

DESCRIPTION
Please note the Contractor Contract Administrator has been changed to Marilyn Brannan
Please note the State Contract Administrator has been changed to Mecca Martin
All other terms, conditions, specifications and pricing remain the same. Per contractor and agency agreement, and DTMB Central Procurement Services approval.

**Program Managers  
for  
Multi-Agency and Statewide Contracts**

AGENCY	NAME	PHONE	EMAIL
DTMB	Kate Jannereth	517-881-1031	JannerethK@michigan.gov
DNR	Paul Rogers	616-260-8406	RogersP5@michigan.gov
MDOC	Richard Drabek	517-240-1613	DrabekR@michigan.gov



# STATE OF MICHIGAN PROCUREMENT

## DTMB Central Procurement Services

525 W. Allegan Street, 1<sup>st</sup> Floor N.E.  
Lansing, MI 48933

### NOTICE OF CONTRACT

NOTICE OF CONTRACT NO. **210000000897**

between

THE STATE OF MICHIGAN

and

<b>CONTRACTOR</b>	L3Harris Technologies, Inc.
	221 Jefferson Ridge Parkway
	Lynchburg, Virginia 24501
	Lori Rodriguez
	434-455-9240
	Lori.Rodriguez@L3Harris.com
	CV15263

<b>STATE</b>	Program Manager	(See Attached)	STATEWIDE
	Contract Administrator	Valerie Hiltz	DTMB
		517-249-0459	
		hiltzv@michigan.gov	

CONTRACT SUMMARY			
<b>DESCRIPTION: Two-Way Radio and Radio Systems Sales and Service- Statewide</b>			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
May 1, 2021	April 30, 2026	3, 1-year	April 30, 2026
PAYMENT TERMS		DELIVERY TIMEFRAME	
Net 45		As per DO. See 2.2. Time Frames	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input checked="" type="checkbox"/> P-card <input type="checkbox"/> Payment Request (PRC) <input type="checkbox"/> Other			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS			
N/A			
MISCELLANEOUS INFORMATION			
THIS IS NOT AN ORDER: Orders will be place directly by the State agency via the authorized document established in Schedule A, Section 5.1. Authorizing Document, and per terms, conditions, and specifications of this contract.			
The Contractor's Program Manager, responsible for day-to-day operations of this contract, is Shakey Kessian 434-219-9940, Shakey.Kessisian@L3Harris.com			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION			\$1,000,000.00

**Program Managers  
for  
Multi-Agency & Statewide Contracts**

	AGENCY	NAME	PHONE	EMAIL
1	DMTB (MPSCS)	Kate Jannereth	517-881-1031	jannerethk@michigan.gov
2	MDOC	Kasey Mlujeak	517-780-6370	MlujeaKL@michigan.gov
3	DNR	Paul Rogers	517-284-5872	RogersP5@michigan.gov

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**FOR THE CONTRACTOR:**

\_\_\_\_\_  
**Company Name**

\_\_\_\_\_  
**Authorized Agent Signature**

\_\_\_\_\_  
**Authorized Agent** (Print or Type)

\_\_\_\_\_  
**Date**

**FOR THE STATE:**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Name & Title**

\_\_\_\_\_  
**Agency**

\_\_\_\_\_  
**Date**



# STATE OF MICHIGAN

## STANDARD CONTRACT TERMS

Master Agreement 210000000897

This STANDARD CONTRACT ("**Contract**") is agreed to between the State of Michigan (the "**State**") and L3Harris Technologies, Inc. ("**Contractor**"), a Delaware corporation. This Contract is effective on May 1, 2021 ("**Effective Date**"), and unless terminated, expires on April 30, 2026.

This Contract may be renewed for up to three (3) additional one (1) year period(s). Renewal is at the sole discretion of the State and will automatically extend the Term of this Contract. The State will document its exercise of renewal options via Contract Change Notice.

1. **Definitions.** For the purposes of this Contract, the following terms have the following meanings:

"**Accept**" has the meaning set forth in **Section 20**.

"**Acceptance**" has the meaning set forth in **Section 20**.

"**Affiliate**" of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. For purposes of this definition, the term "control" (including the terms "controlled by" and "under common control with") means the direct or indirect ownership of more than fifty percent (50%) of the voting securities of a Person.

"**Allegedly Infringing Materials**" has the meaning set forth in **Section 33**.

"**Business Day**" means a day other than a Saturday, Sunday, or other day on which the State is authorized or required by Law to be closed for business.

"**Business Owner**" is the individual appointed by the agency buyer to (a) act as the agency's representative in all matters relating to the Contract, and (b) co-sign off on notice of Acceptance. The Business Owner will be identified in the Statement of Work.

"Change" has the meaning set forth in **Section 5**.

"Change Notice" has the meaning set forth in **Section 5**.

"Change Proposal" has the meaning set forth in **Section 5**.

"Change Request" has the meaning set forth in **Section 5**.

"Confidential Information" has the meaning set forth in **Section 38.a**.

"**Configuration**" means State-specific changes made to the Software without Source Code or structural data model changes occurring.

"**Contract**" has the meaning set forth in the preamble.

"**Contract Activities**" refers to the includes the Services, Deliverables, delivery of commodities, or other contractual requirements set forth in **Schedule A – Statement of Work**, including any subsequent Statement(s) of Work, that the Contractor agrees to provide, and the State agrees to purchase pursuant to the terms of this Contract.

**“Contract Administrator”** is the individual appointed by each party to (a) administer the terms of this Contract, and (b) approve any Change Notices under this Contract. Each party’s Contract Administrator will be identified in the Statement of Work.

**“Contractor”** has the meaning set forth in the preamble.

**“Contractor’s Bid Response”** means the Contractor’s proposal submitted in response to the State’s requests to obtain Contract Activities.

**“Contractor Personnel”** means all employees of Contractor or any Permitted Subcontractors involved in the performance of Services hereunder.

**“Deliverables”** means all materials, including, but not limited to Software, Documentation, written materials and commodities, that Contractor is required to or otherwise does provide to the State under this Contract and otherwise in connection with any Services, including all items specifically identified as Deliverables in **Schedule A - Statement of Work**.

**“Dispute Resolution Procedure”** has the meaning set forth in **Section 55**.

**“Documentation”** means all generally available documentation relating to the Software, including all user manuals, operating manuals and other instructions, specifications, documents and materials, in any form or media, that describe any component, feature, requirement or other aspect of the Software), including any functionality, testing, operation or use thereof.

**“DTMB”** means the Michigan Department of Technology, Management and Budget.

**“Effective Date”** has the meaning set forth in the preamble.

**“Fees”** means collectively all fees collected by the Contractor pursuant to the terms of this Contract.

**“Financial Audit Period”** has the meaning set forth in **Section 42**.

**“Force Majeure”** has the meaning set forth in **Section 54**.

**“HIPAA”** has the meaning set forth in **Section 47**.

**“Intellectual Property Rights”** means all or any of the following: (a) patents, patent disclosures, and inventions (whether patentable or not); (b) trademarks, service marks, trade dress, trade names, logos, corporate names, and domain names, together with all of the associated goodwill; (c) copyrights and copyrightable works (including computer programs), mask works and rights in data and databases; (d) trade secrets, know-how and other confidential information; and (e) all other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection provided by applicable Law in any jurisdiction throughout the world.

