to ensure those changes will not adversely affect performance or availability.



1.500 Acceptance

1.501 CRITERIA

See Section 2.250

1.600 Compensation and Payment

1.601 COMPENSATION AND PAYMENT

This Contract will include firm fixed monthly cost per device pricing (see table below) and will be paid annually in advance for ongoing MDM services.

The below per device costs include all associated Ongoing Software as a Service, Training currently identified within the scope of the Statement of Work (Article 1). The MDM Services provided included in the monthly cost per device are described in Attachment 1 – MDM Services Description.

License Cost for existing licenses	Monthly Cost Per Device
Year 1	\$2.50
Year 2	\$2.50
Year 3	\$2.50
Year 4 (Option Year 1)	\$2.50
Year 5 (Option Year 2)	\$2.50

Pricing for the additional option years (Contract Years 6,7,8) will be mutually agreed to by both parties, and included through a Change Notice to the Contract.

OPTIONAL Fiberlink MaaS360 Supplemental Mobility SaaS services

The State may modify the Contract to include the below options through the Change Control Process:

No.	License Cost	Monthly Cost Per Device	Comments
	Optional MaaS360 Mobile Expense Management	\$0.50	MaaS360 Mobile Expense Management allows Licensee to create data plans on the MaaS360 platform and assign them to supported devices managed by MaaS360. Data plans are configured by the MaaS360 admin based on allowed usage (in MB) and calendar start date. Licensee can assign these plans at a device, group or global level. Licensee can then configure alert thresholds, recipients, and messaging for both in network and roaming data usage. This data is collected via the MaaS360 app on iOS and Android devices. Daily and monthly in-network and roaming data is available in reporting. Fiberlink does not directly integrate with the carrier to pull this data plans.
	Optional MaaS360 Laptop Management – Visibility360	\$1.25	Full service descriptions for MaaS360 Laptop Visibility360 and Control360 available as exhibit to final services agreement. For online overview see: http://www.maas360.com/products/laptop-management/
	Optional MaaS360 Laptop Management – Control360	\$2.25	Full service descriptions for MaaS360 Laptop Visibility360 and Control360 available as exhibit to final services agreement. For online overview see: http://www.maas360.com/products/laptop-management/



The Order Form is provided in **Attachment 2** and identifies the State's commitment to the device count over the initial Contract term.

The Total Estimated Contract Value of \$1,223,040.00 is based on the initial commitment identified in Attachment 2, and also includes additional dollars for device growth.

Travel

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

Future Statements of Work and Issuance of Purchase Orders

Note: This is not applicable to the services currently described in this Contract.

- Unless otherwise agreed by the parties, each Statement of Work will include:
 1. Background
 2. Project Objective
 3. Scope of Work
 4. Deliverables
 5. Acceptance Criteria
 6. Project Control and Reports
 7. Specific Department Standards
 8. Payment Schedule
 10. Project Contacts
 11. Agency Responsibilities and Assumptions
 12. Location of Where the Work is to be performed
 13. Expected Contractor Work Hours and Conditions

Invoicing

Contractor will submit properly itemized invoices to

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

or

DTMB-Accounts-Payable@michigan.gov

Incorrect or incomplete invoices will be returned to Contractor for correction and reissue.

Invoices must provide and itemize, as applicable:

- Contract number;
- Purchase Order number
- Contractor name, address, phone number, and Federal Tax Identification Number;
- Date(s) of delivery, services and/or date(s) of installation and set up;
- Price for each item, or Contractor's list price for each item and applicable discounts;
- Net invoice price for each item;
- Total invoice price; and
- Payment terms

1.602 RESERVED - HOLDBACK



Article 2, Terms and Conditions

2.000 Contract Structure and Term

2.001 CONTRACT TERM

This Contract is for a Subscription Term period of **thirty eight months** beginning on the Effective Date of the Contract. All outstanding Order Forms must also expire upon the termination for any of the reasons listed in **Section 2.150** of the Contract, unless otherwise extended under the Contract. Absent an early termination for any reason, Order Forms issued but not expired, by the end of the Contract's stated term, shall remain in effect for the duration of the Subscription Term listed in such Order Form(s).

2.002 OPTIONS TO RENEW

This Contract may be renewed in writing by mutual agreement of the parties not less than 30 days before its expiration. The Contract may be renewed for up to **five (5)** additional **one (1) year** periods.

2.003 LEGAL EFFECT

Contractor accepts this Contract by signing two copies of the Contract and returning them to the DTMB-Procurement. The Contractor shall not proceed with the performance of the work to be done under the Contract, including the purchase of necessary materials, until both parties have signed the Contract to show acceptance of its terms.

Except as otherwise agreed in writing by the parties, the State shall not be liable for costs incurred by Contractor or payment under this Contract, until this Contract or Change Order has been signed by all the parties and a Purchase Order against the Contract has been issued or an order form has been included within the Contract.

2.004 ATTACHMENTS & EXHIBITS

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

2.005 ORDERING

The State must issue an approved written Purchase Order or Blanket Purchase Order to order any Services/Deliverables under this Contract. All orders are subject to the terms and conditions of this Contract. No additional terms and conditions contained on either a Purchase Order or Blanket Purchase Order apply.

2.006 ORDER OF PRECEDENCE

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

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

2.007 HEADINGS

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

2.008 FORM, FUNCTION & UTILITY



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

2.009 REFORMATION AND SEVERABILITY

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

2.010 Consents and Approvals

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

2.011 NO WAIVER OF DEFAULT

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

2.012 SURVIVAL

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

2.020 Contract Administration

2.021 ISSUING OFFICE

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

[Steve Motz](#)

Buyer

Procurement

Department of Technology, Management and Budget

Mason Bldg., 2nd Floor

PO Box 30026

Lansing, MI 48909

motzs@michigan.gov

517-241-3215

2.022 CONTRACT COMPLIANCE INSPECTOR

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

See Contract Cover Page

**2.023 PROJECT MANAGER**

The following individual will oversee the project:

See Section 1.202.

2.024 CHANGE REQUESTS

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

If the State requests or directs the Contractor to perform any Services/Deliverables that are outside the scope of the Contractor's responsibilities under the Contract ("New Work"), the Contractor must notify the State promptly before commencing performance of the requested activities it believes are New Work. If the State requests or directs the Contractor to perform any services or provide deliverables that are consistent with and similar to the Services/Deliverables being provided by the Contractor under the Contract, but which the Contractor reasonably and in good faith believes are not included within the Statements of Work, then before performing such Services or providing such Deliverables, the Contractor shall notify the State in writing that it considers the Services or Deliverables to be an Additional Service/Deliverable for which the Contractor should receive additional compensation. If the Contractor does so notify the State, then such a Service or Deliverable shall be governed by the Change Request procedure in this Section.

2.025 NOTICES

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

State:

State of Michigan
Procurement
Attention: Steve Motz
PO Box 30026
530 West Allegan
Lansing, Michigan 48909

Contractor:
FIBERLINK:
Attn: Legal Department
1787 Sentry Parkway West
Building 18, Suite 200
Blue Bell, PA 19422
P: 1-800-546-5669
F: 1-215-664-1604
E: legal_department@fiberlink.com

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

2.026 BINDING COMMITMENTS



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

2.027 RELATIONSHIP OF THE PARTIES

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

2.028 COVENANT OF GOOD FAITH

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

2.029 ASSIGNMENTS

Neither party may assign the Contract, or assign or delegate any of its duties or obligations under the Contract, to any other party (whether by operation of law or otherwise), without the prior written consent of the other party; provided, however, that the State may assign the Contract to any other State agency, department, division or department without the prior consent of Contractor and Contractor may assign the Contract to an affiliate so long as the affiliate is adequately capitalized and can provide adequate assurances that the affiliate can perform the Contract. The Contractor may assign this Contract pursuant to a transfer of all or substantially all of the business and assets of a party, whether by merger, sale of assets, sale of stock or other similar transaction (“Merger Transaction”), provided that the Merger Transaction would not decrease the performance obligations under the Contract.

If the Contractor intends to assign the contract or any of the Contractor's rights or duties under the Contract, the Contractor must promptly notify the State in writing at least 60 days before the assignment. The Contractor also must provide the State with adequate information about the assignee within a reasonable amount of time before the assignment for the State. The Contract and its Exhibits, Attachments and SOWs shall bind, benefit and be enforceable by and against both parties and their respective successors and permissible assigns.

2.030 General Provisions

2.031 MEDIA RELEASES

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

2.032 CONTRACT DISTRIBUTION

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

2.033 RESERVED - PERMITS

2.034 WEBSITE INCORPORATION

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

**2.035 RESERVED - FUTURE BIDDING PRECLUSION****2.036 FREEDOM OF INFORMATION**

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

2.037 RESERVED - DISASTER RECOVERY**2.040 Financial Provisions****2.041 FIXED PRICES FOR SERVICES/DELIVERABLES**

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

The license fees are inclusive of the Contractor's standard Support and Maintenance, as described herein.

Support. Support for the Licensed Services will be available 24 hours a day, 7 days a week, except as provided herein. Support shall be provided from Contractor's network operating center to Licensee's network operating center, unless otherwise agreed to by the parties via telephone or email. From time to time, and for the purpose of enhancing the performance and functionality of the Licensed Services, Contractor may make additions, deletions, and modifications to the underlying networks, access points applications and other facilities in connection with the Licensed Services, and shall make automatic updates to Licensed Services provided to State, such as directory updates, and "bug" fixes. In furtherance of the foregoing, Contractor retains the right to change the composition of the Licensed Services, at its sole discretion. Such Support shall only be provided for the current version of the Licensed Services, or the immediately preceding released version for up to twelve (12) months ("Contractor's Latest Release"). From time to time, Contractor may, at its sole discretion, require State, and all of State's users, to migrate to Contractor's Latest Release, upon reasonable advance written notice. Contractor and State shall use commercially reasonable efforts to cooperate and work together during this migration.

Maintenance. Contractor shall use commercially reasonable efforts to address reproducible material failures of the Licensed Services to conform to Documentation that arise in connection with State's proper and authorized use of Contractor's Latest Release. In the event of a reproducible material failure of the Licensed Services to conform to Documentation, State shall provide to Contractor reasonably detailed documentation and explanation, together with underlying data, to substantiate any such failures and shall reasonably assist Contractor in its efforts to investigate, diagnose and correct the failure.

Professional Services. Contractor and State may decide to enter into a separate Statements of Work(s) for professional services which shall then be made part hereof ("Professional Services").

2.042 RESERVED - ADJUSTMENTS FOR REDUCTIONS IN SCOPE OF SERVICES/DELIVERABLES**2.043 SERVICES/DELIVERABLES COVERED**

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

2.044 INVOICING AND PAYMENT – IN GENERAL

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



- (b) All invoices shall be delivered by Contractor via the email address listed in section 1.601. Each Contractor invoice shall show details as to charges by Service/Deliverable component and location at a reasonable level of detail.
- (c) Undisputed invoices shall be due and payable by the State, in accordance with the State's standard payment procedure as specified in 1984 Public Act No. 279, MCL 17.51 et seq., within 45 days after receipt. Any disputes must be submitted to billing@fiberlink.com within thirty (30) days of receipt of invoice.
- (d1) State is granted a certain quantity of licenses for the Services as designated in each Order Form. All licenses are sold on a per-Device basis. Each Order Form shall specify a committed monthly quantity of licenses ("License Quantity") and, unless otherwise expressly stated herein: (i) the number of Devices connected to the Licensed Services must not exceed the License Quantity; (ii) Licenses cannot be shared or used by more than one Device, but may be reassigned to a new Device which replaces the former Device as long as such former Device no longer connects to the Licensed Services; (iii) any added licenses shall terminate on the same date as the pre-existing licenses; and (iv) for billing purposes, State's total license count is determined by the number of Devices that connect to the Licensed Services. In the event that the number of Devices connecting to the Licensed Services exceeds the License Quantity ("Additional Usage"), State will be billed for such Additional Usage for the remainder of the then current Subscription Term on a pro-rated basis, and fully for any renewal Subscription Terms, in accordance with the Fees listed herein if: (a) the Additional Usage exceeds the License Quantity by 5% or more; or (b) the Additional Usage exceeds the License Quantity by less than 5% but such Additional Usage has existed for four (4) consecutive months or more. For the avoidance of doubt, once either (a) or (b) occurs, State shall be invoiced for such Additional Usage including, in (a) the first 5% of Additional Usage, and in (b) the four (4) months. The Additional Usage shall be added to the License Quantity and shall become State's new License Quantity.
- (d2) **Fees.** State shall be invoiced in accordance with the following: (i) all Fees shall be paid in advance; (ii) Fees are based on the License Quantity and not actual usage, unless State incurs Additional Usage as described above; (iii) payment obligations are non-cancelable and Fees paid are non-refundable; (iv) the License Quantity cannot be decreased during the Subscription Term. State may increase its License Quantity by either executing a supplemental Order Form, or by incurring Additional Usage. All Fees for licenses are charged for full monthly periods and any Fees for licenses added in the middle of a monthly period whether via supplemental Order Form(s) or as a result of Additional Usage, will be charged for that full monthly period and the monthly periods remaining in the Subscription Term and any Renewal Subscription Terms. Any purchase order issued hereunder will be for informational purposes only and will not alter the terms of the Agreement. For purposes of this Agreement, all Order Forms shall be collectively referred to as "Attachment 2" or "Order Form."

2.045 PRO-RATION

FEES FOR THE DELIVERABLES ARE NOT ABLE TO BE PRO-RATED MID-MONTH. THE STATE SHALL BE INVOICED FOR LICENSES ADDED DURING THE MONTH FOR THE ENTIRE MONTH AND FOR THE REMAINDER OF THE THEN CURRENT SUBSCRIPTION TERM AND ANY SUBSEQUENT RENEWAL SUBSCRIPTION TERMS, IF APPLICABLE.

2.046 ANTITRUST ASSIGNMENT

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

2.047 FINAL PAYMENT

The making of final payment by the State to Contractor does not constitute a waiver by either party of any rights or other claims as to the other party's continuing obligations under the Contract, nor shall it constitute a waiver of any claims by one party against the other arising from unsettled claims or failure by a party to comply with this Contract.

2.048 ELECTRONIC PAYMENT REQUIREMENT

Electronic transfer of funds is required for payments on State Contracts. Contractors are required to register with the State electronically at <http://www.cpexpress.state.mi.us>. As stated in Public Act 431 of 1984, all



contracts that the State enters into for the purchase of goods and services shall provide that payment shall be made by electronic fund transfer (EFT).

2.050 Taxes

2.051 EMPLOYMENT TAXES

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

2.052 SALES AND USE TAXES

Contractor shall register and remit sales and use taxes on taxable sales of tangible personal property or services delivered into the State. Contractors that lack sufficient presence in Michigan to be required to register and pay tax must do so as a volunteer. This requirement extends to: (1) all members of any controlled group as defined in § 1563(a) of the Internal Revenue Code and applicable regulations of which the company is a member, and (2) all organizations under common control as defined in § 414(c) of the Internal Revenue Code and applicable regulations of which the company is a member that make sales at retail for delivery into the State are registered with the State for the collection and remittance of sales and use taxes. In applying treasury regulations defining "two or more trades or businesses under common control" the term "organization" means sole proprietorship, a partnership (as defined in § 701(a) (2) of the Internal Revenue Code), a trust, an estate, a corporation, or a limited liability company.

2.060 Contract Management

2.061 CONTRACTOR PERSONNEL QUALIFICATIONS

All persons assigned by Contractor to the performance of Services under this Contract must be qualified to perform the work assigned to them.

2.062 CONTRACTOR KEY PERSONNEL

There are no Key Personnel.

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



(e) The Contractor must notify the Contract Compliance Inspector and the Contract Administrator at least 10 business days before redeploying non-Key Personnel, who are dedicated to primarily to the Project, to other projects. If the State does not object to the redeployment by its scheduled date, the Contractor may then redeploy the non-Key Personnel.

2.063 RE-ASSIGNMENT OF PERSONNEL AT THE STATE’S REQUEST

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

2.064 CONTRACTOR PERSONNEL LOCATION

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

2.065 CONTRACTOR IDENTIFICATION

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

2.066 COOPERATION WITH THIRD PARTIES

Contractor agrees to cause its personnel and the personnel of any Subcontractors to cooperate with the State and its agents and other contractors including the State’s Quality Assurance personnel.

2.067 CONTRACT MANAGEMENT RESPONSIBILITIES

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

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

2.068 CONTRACTOR RETURN OF STATE EQUIPMENT/RESOURCES

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

2.070 Subcontracting by Contractor



2.071 CONTRACTOR FULL RESPONSIBILITY

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

2.072 STATE CONSENT TO DELEGATION

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

2.073 SUBCONTRACTOR BOUND TO CONTRACT

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

2.074 FLOW DOWN

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

2.075 COMPETITIVE SELECTION

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

2.080 State Responsibilities

2.081 RESERVED - EQUIPMENT

2.082 FACILITIES

The State must designate space as long as it is available and as provided in the Statement of Work, to house the Contractor's personnel whom the parties agree will perform the Services/Deliverables at State facilities (collectively, the "State Facilities"). The Contractor shall have reasonable access to, and unless agreed otherwise by the parties in writing must observe and comply with all rules and regulations relating to each of the State Facilities (including hours of operation) used by the Contractor in the course of providing the Services.