**“Key Personnel”** means any Contractor Personnel identified as key personnel in **Schedule A – Statement of Work**.

**“Law”** means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree or other requirement or rule of any federal, state, local or foreign government or political subdivision thereof, or any arbitrator, court or tribunal of competent jurisdiction.

**“Loss or Losses”** means all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys’ fees and the costs of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers.

**“Maintenance Release”** means any update, upgrade, release or other adaptation or modification of the Software, including any updated Documentation, that Contractor may generally provide to its licensees from time to time during the Term, which may contain, among other things, error corrections, enhancements, improvements or other changes to the user interface, functionality, compatibility, capabilities, performance, efficiency or quality of the Software.

**“New Version”** means any new version of the Software that the Contractor may from time to time introduce and market generally as a distinct licensed product, as may be indicated by Contractor's designation of a new version number.

**“Permitted Subcontractor”** has the meaning set forth in **Section 13**.

**“Person”** means an individual, corporation, partnership, joint venture, limited liability company, governmental authority, unincorporated organization, trust, association or other entity.

**“Pricing”** means any and all fees, rates and prices payable under this Contract, including pursuant to any Schedule or Exhibit hereto.

**“Pricing Schedule”** means the schedule attached as **Schedule B**, setting forth the Fees, rates and Pricing payable under this Contract.

**“Program Manager”** is the individual appointed by each party to (a) monitor and coordinate the day-to-day activities of this Contract, and (b) for the State, to co-sign off on its notice of Acceptance of the Deliverables. Each party's Program Manager will be identified in the Statement of Work.

**“Representatives”** means a party's employees, officers, directors, partners, shareholders, agents, attorneys, successors and permitted assigns.

**“RFP”** means the State's request designed to solicit responses for Contract Activities under this Contract.

**“Software”** means Contractor's software set forth in the Statement of Work, and any Maintenance Releases or New Versions provided to the State and any Configurations made by or for the State pursuant to this Contract, and all copies of the foregoing permitted under this Contract.

**“Services”** means any of the services Contractor is required to or otherwise does provide under this Contract, **Schedule A** - Statement of Work, **Schedule C** - Software Terms (if applicable), and **Schedule D Data Security Schedule** (if applicable).

**“Source Code”** means the human readable source code of the Software to which it relates, in the programming language in which the Software was written, together with all related flow charts and technical documentation, including a description of the procedure for generating object code, all of a level sufficient to enable a programmer reasonably fluent in such programming language to understand, build, operate, support, maintain and develop modifications, upgrades, updates, adaptations, enhancements, new versions and other derivative works and improvements of, and to develop computer programs compatible with, the Software.

**“Site”** means the physical location designated by the State in, or in accordance with, this Contract or the Statement of Work for delivery or installation of the Contract Activities.

**“State”** means the State of Michigan.

**“State Data”** has the meaning set forth in **Section 36**.

**“State Materials”** means all materials and information, including equipment, documents, data, know-how, ideas, methodologies, specifications, software, content and technology, in any form or media,



directly or indirectly provided or made available to Contractor by or on behalf of the State in connection with this Contract.

**“Statement of Work”** means any statement of work entered into by the parties and attached as a schedule to this Contract. The initial Statement of Work is attached as **Schedule A**, and subsequent Statements of Work shall be sequentially identified and attached as Schedules A-1, A-2, A-3, etc.

**“Stop Work Order”** has the meaning set forth in **Section 27**.

**“Term”** has the meaning set forth in the preamble.

**“Third Party”** means any Person other than the State or Contractor.

**“Transition Period”** has the meaning set forth in **Section 31**.

**“Transition Responsibilities”** has the meaning set forth in **Section 31**.

**“Unauthorized Removal”** has the meaning set forth in **Section 15**.

**“Unauthorized Removal Credit”** has the meaning set forth in **Section 15**.

**“Warranty Period”** means the period set forth in Schedule A, the Statement of Work, commencing on the date of acceptance of all Deliverables purchased pursuant to the terms of this Contract.

**“Work Product”** means all State-specific deliverables that Contractor is required to, or otherwise does, provide to the State under this Contract including but not limited to written materials, computer scripts, software configuration, software customization, APIs, macros, user interfaces, reports, project management documents, forms, templates, and other State-specific documents and related materials together with all ideas, concepts, processes, and methodologies developed in connection with this Contract whether or not embodied in this Contract. Work Product does not include software.

2. **Duties of Contractor.** Contractor must perform the Services and provide the Deliverables described in **Schedule A – Statement of Work**. An obligation to provide delivery of any commodity is considered a service and is a Contract Activity.

Contractor must furnish all labor, equipment, materials, and supplies necessary for the performance of the Contract Activities, and meet operational standards, unless otherwise specified in **Schedule A**.

Contractor must also be clearly identifiable while on State property by wearing identification issued by the State, and clearly identify themselves whenever making contact with the State.

3. **Statement(s) of Work.** Contractor shall provide the Contract Activities pursuant to Statements of Work entered into under this Contract. No Statement of Work shall be effective unless signed by each party's Contract Administrator. The term of each Statement of Work shall commence on the parties' full execution of the Statement of Work and terminate when the parties have fully performed their obligations. The terms and conditions of this Contract will apply at all times to any Statements of Work entered into by the parties and attached as a schedule to this Contract. The State shall have the right to terminate such Statement of Work as set forth in **Sections 28 and 29**. Contractor acknowledges that time is of the essence with respect to Contractor's obligations under each Statement of Work and agrees that prompt and timely performance of all such obligations in accordance with this Contract and the Statements of Work is strictly required.
4. **Statement of Work Requirements.** Each Statement of Work may include the following: (a) names and contact information for Contractor's Contract Administrator, Program Manager and Key Personnel; (b) names and contact information for the State's Contract Administrator, Program Manager and Business Owner; (c) a detailed description of the Services to be provided under this Contract, including any training obligations of Contractor; (d) a detailed description of the Deliverables to be provided under this Contract; (e) a description of all liquidated damages associated with this Contract, if any; and (f) a

detailed description of all State Resources, if any, required to complete the Implementation Plan, if such a Plan is necessary.

5. **Change Control Process.** The State may at any time request in writing (each, a "Change Request") changes to the Statement of Work, including changes to the Contract Activities (each, a "Change"). Upon the State's submission of a Change Request, the parties will evaluate and implement all Changes in accordance with this **Section 5**. No Change will be effective until the parties have executed a Change Notice. Except as the State may request in its Change Request or otherwise in writing, Contractor must continue to perform its obligations in accordance with the Statement of Work pending negotiation and execution of a Change Notice. Contractor will use its best efforts to limit any delays or Fee increases from any Change to those necessary to perform the Change in accordance with the applicable Change Notice. Contractor may, on its own initiative and at its own expense, prepare and submit its own Change Request to the State. However, the State will be under no obligation to approve or otherwise respond to a Change Request initiated by Contractor.
6. **Notices.** All notices and other communications required or permitted under this Contract must be in writing and will be considered given and received: (a) when verified by written receipt if sent by courier; (b) when actually received if sent by mail without verification of receipt; or (c) when verified by automated receipt or electronic logs if sent by facsimile or email.