Contractor agrees that it shall not, without the prior written consent of the State, use any State Facilities or access any State information systems provided for the Contractor's use, or to which the Contractor otherwise gains access in the course of performing the Services, for any purpose other than providing the Services to the State.

2.090 Security

2.091 BACKGROUND CHECKS

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

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

2.092 SECURITY BREACH NOTIFICATION

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

2.093 PCI DATA SECURITY STANDARD

Contractors that process, transmit or store credit/debit cardholder data, must adhere to the Payment Card Industry (PCI) Data Security Standards.

- (a) The Contractor is responsible for the security of cardholder data in its possession. The data may only be used to assist the State or for other uses specifically authorized by law.
- (b) The Contractor must notify the CCI (within 72 hours of discovery) of any breaches in security where cardholder data has been compromised. In that event, the Contractor must provide full cooperation to the Visa, MasterCard, Discover and state Acquirer representative(s), and/or a PCI approved third party to conduct a thorough security review. The Contractor must make the forensic report available within two weeks of completion. The review must validate compliance with the current PCI Data Security Standards for protecting cardholder data.
- (c) The Contractor must properly dispose of cardholder data, in compliance with DTMB policy, when it is no longer needed. The Contractor must continue to treat cardholder data as confidential upon contract termination.
- (d) The Contractor must provide the CCI with an annual Attestation of Compliance (AOC) or a Report on Compliance (ROC) showing the contractor is in compliance with the PCI Data Security Standards. The Contractor must notify the CCI of all failures to comply with the PCI Data Security Standard.



2.100 Confidentiality

2.101 CONFIDENTIALITY

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

2.102 PROTECTION AND DESTRUCTION OF CONFIDENTIAL INFORMATION

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

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

2.103 EXCLUSIONS

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

2.104 NO IMPLIED RIGHTS

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

2.105 RESPECTIVE OBLIGATIONS

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



2.110 Records and Inspections

2.111 INSPECTION OF WORK PERFORMED

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

2.112 EXAMINATION OF RECORDS

For five (5) years after the Contractor invoices the State for any Fees paid under this Contract (the "Audit Period"), the State may examine and copy any of Contractor's books, records, documents and papers relating to the Fees payable under the Contract pertinent to establishing Contractor's compliance with the Contract and with applicable laws and rules. The State shall notify the Contractor in writing 20 days before examining the Contractor's books and records. The State does not have the right to review any information deemed confidential by the Contractor to the extent access would require the confidential information to become publicly available. State's rights to audit are (i) limited to once during any rolling twelve (12) month period during the term of this Contract; (ii) audits will take place at the location where the applicable Contractor records are generally kept; (iii) audits will not unreasonably interfere with Contractor's normal business operations; and (iv) all information disclosed or developed as a result of any such audit shall be the Confidential Information of Contractor.

2.113 RETENTION OF RECORDS

Contractor shall maintain at least until the end of the Audit Period all pertinent financial and accounting records directly related to the Fees (including information pertaining to the Contract and to the Services) pertaining to the Contract according to generally accepted accounting principles and other procedures specified in this Section. Financial and accounting records shall be made available, upon request, to the State at any time during the Audit Period. If an audit, litigation, or other action involving Contractor's records is initiated before the end of the Audit Period, the records shall be retained until all issues arising out of the audit, litigation, or other action are resolved or until the end of the Audit Period, whichever is later.

2.114 AUDIT RESOLUTION

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

2.115 ERRORS

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

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



2.120 Warranties

2.121 WARRANTIES AND REPRESENTATIONS

The Contractor represents and warrants:

- (a) It is capable in all respects of fulfilling and must fulfill all of its obligations under this Contract. The performance of all obligations under this Contract must be provided in a timely, professional, and workman-like manner and must meet the performance and operational standards required under this Contract.
- (b) The Contract Appendices, Attachments and Exhibits identify the software and services to be performed under this Contract.
- (c) It is the lawful owner or licensee of any Deliverable licensed 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 licensed use, as applicable, of any and all Deliverables. None of the Deliverables provided by Contractor to the State under neither this Contract, nor their use by the State infringe the patent, copyright, trade secret, or other proprietary rights of any third party.
- (d) RESERVED.
- (e) The contract signatory has the power and authority, including any necessary corporate authorizations, necessary to enter into this Contract, on behalf of Contractor.
- (f) It is qualified and registered to transact business in all locations where required.
- (g) Neither the Contractor nor any Affiliates, nor any employee of either, has, must have, or must acquire, any contractual, financial, business, or other interest, direct or indirect, that would conflict in any manner or degree with Contractor’s performance of its duties and responsibilities to the State under this Contract or otherwise create an appearance of impropriety with respect to the award or performance of this Agreement. Contractor must notify the State about the nature of the conflict or appearance of impropriety within two days of learning about it.
- (h) Neither Contractor nor any Affiliates, nor any employee of either has accepted or must accept anything of value based on an understanding that the actions of the Contractor or Affiliates or employee on behalf of the State would be influenced. Contractor must not attempt to influence any State employee by the direct or indirect offer of anything of value.
- (i) Neither Contractor nor any Affiliates, nor any employee of either has paid or agreed to pay any person, other than bona fide employees, sales referral partners (agents), and consultants working solely for Contractor or the Affiliate, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract.
- (j) The prices proposed by Contractor were arrived at independently, without consultation, communication, or agreement with any other Bidder for the purpose of restricting competition; the prices quoted were not knowingly disclosed by Contractor to any other Bidder; and no attempt was made by Contractor to induce any other person to submit or not submit a proposal for the purpose of restricting competition.
- (k) All financial statements, reports, and other information furnished by Contractor to the State as part of its response to the RFP or otherwise in connection with the award of this Contract fairly and accurately represent the business, properties, financial condition, and results of operations of Contractor as of the respective dates, or for the respective periods, covered by the financial statements, reports, other information. Since the respective dates or periods covered by the financial statements, reports, or other information, there have been no material adverse changes in the business, properties, financial condition, or results of operations of Contractor.
- (l) All written information furnished to the State by or for the Contractor in connection with this Contract, including its bid, is true, accurate, and complete, and contains no untrue statement of material fact or omits any material fact necessary to make the information not misleading.
- (m) It is not in material default or breach of any other contract or agreement that it may have with the State or any of its departments, commissions, boards, or agencies. Contractor further represents and warrants that it has not been a party to any contract with the State or any of its departments that was terminated by the State or the department within the previous five years for the reason that Contractor failed to perform or otherwise breached an obligation of the contract.
- (n) If any of the certifications, representations, or disclosures made in the Contractor’s original bid response change after contract award, the Contractor is required to report those changes immediately to the Department of Technology, Management and Budget, Procurement.

2.122 RESERVED - WARRANTY OF MERCHANTABILITY



2.123 RESERVED - WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE

2.124 WARRANTY OF TITLE

Contractor warrants it has the full legal right to grant to State the license granted under this Contract.

2.125 RESERVED - EQUIPMENT WARRANTY

2.126 RESERVED - EQUIPMENT TO BE NEW

2.127 RESERVED - PROHIBITED PRODUCTS

2.128 CONSEQUENCES FOR BREACH

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

2.130 Insurance

2.131 LIABILITY INSURANCE

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

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

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

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

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

See www.michigan.gov/dleg.

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

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

- 1. Commercial General Liability with the following minimum coverage:
 - \$2,000,000 General Aggregate Limit other than Products/Completed Operations
 - \$2,000,000 Products/Completed Operations Aggregate Limit
 - \$1,000,000 Personal & Advertising Injury Limit
 - \$1,000,000 Each Occurrence Limit

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



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

The Contractor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents as ADDITIONAL 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 according to applicable laws governing the employees and employers work activities in the state of the Contractor's domicile. If a self-insurer provides the applicable coverage, proof must be provided of approved self-insured authority by the jurisdiction of domicile. For employees working outside of the state of qualification, Contractor must provide appropriate certificates of insurance proving mandated coverage levels for the jurisdictions where the employees' activities occur.

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

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

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

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

- 6. Umbrella or Excess Liability Insurance in a minimum amount of ten million dollars (\$5,000,000.00), which must apply, at a minimum, to the insurance required in Subsection 1 (Commercial General Liability) above.

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

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

2.132 SUBCONTRACTOR INSURANCE COVERAGE

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



2.133 CERTIFICATES OF INSURANCE AND OTHER REQUIREMENTS

Contractor must furnish to DTMB-Procurement, certificate(s) of insurance verifying insurance coverage or providing satisfactory evidence of self-insurance as required in this Section (the "Certificates"). The Certificate must be on the standard "accord" form or equivalent. **The Contract Number or the Purchase Order Number must be shown on the Certificate Of Insurance To Assure Correct Filing.** All Certificate(s) are to be prepared and submitted by the Insurance Provider. All Certificate(s) must contain a provision indicating that coverage afforded under the policies SHALL NOT BE CANCELLED, MATERIALLY CHANGED, OR NOT RENEWED without 30 days prior written notice, except for 10 days for non-payment of premium, having been given to the Director of Procurement, Department of Technology, Management and Budget. The notice must include the Contract or Purchase Order number affected. Before the Contract is signed, and not less than 20 days before the insurance expiration date every year thereafter, the Contractor must provide evidence that the State and its agents, officers and employees are listed as additional insured under each commercial general liability and commercial automobile liability policy. In the event the State approves the representation of the State by the insurer's attorney, the attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.

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

2.140 Indemnification

2.141 GENERAL INDEMNIFICATION

To the extent permitted by law, the Contractor must indemnify, defend and hold harmless the State from all third party claims ("Third Party Claims") and losses, and all related costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest and penalties), accruing or resulting to any person, firm or corporation that may be injured in the case of persons or damaged in the case of real or tangible property, by the Contractor in the performance of this Contract and that are attributable to the negligence or tortious acts of the Contractor .

2.142 CODE INDEMNIFICATION

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

2.143 EMPLOYEE INDEMNIFICATION

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

2.144 PATENT/COPYRIGHT INFRINGEMENT INDEMNIFICATION



To the extent permitted by law, the Contractor must indemnify, defend and hold harmless the State from and against all losses, liabilities, damages (including taxes), and all related costs and expenses incurred in connection with any Third Party Claim or action or proceeding threatened or brought against the State to the extent that the action or proceeding is based on a Third Party Claim that the Contractor Service supplied by the Contractor infringes any such third party's United States patent, copyright, trademark or trade secret of any person or entity, which is enforceable under the laws of the United States.

In addition, should the Contractor service, or its operation, become or in the State's or Contractor's opinion be likely to become the subject of a claim of infringement, the Contractor must at the Contractor's sole expense do one of the following: (i) procure for the State the right to continue using the affected service (ii) replace with non-infringing alternates or modify the relevant Contractor service of substantially equivalent function and performance so that it becomes non-infringing, or, (iii) accept its return of the affected Contractor service depreciated or amortized by an equal annual amount over a three (3) year period beginning from the date of delivery of the affected Contractor service. The collective obligations of the Contractor pursuant to this Section state the sole and exclusive liability of the Contractor, and the State's sole and exclusive remedy, with respect to intellectual property infringement or misappropriation by the Contractor service.

Notwithstanding the foregoing, the Contractor has no obligation to indemnify or defend the State for, or to pay any costs, damages or attorneys' fees related to, any Third Party Claim based upon the infringement arising out of (i) written specifications or designs furnished by the State and implemented by the Contractor at the State's request; (ii) modification of the Contractor services, including software by any person other than the Contractor or a Contractor-authorized technician; (iii) the combination, operation, addition, interconnection or use of the services with equipment, devices, data or software not supplied by or approved by the Contractor under this Contract; or (iv) use of the Contractor services other than in accordance with the Documentation.

2.145 CONTINUATION OF INDEMNIFICATION OBLIGATIONS

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

2.146 INDEMNIFICATION PROCEDURES

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

- (a) After the State receives notice of the action or proceeding involving a Third Party Claim for which it shall seek indemnification, the State must promptly notify Contractor of the Third Party Claim in writing and take or assist Contractor in taking, as the case may be, any reasonable action to avoid the imposition of a default judgment against Contractor. No failure to notify the Contractor relieves the Contractor of its indemnification obligations except to the extent that the Contractor can prove damages attributable to the failure. Within 10 days following receipt of written notice from the State relating to any claim, the Contractor must notify the State in writing whether Contractor agrees to assume control of the defense and settlement of that claim (a "Notice of Election"). After notifying Contractor of a claim and before the State receiving Contractor's Notice of Election, the State is entitled to defend against the claim, at the Contractor's expense, and the Contractor will be responsible for any reasonable costs incurred by the State in defending against the claim during that period.
- (b) If Contractor delivers a Notice of Election relating to any claim: (i) the Contractor will assume the defense and settlement of such Third Party Claim, provided however, that the State is entitled to participate in the defense of the claim and to employ counsel at its own expense to assist in the handling of the claim; (ii) the Contractor must, at the request of the State, demonstrate to the reasonable satisfaction of the State, the Contractor's financial ability to carry out its defense and indemnity obligations under this Contract; (iii) upon written request of the State, and (iv) except as to claims falling under Section 2.144 of this Contract, the Contractor must obtain the prior written approval of the State before entering into any settlement of the claim or ceasing to defend against the claim, which approval will not be unreasonably withheld, provided however that approval may be deemed received if the State does not response to Contractor within five (5) business days of its receipt of such written request. To the extent that any principles of Michigan governmental or public law may be involved or challenged, the State has the right, at its own expense, to control the defense of that portion of the claim involving the principles of Michigan governmental or public law. Any litigation activity on behalf of the State, or any of its subdivisions under this Section, must be coordinated with the Department of Attorney General. In the event the Contractor's attorney represents



the State under this Section, the Contractor'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 within ten (10) days relating to any claim of which it is notified in writing by the State as provided above, the State shall at the end of the ten (10) day period provide contractor with written notice of its intent to defend the claim, and if after five (5) days of Contractor's receipt of such notice, provided that Contractor does not respond to such notice, the State may defend the claim in the manner as it may deem appropriate, at the cost and expense of Contractor. If it is determined that the claim was one against which Contractor was required to indemnify the State, upon request of the State, Contractor must promptly reimburse the State for all the reasonable costs and expenses.

2.150 Termination/Cancellation

2.151 NOTICE AND RIGHT TO CURE

If the Contractor breaches the contract, and the State in its sole discretion determines that the breach is curable, then the State shall provide the Contractor with written notice of the breach and a time period (not less than 30 days) to cure the Breach. The notice of breach and opportunity to cure is inapplicable if the State determines in its sole discretion that the breach poses a serious and imminent threat to the health or safety of any person or the imminent loss, damage, or destruction of any real or tangible personal property.

2.152 TERMINATION FOR CAUSE

- (a) The State may terminate this contract, for cause, by notifying the Contractor in writing, if the Contractor (i) breaches any of its material duties or obligations under this Contract (including a Chronic Failure to meet any particular SLA), or (ii) fails to cure a breach within the time period specified in accordance with Section 2.151 above, in the written notice of breach provided by the State.
- (b) If this Contract is terminated for cause, in addition to any legal remedies otherwise available to the State by law or equity, the Contractor shall be liable for direct damages proven by the State up to the Limitation of Liability in Section 2.220.
- (c) If the State chooses to partially terminate this Contract for cause, charges payable under this Contract shall be equitably adjusted to reflect those Services/Deliverables that are terminated and the State must pay for the percentage of all Services completed up to the termination date. Services and related provisions of this Contract that are terminated for cause must cease on the effective date of the termination.
- (d) If the State terminates this Contract for cause under this Section, and it is determined, for any reason, that Contractor was not in breach of contract under the provisions of this section, that termination for cause must be deemed to have been a termination for convenience, effective as of the same date, and the rights and obligations of the parties must be limited to that otherwise provided in this Contract for a termination for convenience.

2.153 TERMINATION FOR CONVENIENCE

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



2.154 TERMINATION FOR NON-APPROPRIATION

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

2.155 TERMINATION FOR CRIMINAL CONVICTION

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

2.156 TERMINATION FOR APPROVALS RESCINDED

The State may terminate this Contract if any final administrative or judicial decision or adjudication disapproves a previously approved request for purchase of personal services under Constitution 1963, Article 11, § 5, and Civil Service Rule 7-1. In that case, the State shall pay the Contractor for the minimum commitment for the first year of the Contract only. Termination may be in whole or in part and may be immediate as of the date of the written notice to Contractor or may be effective as of the date stated in the written notice.

2.157 RIGHTS AND OBLIGATIONS UPON TERMINATION

- (a) Upon termination of this Contract for any reason, all licensed rights granted in this Contract will terminate and immediately cease to exist, and the State must promptly discontinue all use of the Services, erase all copies of the Services from the State’s Devices, and return to Contractor or destroy any and all copies of the Services in the State’s possession or control and an executive officer of the State shall certify in writing to Contractor that it has fully complied with these requirements. Notwithstanding the foregoing, following termination of this Agreement, the State shall be responsible for any subsequent use by the State or its Users of the Services, or any other Contractor products or services at the rates and charges set forth herein.