If to State:	If to Contractor:
Valerie Hiltz 525 W. Allegan Street, 1 <sup>st</sup> Floor NE Lansing, MI 48933 hiltzv@michigan.gov 517-249-0459	Lori Rodriguez 221 Jefferson Ridge Pkwy Lynchburg, Virginia 24501 Lori.Rodriguez@L3Harris.com Office: (434) 455-9240 Mobile: (434) 258-1156

7. **Performance Guarantee.** Contractor must at all times have financial resources sufficient, in the opinion of the State, to ensure performance of the Contract and must provide proof upon request. The State may require a performance bond (as specified in Schedule A) if, in the opinion of the State, it will ensure performance of the Contract.
8. **Insurance Requirements.** Contractor must maintain the insurances identified below and is responsible for all deductibles. All required insurance must: (a) protect the State from claims that may arise out of, are alleged to arise out of, or result from Contractor's or a subcontractor's performance; (b) be primary and non-contributing to any comparable liability insurance (including self-insurance) carried by the State; and (c) be provided by a company with an A.M. Best rating of "A-" or better, and a financial size of VII or better.

Required Limits	Additional Requirements
<b>Commercial General Liability Insurance</b>	
<u>Minimum Limits:</u> \$1,000,000 Each Occurrence Limit \$1,000,000 Personal & Advertising Injury Limit \$2,000,000 General Aggregate Limit \$2,000,000 Products/Completed Operations  <u>Deductible Maximum:</u>	Contractor must have their policy endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds using endorsement CG 20 10 11 85, or both CG 2010 07 04 and CG 2037 07 04.

Contractor shall be solely responsible for Deductible.	
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<b>Umbrella or Excess Liability Insurance</b>	
<u>Minimum Limits:</u> \$5,000,000 General Aggregate	Contractor must have their policy follow form.
<b>Automobile Liability Insurance</b>	
<u>Minimum Limits:</u> \$1,000,000 Per Accident	Contractor must have their policy: (1) endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds; and (2) include Hired and Non-Owned Automobile coverage.
<b>Workers' Compensation Insurance</b>	
<u>Minimum Limits:</u> Coverage according to applicable laws governing work activities.	Waiver of subrogation, except where waiver is prohibited by law.
<b>Employers Liability Insurance</b>	
<u>Minimum Limits:</u> \$500,000 Each Accident \$500,000 Each Employee by Disease \$500,000 Aggregate Disease.	

<b>Professional Liability (Errors and Omissions) Insurance</b>	
<u>Minimum Limits:</u> \$3,000,000 Each Occurrence \$3,000,000 Annual Aggregate  <u>Deductible Maximum:</u>	

Contractor shall be solely responsible for Deductible.	
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If any of the required policies provide **claims-made** coverage, the Contractor must: (a) provide coverage with a retroactive date before the effective date of the contract or the beginning of Contract Activities; (b) maintain coverage and provide evidence of coverage for at least three (3) years after completion of the Contract Activities; and (c) if coverage is cancelled or not renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, Contractor must purchase extended reporting coverage for a minimum of three (3) years after completion of work.

Contractor must: (a) provide insurance certificates to the Contract Administrator, containing the agreement or delivery order number, at Contract formation and within 20 calendar days of the expiration date of the applicable policies; (b) require that subcontractors maintain the required insurances contained in this Section; (c) notify the Contract Administrator within 5 business days if any insurance is cancelled; and (d) waive all rights against the State for damages covered by insurance. Failure to maintain the required insurance does not limit this waiver.

This Section is not intended to and is not to be construed in any manner as waiving, restricting or limiting the liability of either party for any obligations under this Contract (including any provisions hereof requiring Contractor to indemnify, defend and hold harmless the State).

9. **Administrative Fee and Reporting.** Contractor must pay an administrative fee of 1% on all payments made to Contractor under the Contract including transactions with the State (including its departments, divisions, agencies, offices, and commissions), MiDEAL members, and other states (including governmental subdivisions and authorized entities). Administrative fee payments must be made by check payable to the State of Michigan and mailed to:

Department of Technology, Management and Budget  
Cashiering  
P.O. Box 30681  
Lansing, MI 48909

Contractor must submit an itemized purchasing activity report, which includes at a minimum, the name of the purchasing entity and the total dollar volume in sales. Reports should be mailed to [MiDeal@michigan.gov](mailto:MiDeal@michigan.gov).

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

10. **Extended Purchasing Program.** This contract is extended to MiDEAL members. MiDEAL members include local units of government, school districts, universities, community colleges, and nonprofit hospitals. A current list of MiDEAL members is available at [www.michigan.gov/mideal](http://www.michigan.gov/mideal). Upon written agreement between the State and Contractor, this contract may also be extended to: (a) State of Michigan employees and (b) other states (including governmental subdivisions and authorized entities).

If extended, Contractor must supply all Contract Activities at the established Contract prices and terms. The State reserves the right to impose an administrative fee and negotiate additional discounts based on any increased volume generated by such extensions.

Contractor must submit invoices to, and receive payment from, extended purchasing program members on a direct and individual basis.

11. **Independent Contractor.** Contractor is an independent contractor and assumes all rights, obligations and liabilities set forth in this Contract. Contractor, its employees, and agents will not be considered employees of the State. No partnership or joint venture relationship is created by virtue of this Contract. Contractor, and not the State, is responsible for the payment of wages, benefits and taxes of Contractor's employees and any subcontractors. Prior performance does not modify Contractor's status as an independent contractor.

12. **Intellectual Property Rights.** Contractor hereby acknowledges that the State is and will be the sole and exclusive owner of all right, title, and interest in the Work Product produced as part of the Contract Activities, and all associated intellectual property rights, if any. In general, Work Product constitutes works made for hire as defined in Section 101 of the Copyright Act of 1976. To the extent any Work Product, and related intellectual property do not qualify as works made for hire under the Copyright Act, Contractor will, and hereby does, immediately on its creation, assign, transfer and otherwise convey to the State, irrevocably and in perpetuity, throughout the universe, all right, title and interest in and to the Work Product, including all intellectual property rights therein. Contractor also irrevocably waives any and all claims Contractor may have now or hereafter have in any jurisdiction to so called “moral rights” or rights of *droit moral* with respect to the Work Product. If Contract Activities includes the purchase or use of software, such purchase, use, or access to Software shall be subject to **Schedules C and D** of this Contract.
13. **Subcontracting.** Contractor will not, without the prior written approval of the State, which consent may be given or withheld in the State’s sole discretion, engage any Third Party to perform Services. The State’s approval of any such Third Party (each approved Third Party, a “**Permitted Subcontractor**”) does not relieve Contractor of its representations, warranties or obligations under this Contract. Without limiting the foregoing, Contractor will: (a) be responsible and liable for the acts and omissions of each such Permitted Subcontractor (including such Permitted Subcontractor’s employees who, to the extent providing Services or Deliverables, shall be deemed Contractor Personnel) to the same extent as if such acts or omissions were by Contractor or its employees; (b) name the State a third party beneficiary under Contractor’s Contract with each Permitted Subcontractor with respect to the Services; (c) be responsible for all fees and expenses payable to, by or on behalf of each Permitted Subcontractor in connection with this Contract, including, if applicable, withholding of income taxes, and the payment and withholding of social security and other payroll taxes, unemployment insurance, workers’ compensation insurance payments and disability benefits; and (d) notify the State of the location of the Permitted Subcontractor and indicate if it is located within the continental United States.
14. **Staffing.** Contractor is solely responsible for all Contractor Personnel and for the payment of their compensation, including, if applicable, withholding of income taxes, and the payment and withholding of social security and other payroll taxes, unemployment insurance, workers’ compensation insurance payments and disability benefits. The State’s Contract Administrator may require Contractor to remove or reassign personnel by providing a notice to Contractor.
15. **Key Personnel.** If, in the sole discretion of the State, Key Personnel are required to complete the Contract Activities, such Key Personnel shall be identified in **Schedule A - Statement of Work**. The State has the right to recommend and approve in writing the initial assignment, as well as any proposed reassignment or replacement, of any Key Personnel. Before assigning an individual to any Key Personnel position, Contractor will notify the State of the proposed assignment, introduce the individual to the State’s Program Manager, and 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 will provide a written explanation including reasonable detail outlining the reasons for the rejection.