2.158 RESERVATION OF RIGHTS

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

2.160 Termination by Contractor

2.161 TERMINATION BY CONTRACTOR

If the State breaches the Contract, and the Contractor in its sole discretion determines that the breach is curable, then the Contractor will provide the State with written notice of the breach and a time period (not less



than 30 days) to cure the breach. The Notice of Breach and opportunity to cure is inapplicable for successive and repeated breaches.

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

2.170 Transition Responsibilities

2.171 CONTRACTOR TRANSITION RESPONSIBILITIES

If the State terminates this contract, for convenience or cause, or if the Contract is otherwise dissolved, voided, rescinded, nullified, expires or rendered unenforceable, the Contractor may assist in the orderly transition to the State or a third party designated by the State. If this Contract expires or terminates, the Contractor agrees to make all reasonable efforts to effect an orderly transition of services within a reasonable period of time that in no event will exceed 120 days. The transition shall be subject to mutually agreed upon transition terms.

2.172 RESERVED - CONTRACTOR PERSONNEL TRANSITION

2.173 RESERVED - CONTRACTOR INFORMATION TRANSITION

2.174 RESERVED - CONTRACTOR SOFTWARE TRANSITION

2.175 TRANSITION PAYMENTS

See Section 2.171

2.176 STATE TRANSITION RESPONSIBILITIES

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

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

2.180 Stop Work

2.181 Stop Work Orders

To the extent that time and material Services are provided in any Statement of Work, the State may, at any time, by written Stop Work Order to Contractor, require that Contractor stop all, or any part, of the work called for by the Contract for a period of up to 90 calendar days after the Stop Work Order is delivered to Contractor, and for any further period to which the parties may agree. The Stop Work Order must be identified as a Stop Work Order and must indicate that it is issued under this **Section**. Upon receipt of the stop work order, Contractor must immediately comply with its terms and take all reasonable steps to minimize incurring costs allocable to the work covered by the Stop Work Order during the period of work stoppage. Within the period of the stop work order, the State must either: (a) cancel the stop work order; or (b) terminate the work covered by the Stop Work Order as provided in **Section 2.182**.

2.182 Cancellation or Expiration of Stop Work Order

The Contractor shall resume work if the State cancels a Stop Work Order or if it expires. The parties shall agree upon an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract shall be modified, in writing, accordingly, if: (a) the Stop Work Order results in an



increase in the time required for, or in Contractor's costs properly allocable to, the performance of any part of the Contract; and (b) Contractor asserts its right to an equitable adjustment within 30 calendar days after the end of the period of work stoppage; provided that, if the State decides the facts justify the action, the State may receive and act upon a Contractor proposal submitted at any time before final payment under the Contract. Any adjustment will conform to the requirements of **Section 2.024**.

2.183 Allowance of Contractor Costs

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

2.190 Dispute Resolution

2.191 IN GENERAL

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

2.192 INFORMAL DISPUTE RESOLUTION

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

- (1) The representatives of Contractor and the State must meet as often as the parties reasonably deem necessary to gather and furnish to each other all information with respect to the matter at issue which the parties believe to be appropriate and germane in connection with its resolution. The representatives shall discuss the problem and negotiate in good faith in an effort to resolve the dispute without the necessity of any formal proceeding.
 - (2) During the course of negotiations, all reasonable requests made by one party to another for non-privileged information reasonably related to the Contract shall be honored in order that each of the parties may be fully advised of the other's position.
 - (3) The specific format for the discussions shall be left to the discretion of the designated State and Contractor representatives, but may include the preparation of agreed upon statements of fact or written statements of position.
 - (4) Following the completion of this process within 60 calendar days, the Director of Procurement, DTMB, or designee, shall issue a written opinion regarding the issue(s) in dispute within 30 calendar days. The opinion regarding the dispute must be considered the State's final action and the exhaustion of administrative remedies.
- (b) This Section shall not be construed to prevent either party from instituting, and a party is authorized to institute, formal proceedings earlier to avoid the expiration of any applicable limitations period, to preserve a superior position with respect to other creditors, or under Section 2.193.
- (c) The State shall not mediate disputes between the Contractor and any other entity, except state agencies, concerning responsibility for performance of work under the Contract.

2.193 INJUNCTIVE RELIEF



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

2.194 CONTINUED PERFORMANCE

Each party agrees to continue performing its obligations under the Contract while a dispute is being resolved except to the extent the issue in dispute precludes performance and without limiting either party's right to terminate the Contract as provided in **Section 2.150**, as the case may be.

2.200 Federal and State Contract Requirements

2.201 NONDISCRIMINATION

In the performance of the Contract, Contractor agrees not to discriminate against any employee or applicant for employment, with respect to his or her hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, ancestry, age, sex, height, weight, and marital status, physical or mental disability. This covenant is required under the Elliot Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, et seq., and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, et seq., and any breach of this provision may be regarded as a material breach of the Contract.

2.202 UNFAIR LABOR PRACTICES

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

2.203 WORKPLACE SAFETY AND DISCRIMINATORY HARASSMENT

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

2.204 RESERVED - PREVAILING WAGE

2.210 Governing Law

2.211 GOVERNING LAW

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

2.212 COMPLIANCE WITH LAWS

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

2.213 JURISDICTION



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

2.220 Limitation of Liability

2.221 LIMITATION OF LIABILITY

2.221.1

SUBJECT TO THE PROVISIONS OF SECTION 2.221.2 BELOW, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR: (A) CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT OR OTHERWISE, INCLUDING NEGLIGENCE, STRICT LIABILITY, INDEMNITY OR OTHERWISE, AND WHETHER OR NOT SUCH DAMAGES WERE FORESEEN OR UNFORESEEN AND REGARDLESS OF WHETHER SUCH PARTY HAD RECEIVED NOTICE OR HAD BEEN ADVISED, OR KNEW OR SHOULD HAVE KNOWN, OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES OR (B) DIRECT DAMAGES IN EXCESS OF THE AMOUNTS OF ONE MILLION DOLLARS (\$1,000,000) PER OCCURRENCE.

2.221.2

THIS LIMITATION IN SECTION 2.221.1 SHALL NOT APPLY TO A) THE CONTRACTOR'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 2.144 ABOVE, RELATING TO THIRD PARTY CLAIMS FOR INFRINGEMENT OF UNITED STATES PATENT, COPYRIGHT, TRADEMARK OR TRADE SECRETS; B) TO THE CONTRACTOR'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 2.141 ABOVE RELATING TO THIRD PARTY CLAIMS FOR PERSONAL INJURY OR DAMAGE TO REAL OR TANGIBLE PROPERTY CAUSED BY THE NEGLIGENCE OR TORTIOUS ACTS OF THE CONTRACTOR; OR C) FOR DAMAGES OCCASIONED BY THE BREACH BY EITHER PARTY, OF ITS OBLIGATIONS OF CONFIDENTIALITY UNDER SECTION 2.100 ABOVE.

2.230 Disclosure Responsibilities

2.231 DISCLOSURE OF LITIGATION

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

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

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



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

2.232 RESERVED - CALL CENTER DISCLOSURE

2.233 BANKRUPTCY

The State may, without prejudice to any other right or remedy, terminate this Contract, in whole or in part if:

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

2.240 Performance

2.241 TIME OF PERFORMANCE

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

2.242 RESERVED - SERVICE LEVEL AGREEMENT (SLA)

2.243 RESERVED - LIQUIDATED DAMAGES

2.244 EXCUSABLE FAILURE

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



and cannot reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans or other means, including disaster recovery plans.

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

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

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

2.250 Approval of Deliverables

2.251 DELIVERY OF DELIVERABLES

2.252 RESERVED - CONTRACTOR SYSTEM TESTING

2.253 RESERVED - APPROVAL OF DELIVERABLES, IN GENERAL

2.254 RESERVED - PROCESS FOR APPROVAL OF WRITTEN DELIVERABLES

2.255 RESERVED - PROCESS FOR APPROVAL OF MDM DELIVERABLES

2.256 FINAL ACCEPTANCE

"Final Acceptance" shall be considered to occur upon electronic delivery of the MDM service to the State.

2.260 Ownership

2.261 RESERVED - OWNERSHIP OF WORK PRODUCT BY STATE

2.262 RESERVED - VESTING OF RIGHTS

2.263 RIGHTS IN DATA

The State is the owner of all State data made available by the State to the Contractor or its agents, Subcontractors or representatives under the Contract. The Contractor will not use the State's data for any purpose other than providing the Services, nor will any part of the State's data be disclosed, sold, assigned,



leased or otherwise disposed of to the general public or to specific third parties or commercially exploited by or on behalf of the Contractor. No employees of the Contractor, other than those on a strictly need-to-know basis, have access to the State's data. Contractor will not possess or assert any lien or other right against the State's data. Without limiting the generality of this Section, the Contractor must only use personally identifiable information as strictly necessary to provide the Services and must disclose the information only to its employees who have a strict need-to-know the information. The Contractor must comply at all times with all laws and regulations applicable to the personally identifiable information.

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

Nothing herein shall prohibit Contractor from including State's End User Data in aggregate (i.e., in combination with Contractor's End User Data for other Contractor licensees) compilations of data provided to third parties to demonstrate network performance and end user experience, provided that Contractor deletes from such aggregate data all references to the State or its end users. "End User Data" means data reflecting the individual experiences of State's end users with the Services provided by Contractor. Subject to the terms of this Agreement, the State hereby grants Contractor a royalty-free, non-exclusive, non-transferable right and license to use, copy, store, and display the End User Data and State Data for the purpose enabling Contractor to perform the Services under this Contract. Contractor acknowledges that State shall retain all rights to and ownership of all State Data. "State Data" means the data and information specifically pertaining to State and State's employees and agents that Contractor main obtain in the course of performing the Services under this Contract.

Contractor shall have a royalty-free, worldwide, irrevocable, perpetual license to use and incorporate into the Services any suggestions, enhancement requests, recommendations or other feedback provided by State, including State's Users, relating to the operation of the Services.

2.264 OWNERSHIP OF MATERIALS

The State and the Contractor will continue to own their respective proprietary technologies developed before entering into the Contract. Any Contractor Software licensed through the Contractor and sold to the State, will be licensed directly to the State in accordance with the terms of Section 2.324.

2.270 State Standards

2.271 EXISTING TECHNOLOGY STANDARDS

The Contractor will adhere to all existing standards as described within the comprehensive listing of the State's existing technology standards at <http://www.michigan.gov/dmb/0,4568,7-150-56355-108233--,00.html>.

2.272 ACCEPTABLE USE POLICY

Contractor does not have access to the State computer system.

To the extent that Contractor has access to the State computer system, Contractor must comply with the State's Acceptable Use Policy, see http://michigan.gov/cybersecurity/0,1607,7-217-34395_34476---,00.html. All Contractor employees must be required, in writing, to agree to the State's Acceptable Use Policy before accessing the State system. The State reserves the right to terminate Contractor's access to the State system if a violation occurs.

2.273 RESERVED - SYSTEMS CHANGES



2.280 *Extended Purchasing*

2.281 MIDEAL (MICHIGAN DELIVERY EXTENDED AGREEMENTS LOCALLY)

A. MiDEAL Requirements

1. The Contractor must ensure that all purchasers are MiDEAL Members before extending the Contract pricing. A current listing of approved MiDEAL Members is available at: www.michigan.gov/mideal.
2. The Contractor must submit quarterly reports of MiDEAL purchasing activities to DTMB-Purchasing Operations.
3. The Contractor must submit invoices to and receive payment from MiDEAL Members on a direct and individual basis.
4. Estimated requirements for MiDEAL members are not included in the quantities shown in this RFP, unless otherwise noted.
5. The State of Michigan reserves the right to negotiate additional discounts based on any increased volumes by MiDEAL members.

B. MiDEAL Administrative Fee

1. The Contractor must remit a MiDEAL administrative fee on all sales transacted under this Contract, and remit the fee within 30 days after the end of each quarter. The administrative fee shall equal **1% of the total quarterly sales reported**.
2. The Contractor must pay the administrative fee by check payable to the State of Michigan. The Contractor must identify the check as an "Administrative Fee" and include the following information with the payment: the applicable Contract Number, the total quarterly sales by volume and dollar amount, and the quarter covered.
3. The Contractor must send the check to the following address:
Department of Technology, Management and Budget
Financial Services – Cashier Unit
Lewis Cass Building
320 South Walnut St.
P.O. Box 30681
Lansing, MI 48909

2.282 RESERVED – STATE EMPLOYEE PURCHASES

2.283 COOPERATIVE PURCHASING

- (a) This Contract may be extended to additional States or governmental jurisdictions upon mutual written agreement between the State of Michigan and the Contractor. Political subdivisions and other authorized entities within each participating State or governmental jurisdiction may also participate in this Contract if such State allows participation by such entities.
- (b) All MiDEAL processes, invoicing relationships, reporting and MiDEAL Service Fee also apply to cooperative purchasing participants.
- (c) The State of Michigan reserves the right to negotiate additional discounts based on any increased volume generated by such extensions.

2.290 *Environmental Provision*

In the event the Contractor provides products other than Software as a service, the following sections apply (if applicable).

2.291 ENVIRONMENTAL PROVISION



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

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

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

- (a) The Contractor shall use, handle, store, dispose of, process, transport and transfer any material considered a Hazardous Material according to all federal, State and local laws. The State shall provide a safe and suitable environment for performance of Contractor's Work. Before the commencement of Work, the State shall advise the Contractor of the presence at the work site of any Hazardous Material to the extent that the State is aware of the Hazardous Material. If the Contractor encounters material reasonably believed to be a Hazardous Material and which may present a substantial danger, the Contractor shall immediately stop all affected Work, notify the State in writing about the conditions encountered, and take appropriate health and safety precautions.
- (b) Upon receipt of a written notice, the State will investigate the conditions. If (a) the material is a Hazardous Material that may present a substantial danger, and (b) the Hazardous Material was not brought to the site by the Contractor, or does not result in whole or in part from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Materials, the State shall order a suspension of Work in writing. The State shall proceed to have the Hazardous Material removed or rendered harmless. In the alternative, the State shall terminate the affected Work for the State's convenience.
- (c) Once the Hazardous Material has been removed or rendered harmless by the State, the Contractor shall resume Work as directed in writing by the State. Any determination by the Michigan Department of Community Health or the Michigan Department of Environmental Quality that the Hazardous Material has either been removed or rendered harmless is binding upon the State and Contractor for the purposes of resuming the Work. If any incident with Hazardous Material results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Work will not be counted in a time as mutually agreed by the parties.
- (d) If the Hazardous Material was brought to the site by the Contractor, or results in whole or in part from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Material, or from any other act or omission within the control of the Contractor, the Contractor shall bear its proportionate share of the delay and costs involved in cleaning up the site and removing and rendering harmless the Hazardous Material according to Applicable Laws to the condition approved by applicable regulatory agency(ies).

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



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

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

2.300 Deliverables

2.301 SOFTWARE AS A SERVICE

See Article 1 for a description of the SaaS (Software as a Service) Solution.

2.302 RESERVED - HARDWARE

2.310 Software Warranties

2.311 PERFORMANCE WARRANTY

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

EXCEPT AS EXPRESSLY PROVIDED IN THIS CONTRACT, THE SERVICES ARE PROVIDED "AS IS" AND CONTRACTOR AND ITS SUPPLIERS MAKE NO REPRESENTATIONS OR WARRANTIES, ORAL OR WRITTEN, EXPRESS OR IMPLIED, ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, QUALITY OF INFORMATION, QUIET ENJOYMENT OR OTHERWISE, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NON-INTERFERENCE. CONTRACTOR MAKES NO REPRESENTATIONS OR WARRANTIES, NOR SHALL CONTRACTOR HAVE ANY LIABILITY WITH RESPECT TO ANY THIRD PARTY PRODUCTS OR SERVICES. CONTRACTOR SHALL NOT BE RESPONSIBLE FOR ANY APPLICATION OF RESULTS OBTAINED FROM THE USE OF THE LICENSED SERVICES OR FOR UNINTENDED OR UNFORESEEN RESULTS OBTAINED IN THE USE OF THE LICENSED SERVICES. USE OF ANY INFORMATION OBTAINED THROUGH THE LICENSED SERVICES IS AT THE STATE'S SOLE RISK. STATE ACKNOWLEDGES THAT IT HAS NOT ENTERED INTO THIS AGREEMENT IN RELIANCE UPON ANY WARRANTY OR REPRESENTATION NOT EXPRESSLY CONTAINED IN THIS AGREEMENT. FURTHER, STATE EXPRESSLY RECOGNIZES THAT CONTRACTOR DOES NOT CREATE, OPERATE, CONTROL OR ENDORSE ANY DATA, INFORMATION, OR THIRD-PARTY PRODUCTS PROCESSED BY THE LICENSED SERVICES, INCLUDING BUT NOT LIMITED TO, INFORMATION OBTAINED. CONTRACTOR SHALL NOT BE LIABLE TO STATE OR ANY THIRD PARTY FOR ANY COST OR DAMAGE ARISING EITHER DIRECTLY OR INDIRECTLY FROM ANY LOSS OF DATA.

2.312 NO SURREPTITIOUS CODE WARRANTY

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

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



acting by authority of the owner) to obtain access to a licensee’s computer system(s) (e.g. remote access via modem) for purposes of maintenance or technical support.

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

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

2.313 CALENDAR WARRANTY

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

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

2.314 THIRD-PARTY SOFTWARE WARRANTY

The Contractor represents and warrants that it has the full right to incorporate its third-party software into the Services.