Contractor will not remove any Key Personnel from their assigned roles on this 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**”). An Unauthorized Removal 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. Any Unauthorized Removal may be considered by the State to be a material breach of this Contract, in respect of which the State may elect to terminate this Contract for cause under **Section 28**.

It is further acknowledged that an Unauthorized Removal will interfere with the timely and proper completion of this Contract, to the loss and damage of the State, and that it would be impracticable and extremely difficult to fix the actual damage sustained by the State as a result of any Unauthorized

Removal. Therefore, Contractor and the State agree that in the case of any Unauthorized Removal in respect of which the State does not elect to exercise its rights under **Section 28**, Contractor will issue to the State an amount set forth in **Schedule A – Statement of Work** (each, an “**Unauthorized Removal Credit**”).

16. **Background Checks.** Pursuant to Michigan law, all agencies subject to IRS Pub. 1075 are required to ask the Michigan State Police to perform fingerprint background checks on all employees, including Contractor and Subcontractor employees, who may have access to any database of information maintained by the federal government that contains confidential or personal information, including, but not limited to, federal tax information. Further, pursuant to Michigan law, any agency described above is prohibited from providing Contractors or Subcontractors with the result of such background check. For more information, please see Michigan Public Act 427 of 2018. Upon request, Contractor must perform background checks on all employees and subcontractors and its employees prior to their assignment. The scope is at the discretion of the State and documentation must be provided as requested. Contractor is responsible for all costs associated with the requested background checks. The State, in its sole discretion, may also perform background checks.
17. **Assignment.** Contractor may not assign this Contract to any other party without the prior approval of the State. Upon notice to Contractor, the State, in its sole discretion, may assign in whole or in part, its rights or responsibilities under this Contract to any other party. If the State determines that a novation of the Contract to a third party is necessary, Contractor will agree to the novation and provide all necessary documentation and signatures.
18. **Change of Control.** Contractor will notify within 30 days of any public announcement, or otherwise once legally permitted to do so, the State of a change in Contractor’s organizational structure or ownership. For purposes of this Contract, a change in control means any of the following: (a) a sale of more than 50% of Contractor’s stock; (b) a sale of substantially all of Contractor’s assets; (c) a change in a majority of Contractor’s board members; (d) consummation of a merger or consolidation of Contractor with any other entity; (e) a change in ownership through a transaction or series of transactions; (f) or the board (or the stockholders) approves a plan of complete liquidation. A change of control does not include any consolidation or merger effected exclusively to change the domicile of Contractor, or any transaction or series of transactions principally for bona fide equity financing purposes.  
  
In the event of a change of control, Contractor must require the successor to assume this Contract and all of its obligations under this Contract.
19. **Ordering.** Contractor is not authorized to begin performance until receipt of authorization as identified in Schedule A.
20. **Acceptance.** Contract Activities are subject to inspection and testing by the State within 30 calendar days of the State’s receipt of them (“**State Review Period**”), unless otherwise provided in Schedule A. If the Contract Activities are not fully accepted by the State, the State will notify Contractor by the end of the State Review Period that either: (a) the Contract Activities are accepted but noted deficiencies must be corrected; or (b) the Contract Activities are rejected. If the State finds material deficiencies, it may: (i) reject the Contract Activities without performing any further inspections; (ii) demand performance at no additional cost; or (iii) terminate this Contract in accordance with **Section 28**, Termination for Cause.

Within 10 business days from the date of Contractor’s receipt of notification of acceptance with deficiencies or rejection of any Contract Activities, Contractor must cure, at no additional cost, the deficiency and deliver unequivocally acceptable Contract Activities to the State. If acceptance with deficiencies or rejection of the Contract Activities impacts the content or delivery of other non-completed Contract Activities, the parties’ respective Program Managers must determine an agreed to number of days for re-submission that minimizes the overall impact to the Contract. However, nothing herein affects, alters, or relieves Contractor of its obligations to correct deficiencies in accordance with the time response standards set forth in this Contract.

If Contractor is unable or refuses to correct the deficiency within the time response standards set forth in this Contract, the State may cancel the order in whole or in part. The State, or a third party identified

by the State, may perform the Contract Activities and recover the difference between the cost to cure and the Contract price plus an additional 10% administrative fee.

21. **Delivery.** Contractor must deliver all Contract Activities F.O.B. destination, within the State premises with transportation and handling charges paid by Contractor, unless otherwise specified in Schedule A. All containers and packaging become the State's exclusive property upon acceptance.
22. **Risk of Loss and Title** Until final acceptance, title and risk of loss or damage to Contract Activities remains with Contractor. Contractor is responsible for filing, processing, and collecting all damage claims. The State will record and report to Contractor any evidence of visible damage. If the State rejects the Contract Activities, Contractor must remove them from the premises within 10 calendar days after notification of rejection. The risk of loss of rejected or non-conforming Contract Activities remains with Contractor. Rejected Contract Activities not removed by Contractor within 10 calendar days will be deemed abandoned by Contractor, and the State will have the right to dispose of it as its own property. Contractor must reimburse the State for costs and expenses incurred in storing or effecting removal or disposition of rejected Contract Activities.
23. **Warranty Period.** The warranty period, if applicable, for Contract Activities is a fixed period commencing on the date specified in **Schedule A**, and, for Software, **Schedule C**. If the Contract Activities do not function as warranted during the warranty period, the State may return such non-conforming Contract Activities to the Contractor for a full refund.
24. **Terms of Payment.** Invoices must conform to the requirements communicated from time-to-time by the State. All undisputed amounts are payable within 45 days of the State's receipt. Contractor may only charge for Contract Activities performed as specified in **Schedule A**. Invoices must include an itemized statement of all charges. The State is exempt from State sales tax for direct purchases and may be exempt from federal excise tax, if Services purchased under this Agreement are for the State's exclusive use. All prices are exclusive of taxes, and Contractor is responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state, or local governmental entity on any amounts payable by the State under this Contract.