2.315 RESERVED - PHYSICAL MEDIA WARRANTY

2.320 Software Licensing

2.321 SOFTWARE AND SERVICE LICENSE

Subject to the terms and conditions of this Contract, Contractor grants to State a personal, non-transferable, non-exclusive license to use (a) the Services for State’s internal business purpose in the ordinary course of its business operations, (b) the Services on behalf of State’s Affiliates for its Affiliates’ internal business purposes in the ordinary course of its Affiliates’ business operations, and (c) copy the Documentation for inactive back-up and disaster recovery purposes. Users shall use the Services only in accordance with the Documentation and the terms and conditions of this Contract. State shall be responsible for all Users’ use of the Services as if such use were directly by State and shall be liable for any breach of the Contract by its Users. The Services are licensed, not sold to the State under the terms of this Contract. All right title and interest in and to the Services shall at all times remain with Contractor, including all Intellectual Property and proprietary rights to the Services, including but not limited to any improvements, modification or alteration made to the Services by Contractor, State, or any third party.

Contractor represents and the State acknowledges, the Services and the related object code, source code, design features, visual expressions, screen formats, report formats, trademarks and copyrights, and the ideas, methods and concepts used in the Services, and all modifications of the foregoing (“Proprietary Items”), are Contractor’s valuable, confidential property. Contractor holds United States Patent numbers 7395341 and 7725589 which are incorporated into the Services. The State shall not, attempt to, or permit any other third



party to: (a) sell, license, distribute, transfer, or disclose any Proprietary Items to any third party; (b) copy any Proprietary Items in violation of this Contract; (c) modify or create derivative works of any Proprietary Items, or decompile, reverse engineer, create or recreate any Services source code; (d) use Proprietary Items to provide services to, or to otherwise benefit, any third party; (e) use any Proprietary Items to create a program having features or functions substantially similar to those of the Services; (f) remove or modify any copyright or other proprietary notice contained in the Proprietary Items; (g) use or possess the Proprietary Items in any foreign jurisdiction in violation of any trade laws or regulations or (h) publish or share with any third party any results of any benchmark or performance test run on the Services or component thereof. In addition, the State agrees it will not use the Services to: (i) violate any applicable law or regulation; (ii) violate copyright, trademark, trade secret or other property right of any third party; (iii) interfere with other users' use of the Services or of the Internet; (iv) add, remove or modify any identifying network header information in an effort to deceive; (v) use the Services to access, or attempt to access, the accounts of others, or to penetrate, or attempt to penetrate, security measures of Contractor's or another entity's computer software or hardware, electronic communications system, or telecommunications system, whether or not the intrusion results in the corruption or loss of data; (vi) use the Services to collect, or attempt to collect, personal information about third parties without their consent; or (vii) use the Services for the on-line control of nuclear facilities, aircraft navigation systems, aircraft communication systems, air traffic control, direct life support machines, or weapon systems. State shall not nor have any right to have "have developed" or "have made" rights under this Agreement.

2.330 *RESERVED - Source Code Escrow*



Glossary

Days	Means calendar days unless otherwise specified.
24x7x365	Means 24 hours a day, seven days a week, and 365 days a year (including the 366th day in a leap year).
Additional Service	Means any Services/Deliverables within the scope of the Contract, but not specifically provided under any Statement of Work, that once added will result in the need to provide the Contractor with additional consideration.
Audit Period	See Section 2.110
Business Day	Whether capitalized or not, shall mean any day other than a Saturday, Sunday or State-recognized legal holiday (as identified in the Collective Bargaining Agreement for State employees) from 8:00am EST through 5:00pm EST unless otherwise stated.
Blanket Purchase Order	An alternate term for Contract as used in the States computer system.
Business Critical	Any function identified in any Statement of Work as Business Critical.
Chronic Failure	Defined in any applicable Service Level Agreements.
Deliverable	Physical goods and/or commodities as required or identified by a Statement of Work
DTMB	Michigan Department of Technology, Management and Budget
Environmentally preferable products	A product or service that has a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. Such products or services may include, but are not limited to, those that contain recycled content, minimize waste, conserve energy or water, and reduce the amount of toxics either disposed of or consumed.
Excusable Failure	See Section 2.244.
Hazardous material	Any material defined as hazardous under the latest version of federal Emergency Planning and Community Right-to-Know Act of 1986 (including revisions adopted during the term of the Contract).
Incident	Any interruption in Services.
Key Personnel	Any Personnel designated in Article 1 as Key Personnel.
MDM	Mobile Device Management – to describe the solution requested through this RFP.
New Work	Any Services/Deliverables outside the scope of the Contract and not specifically provided under any Statement of Work, that once added will result in the need to provide the Contractor with additional consideration.
Ozone-depleting substance	Any substance the Environmental Protection Agency designates in 40 CFR part 82 as: (1) Class I, including, but not limited to, chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or (2) Class II, including, but not limited to, hydro chlorofluorocarbons
Post-Consumer Waste	Any product generated by a business or consumer which has served its intended end use, and which has been separated or diverted from solid waste for the purpose of recycling into a usable commodity or product, and which does not include post-industrial waste.
Post-Industrial Waste	Industrial by-products that would otherwise go to disposal and wastes generated after completion of a manufacturing process, but do not include internally generated scrap commonly returned to industrial or manufacturing processes.
Recycling	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.
RESERVED	Section is not applicable or included in this Contract. This is used as a placeholder to maintain consistent numbering.
Reuse	Using a product or component of municipal solid waste in its original form more than once.
RFP	Request for Proposal designed to solicit proposals for services
Services	The SAAS-based MDM subscription services via Contractor’s proprietary MaaS360 platform which includes any software provided by Contractor to the State



Source reduction	Any practice that reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment prior to recycling, energy recovery, treatment, or disposal.
State Location	Any physical location where the State performs work. State Location may include state-owned, leased, or rented space.
Subcontractor	A company Contractor delegates performance of a portion of the Services to, but does not include independent contractors engaged by Contractor solely in a staff augmentation role.
Unauthorized Removal	Contractor's removal of Key Personnel without the prior written consent of the State.
Waste prevention	Source reduction and reuse, but not recycling.
Waste reduction and Pollution prevention	The practice of minimizing the generation of waste at the source and, when wastes cannot be prevented, utilizing environmentally sound on-site or off-site reuse and recycling. 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.



Attachment 1 – MDM Services Description

Fiberlink Communications Corporation Product and Service Descriptions

MaaS360® PLATFORM. The MaaS360 Platform consists of the MaaS360 Management Center (as described herein) and any required Fiberlink-provided client side software (“Agent”). Client side software is dependent on the Services purchased and not always required. In order to deploy the MaaS360 Platform, Licensee must adhere to Fiberlink procedures and specifications set forth herein and in any attached statement of work which shall be made a part hereof. The Fiberlink network transmits data, manages the Policy changes requested by Licensee, manages the authentication process, and provides on-going maintenance of the Licensed Services resident on the Device.

MaaS360® for Mobile Devices

MaaS360 for Mobile Devices is an add-on application to the MaaS360 Management Center and includes the following capabilities and features.

MaaS360 ActiveSync Manager

Leverages integration with Microsoft Exchange Server and provides visibility and control of a wide range of Mobile Devices that have a connection to the Microsoft Exchange Email Server over the ActiveSync protocol. The following reporting and control functions are available:

- Create and apply ActiveSync policies
- Apply a system-wide quarantine policy
- New Device Notification to the Administrator
- Approval workflow
- Block/Allow Devices
 - o Block specific devices from accessing the email system
 - o Allow blocked devices
- Remote Management Actions
 - o Complete device wipe
 - o OTA configuration
- Mobility Intelligence™ Reporting
 - o Smartphone Summary
 - o Device by Ownership
 - o Device by Platform
 - o Devices by Exchange Access State
 - o New Devices
 - o Devices by Policy
 - o Approved devices that cannot be wiped

Device support includes all ActiveSync supported devices.

MaaS360 Lotus Traveler Manager

Leverages integration with IBM Lotus Domino Traveler Service and provides visibility and control of a wide range of Mobile Devices that have a connection to the IBM Lotus Notes Server. The following reporting and control functions are available:

- Block/Allow Devices
 - o Block specific devices from accessing the email system
 - o Allow blocked devices
- Remote Management Actions
 - o Complete device wipe
 - o OTA configuration
- Mobility Intelligence™ Reporting



- Smartphone Summary
- Device by Ownership
- Device by Platform
- Devices by Policy

Device support includes all Lotus Traveler supported devices.