The State has the right to withhold payment of any disputed amounts until the parties agree as to the validity of the disputed amount. The State will notify Contractor of any dispute within a reasonable time. Payment by the State will not constitute a waiver of any rights as to Contractor's continuing obligations, including claims for deficiencies or substandard Contract Activities. Contractor's acceptance of final payment by the State constitutes a waiver of all claims by Contractor against the State for payment under this Contract, other than those claims previously filed in writing on a timely basis and still disputed.

The State will only disburse payments under this Contract through Electronic Funds Transfer (EFT). Contractor must register with the State at <http://www.michigan.gov/SIGMAVSS> to receive electronic fund transfer payments. If Contractor does not register, the State is not liable for failure to provide payment. Without prejudice to any other right or remedy it may have, the State reserves the right to set off at any time any amount then due and owing to it by Contractor against any amount payable by the State to Contractor under this Contract.

25. **Payment Disputes.** The State may withhold from payment any and all payments and amounts the State disputes in good faith, pending resolution of such dispute, provided that the State: (a) timely renders all payments and amounts that are not in dispute; notifies Contractor of the dispute prior to the due date for payment, specifying in such notice: (i) the amount in dispute; and (ii) the reason for the dispute set out in sufficient detail to facilitate investigation by Contractor and resolution by the parties; (b) works with Contractor in good faith to resolve the dispute promptly; and (c) promptly pays any amount determined to be payable by resolution of the dispute.

Contractor shall not withhold any Contract Activities or fail to perform any obligation hereunder by reason of the State's good faith withholding of any payment or amount in accordance with this **Section 25** or any dispute arising therefrom.

26. **Liquidated Damages.** Liquidated damages, if applicable, will be assessed as described in **Schedule A**. Amounts due the State as liquidated damages may be set off against any Fees payable to Contractor under this Contract, or the State may bill Contractor as a separate item and Contractor will promptly make payments on such bills.
27. **Stop Work Order.** The State may suspend any or all activities under the Contract at any time. The State will provide Contractor a written stop work order detailing the suspension. Contractor must comply with the stop work order upon receipt. Within 90 calendar days, or any longer period agreed to by Contractor, the State will either: (a) issue a notice authorizing Contractor to resume work, or (b) terminate the Contract or delivery order. The State will not pay for Contract Activities, Contractor's lost profits, or any additional compensation during a stop work period.
28. **Termination for Cause.** The State may terminate this Contract for cause, in whole or in part, if Contractor, as determined by the State: (a) endangers the value, integrity, or security of any location, data, or personnel; (b) becomes insolvent, petitions for bankruptcy court proceedings, or has an involuntary bankruptcy proceeding filed against it by any creditor; (c) engages in any conduct that may expose the State to liability; (d) breaches any of its material duties or obligations; or (e) fails to cure a breach within the time stated in a notice of breach. Any reference to specific breaches being material breaches within this Contract will not be construed to mean that other breaches are not material.
- If the State terminates this Contract under this Section, the State will issue a termination notice specifying whether Contractor must: (a) cease performance immediately, or (b) continue to perform for a specified period. If it is later determined that Contractor was not in breach of the Contract, the termination will be deemed to have been a Termination for Convenience, effective as of the same date, and the rights and obligations of the parties will be limited to those provided in **Section 29**, Termination for Convenience.
- The State will only pay for amounts due to Contractor for Contract Activities accepted by the State on or before the date of termination, subject to the State's right to set off any amounts owed by the Contractor for the State's reasonable costs in terminating this Contract. The Contractor must pay all reasonable costs incurred by the State in terminating this Contract for cause, including administrative costs, attorneys' fees, court costs, transition costs, and any costs the State incurs to procure the Contract Activities from other sources.
29. **Termination for Convenience.** The State may immediately terminate this Contract in whole or in part without penalty and for any reason, including but not limited to, appropriation or budget shortfalls. The termination notice will specify whether Contractor must: (a) cease performance of the Contract Activities immediately, or (b) continue to perform the Contract Activities in accordance with **Section 31**, Transition Responsibilities. If the State terminates this Contract for convenience, the State will pay all reasonable costs, as determined by the State, for State approved Transition Responsibilities.
30. **Effect of Termination.** Upon and after the termination or expiration of this Contract or one or more Statements of Work for any or no reason: (a) Contractor will be obligated to perform all Transition Responsibilities specified in **Section 31**; (b) all licenses granted to Contractor in State Data will immediately and automatically also terminate. Contractor must promptly return to the State all State Data not required by Contractor for its Transition Responsibilities, if any; (c) Contractor will: (i) return to the State all documents and tangible materials (and any copies) containing, reflecting, incorporating, or based on the State's Confidential Information; (ii) permanently erase the State's Confidential Information from its computer systems; and (iii) certify in writing to the State that it has complied with the requirements of this **Section 30** in each case to the extent such materials are not required by Contractor for Transition Responsibilities, if any.
31. **Transition Responsibilities.** Upon termination or expiration of this Contract for any reason, Contractor must, for a period of time specified by the State (not to exceed 180 calendar days, "**Transition Period**"), provide all reasonable transition assistance requested by the State, to allow for the expired or terminated portion of the Contract Activities to continue without interruption or adverse effect, and to facilitate the orderly transfer of such Contract Activities to the State or its designees. Such transition assistance may include, but is not limited to: (a) continuing to perform the Contract Activities at the established Contract rates; (b) taking all reasonable and necessary measures to transition performance



of the work, including all applicable Contract Activities, training, equipment, software, leases, reports and other documentation, to the State or the State's designee; (c) taking all necessary and appropriate steps, or such other action as the State may direct, to preserve, maintain, protect, or return to the State all materials, data, property, and confidential information provided directly or indirectly to Contractor by any entity, agent, vendor, or employee of the State; (d) transferring title in and delivering to the State, at the State's discretion, all completed or partially completed deliverables prepared under this Contract as of the Contract termination date; and (e) preparing an accurate accounting from which the State and Contractor may reconcile all outstanding accounts (collectively, "**Transition Responsibilities**"). This Contract will automatically be extended through the end of the transition period.

- 32. General Indemnification.** Contractor must defend, indemnify and hold the State, its departments, divisions, agencies, offices, commissions, officers, and employees harmless, without limitation, from and against any and all actions, claims, losses, liabilities, damages, costs, attorney fees, and expenses (including those required to establish the right to indemnification), arising out of or relating to: (a) any breach by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable) of any of the promises, agreements, representations, warranties, or insurance requirements contained in this Contract; (b) any infringement, misappropriation, or other violation of any intellectual property right or other right of any third party; (c) any bodily injury, death, or damage to real or tangible personal property occurring wholly or in part due to action or inaction by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable); and (d) any acts or omissions of Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable).

The State will notify Contractor in writing if indemnification is sought; however, failure to do so will not relieve Contractor, except to the extent that Contractor is materially prejudiced. Contractor must, to the satisfaction of the State, demonstrate its financial ability to carry out these obligations.

The State is entitled to: (i) regular updates on proceeding status; (ii) participate in the defense of the proceeding; (iii) employ its own counsel; and to (iv) retain control of the defense if the State deems necessary. Contractor will not, without the State's written consent (not to be unreasonably withheld), settle, compromise, or consent to the entry of any judgment in or otherwise seek to terminate any claim, action, or proceeding. To the extent that any State employee, official, or law may be involved or challenged, the State may, at its own expense, control the defense of that portion of the claim.

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. An attorney designated to represent the State may not do so until approved by the Michigan Attorney General and appointed as a Special Assistant Attorney General.

- 33. Infringement Remedies.** If, in either party's opinion, any piece of equipment, software, commodity, or service supplied by Contractor or its subcontractors, or its operation, use or reproduction, is likely to become the subject of a copyright, patent, trademark, or trade secret infringement claim, Contractor must, at its expense: (a) procure for the State the right to continue using the equipment, software, commodity, or service, or if this option is not reasonably available to Contractor, (b) replace or modify the same so that it becomes non-infringing; or (c) accept its return by the State with appropriate credits to the State against Contractor's charges and reimburse the State for any losses or costs incurred as a consequence of the State ceasing its use and returning it.
- 34. Limitation of Liability and Disclaimer of Damages.** NEITHER PARTY WILL BE LIABLE, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS CONTRACT FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS AND LOST BUSINESS OPPORTUNITIES. EXCEPT FOR CONTRACTOR'S INDEMNIFICATION OBLIGATIONS, IN NO EVENT WILL EITHER PARTY'S AGGREGATE LIABILITY TO THE OTHER PARTY UNDER THIS CONTRACT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS CONTRACT, EXCEED THE MAXIMUM AMOUNT OF FEES PAYABLE UNDER THIS CONTRACT.

35. **Disclosure of Litigation, or Other Proceeding.** Contractor must notify the State within 14 calendar days of receiving notice of any litigation, investigation, arbitration, or other proceeding (collectively, "**Proceeding**") involving Contractor, a subcontractor, or an officer or director of Contractor or subcontractor, that arises during the term of the Contract, including: (a) a criminal Proceeding; (b) a parole or probation Proceeding; (c) a Proceeding under the Sarbanes-Oxley Act; (d) a civil Proceeding involving: (1) a claim that might reasonably be expected to adversely affect Contractor's viability or financial stability; or (2) a governmental or public entity's claim or written allegation of fraud; or (e) a Proceeding involving any license that Contractor is required to possess in order to perform under this Contract.

36. **State Data.** All data and information provided to Contractor by or on behalf of the State, and all data and information derived therefrom, is the exclusive property of the State ("**State Data**"); this definition is to be construed as broadly as possible. Upon request, Contractor must provide to the State, or a third party designated by the State, all State Data within 10 calendar days of the request and in the format requested by the State. Contractor will assume all costs incurred in compiling and supplying State Data. No State Data may be used for any marketing purposes.

Contractor Use of State Data. Contractor is provided a limited license to State Data for the sole and exclusive purpose of providing the Services, including a license to collect, process, store, generate, and display State Data only to the extent necessary in the provision of the Services. Contractor must:

(a) keep and maintain State Data in strict confidence, using such degree of care as is appropriate and consistent with its obligations as further described in this Contract and applicable law to avoid unauthorized access, use, disclosure, or loss;

(b) use and disclose State Data solely and exclusively for the purpose of providing the Services, such use and disclosure being in accordance with this Contract, any applicable Statement of Work, and applicable law;

(c) keep and maintain State Data in the continental United States and

(d) not use, sell, rent, transfer, distribute, or otherwise disclose or make available State Data for Contractor's own purposes or for the benefit of anyone other than the State without the State's prior written consent.

37. **Reserved.**

38. **Non-Disclosure of Confidential Information.** The parties acknowledge that each party may be exposed to or acquire communication or data of the other party that is confidential, privileged communication not intended to be disclosed to third parties. The provisions of this Section survive the termination of this Contract.

a. Meaning of Confidential Information. For the purposes of this Contract, the term "**Confidential Information**" means all information and documentation of a party that: (a) has been marked "confidential" or with words of similar meaning, at the time of disclosure by such party; (b) if disclosed orally or not marked "confidential" or with words of similar meaning, was subsequently summarized in writing by the disclosing party and marked "confidential" or with words of similar meaning; and, (c) should reasonably be recognized as confidential information of the disclosing party. The term "Confidential Information" does not include any information or documentation that was: (a) subject to disclosure under the Michigan Freedom of Information Act (FOIA); (b) already in the possession of the receiving party without an obligation of confidentiality; (c) developed independently by the receiving party, as demonstrated by the receiving party, without violating the disclosing party's proprietary rights; (d) obtained from a source other than the disclosing party without an obligation of confidentiality; or, (e) publicly available when received, or thereafter became publicly available (other than through any unauthorized disclosure by, through, or on behalf of, the receiving party). For purposes of this Contract, in all cases and for all matters, State Data is deemed to be Confidential Information.

b. Obligation of Confidentiality. The parties agree to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third parties other than employees, agents, or subcontractors of a party

who have a need to know in connection with this Contract or to use such Confidential Information for any purposes whatsoever other than the performance of this Contract. The parties agree to advise and require their respective employees, agents, and subcontractors of their obligations to keep all Confidential Information confidential. Disclosure to 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 responsibilities; 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 or any subcontractor may be required to execute a separate agreement to be bound by the provisions of this Section.

- c. Cooperation to Prevent Disclosure of Confidential Information. Each party must use its best efforts to assist the other party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the foregoing, each party must advise the other party immediately in the event either party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Contract and each party will cooperate with the other party in seeking injunctive or other equitable relief against any such person.
- d. Remedies for Breach of Obligation of Confidentiality. Each party acknowledges that breach of its obligation of confidentiality may give rise to irreparable injury to the other party, which damage may be inadequately compensable in the form of monetary damages. Accordingly, a party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available, to include, in the case of the State, at the sole election of the State, the immediate termination, without liability to the State, of this Contract or any Statement of Work corresponding to the breach or threatened breach.
- e. Surrender of Confidential Information upon Termination. Upon termination of this Contract or a Statement of Work, in whole or in part, each party must, within 5 calendar days from the date of termination, return to the other party any and all Confidential Information received from the other party, or created or received by a party on behalf of the other party, which are in such party's possession, custody, or control; provided, however, that Contractor must return State Data to the State following the timeframe and procedure described further in this Contract. Should Contractor or the State determine that the return of any Confidential Information is not feasible, such party must destroy the Confidential Information and must certify the same in writing within 5 calendar days from the date of termination to the other party. However, the State's legal ability to destroy Contractor data may be restricted by its retention and disposal schedule, in which case Contractor's Confidential Information will be destroyed after the retention period expires.