MaaS360 BlackBerry Enterprise Server (BES) Manager

Leverages integration with BlackBerry Enterprise Server (BES) version 5.0 and higher for Microsoft Exchange or Lotus Notes and provides visibility and control over BlackBerry devices being managed by leveraging API's made available by RIM. The following reporting and control functions are available:

- Remote Management Actions
 - Send Message
 - Reset Device Passcode
 - Wipe Device
 - Assign BES Policy
 - Remove Device from BES
 - Refresh Data
- Data Collection and Mobility Intelligence Reporting
 - Hardware Inventory
 - Network Information
 - Device Features
 - Messaging History
 - Security & Compliance Information
 - Software Installed Information

Device support includes all devices compatible with BlackBerry Enterprise Server (BES) version 5.0 and above.

MaaS360 Management and Security for iOS Devices

MDM for IOS uses the Apple Mobile Device Management API and the Apple Push Notification Service (APNS) built into the IOS versions 4 and 5 Mobile Operating System to provide visibility and control to all iOS 4.x, 5.x, and 6.x devices including the iPhone, iPad and iPod. The following reporting and control functions are available:

- Create and apply policies and profiles
 - Passcode Policies
 - Wi-Fi Profiles
 - Email Profiles
 - VPN Profiles
 - Restricted Applications
 - New Device Notification to the Administrator
 - Quick Approval workflow
- Remote Management Actions
 - Selective wipe of corporate profile and email
 - Device lock
 - Query now
 - OTA configuration
- Mobility Intelligence™ Reporting
 - Devices by Model
 - Devices by Operating System
 - Home and current network
 - Free internal storage
 - Applications, versions, and size
 - Device identification (phone number, IMEI, email address)
 - Device restrictions
 - Installed profiles

MaaS360 Management and Security for Android Mobile Devices

MDM for Android uses a lightweight agent that interfaces with the Android Mobile Device Management API Framework to provide visibility and control to all Android devices running 2.2 and higher. The following reporting and control functions are available:



- Create and apply policies and profiles
 - o Passcode Policies
 - o Wi-Fi Profiles
 - o Restricted Applications
 - o Disallow Applications from Unknown Sources
 - o Device Feature Restrictions
- Remote Management Actions
 - o Full Wipe
 - o Selective wipe
 - o Device lock
 - o Locate and Query now
 - o Reset Device Passcode
- Mobility Intelligence™ Reporting
 - o Devices by Model
 - o Devices by Operating System
 - o Home and current network
 - o Free internal storage
 - o Applications, versions, and size
 - o Device identification (phone number, IMEI, email address)
 - o Device restrictions
 - o Installed profiles

MaaS360 Management for Microsoft Windows Phone 7

MaaS360 for Windows Phone 7 uses a lightweight agent that interfaces with Microsoft Push Notification Services (MPNS) and Microsoft ActiveSync to provide visibility and control to all Windows Phone 7 devices 7.5 (Mango) and higher. MaaS360 ActiveSync Manager is required for policy management functionality. The following reporting and control functions are available:

- Remote Management Actions
 - o Locate Device
 - o Send Message
 - o Deploy Public or Private Marketplace Applications
 - o Wipe Device (via MaaS360 ActiveSync Manager)
 - o Change Policy (via MaaS360 ActiveSync Manager)
- Data Collection and Mobility Intelligence™ Reporting
 - o Hardware Information
 - o Identity Information
 - o Network Information
 - o Location Information

MaaS360 Management and Security for BlackBerry (RIM) Devices

MDM for Blackberry uses a lightweight agent that interfaces with BlackBerry Push Notification services and the BlackBerry Internet Service (BIS) to provide visibility and control to all Java-based BlackBerry devices running version 5.0 and higher. The following reporting and control functions are available:

- Remote Management Actions
 - o Locate Device
 - o Send Message
 - o Lock Device
 - o Wipe Device
 - o Change BlackBerry MDM Policy
 - o Remove BlackBerry Control
- Policy Management Options
 - o Ensure Passcode Policy & Idle Timeout
 - o Ensure Device & SD Card Encryption
 - o Restricted and Required Application Management
- Data Collection and Mobility Intelligence Reporting
 - o Hardware Inventory
 - o Network Information
 - o Location Information
 - o Security & Compliance Information



- Software Installed Information
- Module and Service Book Information
- Software Installed Information

Full feature support requires subscription to phone carrier's BlackBerry Internet Service (BIS) data plan.

Supplemental MDM Services – Additional Fees May Apply as noted below

MaaS360 App Management

MaaS360 App Management allows the Licensee to create app catalog entries on the MaaS360 platform and distribute them to supported devices managed by MaaS360. Licensee controls all aspects of distribution including installation instructions and targeting at a device, group or global level. Licensee will be responsible for all packaging and file creation. Fiberlink does not provide app package creation support. Licensee shall be allotted app distribution to a certain number of devices in accordance with the contracted quantity. Licensee has the ability to reference app packages that are hosted by the Licensee.

MaaS360 Doc Management

MaaS360 Doc Management allows the Licensee to create document catalog entries on the MaaS360 platform and distribute them to supported devices managed by MaaS360. Licensee controls all aspects of distribution including document description and targeting the document distribution at a device, group or global level. Licensee will be responsible for all document content and formatting. Licensee shall be allotted document distribution to a certain number of devices in accordance with the contracted quantity.

MaaS360 Content Distribution - Additional Fees Apply if Storage exceeds the amounts below

Licensee has the ability to upload app packages and documents to MaaS360's Content Distribution system. Licensee has the ability to store up to 1GB of data on the MaaS360 platform for distribution and a pool of bandwidth equivalent to 6GB per contracted device of annual usage. Licensee shall be invoiced monthly for usage and storage in excess of these amounts. Overage fees are \$1 per GB of additional monthly usage and \$40 per month for each GB of additional company storage.

MaaS360 Mobile Expense Management - Additional Fees Apply

MaaS360 Mobile Expense Management allows the Licensee to create data plans on the MaaS360 platform and assign them to supported devices managed by MaaS360. Data plans are configured by the MaaS360 admin based on allowed usage (in MB) and calendar start date. Licensee can assign these plans at a device, group or global level. Licensee can then configure alert thresholds, recipients, and messaging for both in network and roaming data usage. This data is collected via the MaaS360 app on iOS and Android devices. Daily and monthly in-network and roaming data is available in reporting. Fiberlink does not directly integrate with the carrier to pull these data plans.



Attachment 2 – Order Form

Licensee: State of Michigan
Payment Terms: 45 days from date of invoice
Billing Frequency: Annual
Length of Initial Subscription Term: 38 months, beginning on the Contract Effective Date.
Order Form Effective Date: 12/26/2012

PRICING IS INCLUSIVE OF STANDARD MAINTENANCE AND SUPPORT FEES INCLUDING CUSTOMER SERVICE
 LICENSE FEES FOR MONTHS 1 AND 2 OF THE INITIAL SUBSCRIPTION TERM ARE WAIVED.

Year 1 (Months 1 – 14)			
Licensed Services	License Quantity	Fee per License per Month	Total Annual Fees
MaaS360 for Mobile Devices (MDM)	6300	\$2.50	\$189,000.00

Year 2 (Months 15 – 26)			
Licensed Services	License Quantity	Fee per License per Year	Total Annual Fees
MaaS360 for Mobile Devices (MDM)	6300	\$2.50	\$189,000.00

Year 3 (Months 27 – 38)			
Licensed Services	License Quantity	Fee per License per Year	Total Annual Fees
MaaS360 for Mobile Devices (MDM)	6300	\$2.50	\$189,000.00

Total Initial Subscription Term Fees: \$567,000.00

Fees are waived for the first two months of the Initial Subscription Term for only the License Quantity indicated above. Additional Usage and licenses added via subsequent Order Form will be invoiced in accordance with the Agreement.

This Order Form is subject to the Termination for Convenience Section 2.152 of the Contract.
 Is a Purchase Order Required: No Yes, **The Licensee will issue a Purchase Order Annually**
 The pricing listed above is valid through: December 31, 2012
 Fiberlink Sales Representative: Jim Jakary, Senior RSM, Central US (734.667.2979) jjakary@fiberlink.com

FIBERLINK:
 Attn: Billing Supervisor
 1787 Sentry Parkway West
 Building 18, Ste 200
 Blue Bell, PA 19422
 P: 1-800-546-5669
 F: 1-215-664-1601
 E: billing@fiberlink.com

LICENSEE BILLING INFORMATION:
 DTMB – Financial Services
 Accounts Payable
 PO Box 30026
 Lansing, MI 48909
 P: 517-241-9277
 F: 517-373-7268
 E: DTMB-Accounts-Payable@michigan.gov

BY CONTRACT EXECUTION, Licensee represents that he or she is an authorized representative of the company for purposes of licensing the Licensed Services. Licensee understands that this Order Form is subject to the terms and conditions in the Contract and by signing below, Licensee commits to the payment amounts and terms within this Order Form.