39. **Reserved.**

40. **Reserved.**

41. **Reserved.**

42. **Records Maintenance, Inspection, Examination, and Audit.** The State or its designee may audit Contractor to verify compliance with this Contract. Contractor must retain and provide to the State or its designee and the auditor general upon request, all financial and accounting records related to the Contract through the term of the Contract and for 4 years after the latter of termination, expiration, or final payment under this Contract or any extension ("**Audit Period**"). If an audit, litigation, or other action involving the records is initiated before the end of the Audit Period, Contractor must retain the records until all issues are resolved.

Within 10 calendar days of providing notice, the State and its authorized representatives or designees have the right to enter and inspect Contractor's premises or any other places where Contract Activities are being performed, and examine, copy, and audit all records related to this Contract. Contractor must cooperate and provide reasonable assistance. If any financial errors are revealed, the amount in error

must be reflected as a credit or debit on subsequent invoices until the amount is paid or refunded. Any remaining balance at the end of the Contract must be paid or refunded within 45 calendar days.

This Section applies to Contractor, any parent, affiliate, or subsidiary organization of Contractor, and any subcontractor that performs Contract Activities in connection with this Contract.

43. **Warranties and Representations.** Contractor represents and warrants: (a) Contractor is the owner or licensee of any Contract Activities that it licenses, sells, or develops and Contractor has the rights necessary to convey title, ownership rights, or licensed use; (b) Contractor will perform the Contract Activities in a timely, professional, safe, and workmanlike manner consistent with standards in the trade, profession, or industry; (c) Contractor will meet or exceed the performance and operational standards, and specifications of the Contract; (d) Contractor will provide all Contract Activities in good quality, with no material defects; (d) Contractor will not interfere with the State's operations; (e) all Contract Activities are delivered free from any security interest, lien, or encumbrance and will continue in that respect; (f) the Contract Activities will not infringe the patent, trademark, copyright, trade secret, or other proprietary rights of any third party; (g) Contractor must assign or otherwise transfer to the State or its designee any manufacturer's warranty for the Contract Activities; (h) the Contract Activities are merchantable and fit for the specific purposes identified in the Contract; (g) the Contract signatory has the authority to enter into this Contract; (h) all information furnished by Contractor in connection with the Contract fairly and accurately represents Contractor's business, properties, finances, and operations as of the dates covered by the information, and Contractor will inform the State of any material adverse changes; (i) all information furnished and representations made in connection with the award of this Contract is true, accurate, and complete, and contains no false statements or omits any fact that would make the information misleading; and that (j) Contractor is neither currently engaged in nor will engage in the boycott of a person based in or doing business with a strategic partner as described in 22 USC 8601 to 8606. A breach of this Section is considered a material breach of this Contract, which entitles the State to terminate this Contract under **Section 28**, Termination for Cause. If Contract Activities includes purchase, use, or access to software, Contractor must agree to additional Warranties and Representations found in **Schedules C** or **D** of this Contract, as applicable.
44. **Conflicts and Ethics.** Contractor will uphold high ethical standards and is prohibited from: (a) holding or acquiring an interest that would conflict with this Contract; (b) doing anything that creates an appearance of impropriety with respect to the award or performance of the Contract; (c) attempting to influence or appearing to influence any State employee by the direct or indirect offer of anything of value; or (d) paying or agreeing to pay any person, other than employees and consultants working for Contractor, any consideration contingent upon the award of the Contract. Contractor must immediately notify the State of any violation or potential violation of these standards. This Section applies to Contractor, any parent, affiliate, or subsidiary organization of Contractor, and any subcontractor that performs Contract Activities in connection with this Contract.
45. **Compliance with Laws.** Contractor must comply with all federal, state and local laws, rules and regulations.
46. **ADA Compliance.** The State is required to comply with the Americans with Disabilities Act of 1990 (ADA), and has adopted a formal policy regarding accessibility requirements for websites and software applications. Contractor's Service Software must comply, where relevant, with level AA of the World Wide Web Consortium (W3C) Web Content Accessibility Guidelines (WCAG) 2.0.
47. **HIPAA Compliance.** The State and Contractor must comply with all obligations under HIPAA and its accompanying regulations, including but not limited to entering into a business associate agreement, if reasonably necessary to keep the State and Contractor in compliance with HIPAA.
48. **Reserved.**
49. **Reserved.**
50. **Nondiscrimination.** Under the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, *et seq.*, the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, *et seq.*, and [Executive Directive 2019-09](#). Contractor and its subcontractors agree not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter

directly or indirectly related to employment, because of race, color, religion, national origin, age, sex (as defined in Executive Directive 2019-09), height, weight, marital status, partisan considerations, any mental or physical disability, or genetic information that is unrelated to the person's ability to perform the duties of a particular job or position. Breach of this covenant is a material breach of this Contract.

51. **Unfair Labor Practice.** Under MCL 423.324, the State may void any Contract with a Contractor or subcontractor who appears on the Unfair Labor Practice register compiled under MCL 423.322.
52. **Governing Law.** This Contract is governed, construed, and enforced in accordance with Michigan law, excluding choice-of-law principles, and all claims relating to or arising out of this Contract are governed by Michigan law, excluding choice-of-law principles. Any dispute arising from this Contract must be resolved in Michigan Court of Claims. Contractor consents to venue in Ingham County, and waives any objections, such as lack of personal jurisdiction or *forum non conveniens*. Contractor must appoint agents in Michigan to receive service of process.
53. **Non-Exclusivity.** Nothing contained in this Contract is intended nor will be construed as creating any requirements contract with Contractor. This Contract does not restrict the State or its agencies from acquiring similar, equal, or like Contract Activities from other sources.
54. **Force Majeure.** Neither party will be in breach of this Contract because of any failure arising from any disaster or acts of god that are beyond their control and without their fault or negligence. Each party will use commercially reasonable efforts to resume performance. Contractor will not be relieved of a breach or delay caused by its subcontractors. If immediate performance is necessary to ensure public health and safety, the State may immediately contract with a third party.
55. **Dispute Resolution.** The parties will endeavor to resolve any Contract dispute in accordance with this provision. The dispute will be referred to the parties' respective Contract Administrators or Program Managers. Such referral must include a description of the issues and all supporting documentation. The parties must submit the dispute to a senior executive if unable to resolve the dispute within 15 business days. The parties will continue performing while a dispute is being resolved, unless the dispute precludes performance. A dispute involving payment does not preclude performance.  
  
Litigation to resolve the dispute will not be instituted until after the dispute has been elevated to the parties' senior executive and either concludes that resolution is unlikely or fails to respond within 15 business days. The parties are not prohibited from instituting formal proceedings: (a) to avoid the expiration of statute of limitations period; (b) to preserve a superior position with respect to creditors; or (c) where a party makes a determination that a temporary restraining order or other injunctive relief is the only adequate remedy. This Section does not limit the State's right to terminate the Contract.
56. **Media Releases.** News releases (including promotional literature and commercial advertisements) pertaining to the Contract or project to which it relates must not be made without prior written State approval, and then only in accordance with the explicit written instructions of the State.
57. **Website Incorporation.** The State is not bound by any content on Contractor's website unless expressly incorporated directly into this Contract.
58. **Schedules.** All Schedules and Exhibits that are referenced herein and attached hereto are hereby incorporated by reference. The following Schedules are attached hereto and incorporated herein:

<b>Schedule A</b>	Statement of Work
<b>Schedule A, Attachment 1</b>	MPSCS Approved Radios, Consoles and Pagers
<b>Schedule A, Attachment 2</b>	Sample- Simple Quotation
<b>Schedule B</b>	Pricing and Fees
<b>Schedule B, Attachment 1</b>	Manufacturer List Price Catalog(s)
<b>Schedule C</b>	Software Terms
<b>Schedule D</b>	Data Security Requirements

59. **Entire Agreement and Order of Precedence.** This Contract, which includes **Schedule A** – Statement of Work, and schedules and exhibits which are hereby expressly incorporated, is the entire agreement of the parties related to the Contract Activities. This Contract supersedes and replaces all previous understandings and agreements between the parties for the Contract Activities. If there is a conflict between documents, the order of precedence is: (a) first, this Contract, excluding its schedules, exhibits, and Schedule A – Statement of Work; (b) second, Schedule A – Statement of Work; and (c) third, schedules expressly incorporated into this Contract. NO TERMS ON CONTRACTOR'S INVOICES, ORDERING DOCUMENTS, WEBSITE, BROWSE-WRAP, SHRINK-WRAP, CLICK-WRAP, CLICK-THROUGH OR OTHER NON-NEGOTIATED TERMS AND CONDITIONS PROVIDED WITH ANY OF THE CONTRACT ACTIVITIES WILL CONSTITUTE A PART OR AMENDMENT OF THIS CONTRACT OR IS BINDING ON THE STATE OR ITS AUTHORIZED USERS FOR ANY PURPOSE. ALL SUCH OTHER TERMS AND CONDITIONS HAVE NO FORCE AND EFFECT AND ARE DEEMED REJECTED BY THE STATE, EVEN IF ACCESS TO OR USE OF THE CONTRACT ACTIVITIES REQUIRES AFFIRMATIVE ACCEPTANCE OF SUCH TERMS AND CONDITIONS.
60. **Severability.** If any part of this Contract is held invalid or unenforceable, by any court of competent jurisdiction, that part will be deemed deleted from this Contract and the severed part will be replaced by agreed upon language that achieves the same or similar objectives. The remaining Contract will continue in full force and effect.
61. **Waiver.** Failure to enforce any provision of this Contract will not constitute a waiver.
62. **Survival.** The provisions of this Contract that impose continuing obligations, including warranties and representations, termination, transition, insurance coverage, indemnification, and confidentiality, will survive the expiration or termination of this Contract.

# STATE OF MICHIGAN

Master Agreement No.  
**Two-Way Radio and Radio Systems Sales and Service**  
**SCHEDULE A**  
**STATEMENT OF WORK**  
**CONTRACT ACTIVITIES**

## BACKGROUND

The State of Michigan, its agencies, and MiDeal members (local units of government including cities, villages, counties, townships, school districts, non-profit hospitals, and institutions of higher education) use two-way radio and wireless communication equipment to ensure public safety either by utilizing the Michigan Public Services Communication System (MPSCS) or independent systems, and the performance of their everyday duties.

## SCOPE

This contract will be for use by the State of Michigan and its MiDeal members and must provide deliverables, services, staff, and otherwise do all things necessary or incidental to the performance of the work established in the contract to include but not limited to:

- A. P25 Two-Way Radios and other associated radio systems hardware, accessories and furniture which may or may not be utilized for use on and compatible with the Michigan Public Safety Communication System (MPSCS).
- B. Non-P25 Two-Way Radios and other associated radio system hardware, software, accessories, and furniture.
- C. Professional services including but not limited to extended warranties, engineering, installation, maintenance, repair, and training services.
- D. Future new technologies and technology solutions as necessary to refresh radio systems created under this contract or to augment existing State systems.

## REQUIREMENTS

### 1. General Requirements

#### **1.1. Sales- Deliverable Product Specifications**

##### **A. P-25 and Non-P25 Radios and Equipment.**

The Contractor may provide both P-25 and Non-P25 radios and equipment. Products intended to be used in conjunction with (MPSCS) must meet parameters as set forth in **Section 1.1.B.** as indicated below.

The following list of commodities will be made available to include but not limited to:

- 1. Mobile and Portable Radios. Includes but are not limited to, trucking phase II, analog conventional:
  - a. Mobile Radio- which is a fixed mount unit installed into a vehicle.
  - b. Portable Radio- which are personal radios.
  - c. Console Radio- which are at dispatch centers or established for back-up using 120v.
  - d. In-vehicle Repeaters and systems, and associated hardware and accessories.
- 2. Consoles. Include but not limited to any dispatch console.

3. Fixed Stations, Fixed Station Controls and Fixed Station Accessories. These are the large rack mounted radios and equipment located at radio tower sites, and receivers. Including but not limited to:
  - a. Microwave Antennas and Antenna Systems
  - b. Base Station/Repeater Radio Antennas
  - c. RF Transmission Lines
  - d. RF Filtering Equipment
4. Fixed Network Equipment. Includes all system infrastructure IP networking hardware including but not limited to:
  - a. Routers
  - b. Switches
  - c. Firewalls
5. System Infrastructure. Includes hardware, software, software licenses all located at the system master sites which run the radio system.
6. Dropship. Includes but is not limited to:
  - a. Microwave Equipment
  - b. Antenna Systems
  - c. Site Shelters
  - d. Console Furniture
  - e. Fixed Mount Hardware
  - f. Third party hardware or software
7. Accessories and Aftermarket. Includes but is not limited to such items as:
  - a. Belt Clips
  - b. Remote speaker mics
  - c. Batteries
8. Spare Parts. To repair any items sold
9. Pagers and Pager Encoders
10. Pager Accessories

**B. P25 Equipment to be used in conjunction with the MPSCS**

**1. Radios and Dispatch Consoles**

After evaluation by the Michigan Public Safety Communications staff for compliance with the established MPSCS technical and operational standards, the mobile and portable radios, paging receivers and dispatch consoles listed below have met those requirements and are eligible for use on the MPSCS by MPSCS members. Currently approved equipment available for review in **Schedule A, Attachment 1**.

**2. Size800 MHz Fire Paging**

At this time, only one manufacturer has been approved as compatible for use on the MPSCS. During the course of the contract this list could be updated and expanded as other manufacturers develop pagers that have been proven to work on the system. The list of currently approved pagers is as follows:

- a. Unication G4 Single Band P25 Voice Pager
- b. Unication G5 Dual Band P25 Voice Pager (which can switch between digital and analog paging)
- c. Unication accessories



## 1.2. Warranties

- A. The Contractor warrants that the hardware and installation services they furnished will be free from defect in material and workmanship. During the warranty period, if any component of the hardware or portion of the installation services fails, the Contractor will examine the failure and remedy by:
  - 1. Repairing any defective component of the hardware;
  - 2. Furnishing any necessary repaired or replacement parts;
  - 3. Correcting the faulty installation at no additional cost to the customer.
- B. The Contractor's standard manufacturer's warranty is one (1) year; two (2) years for portable and mobile radios.
- C. The following procedure describes the returns process for equipment under warranty:
  - 1. The Contractor creates a support case number, verifies product part numbers, serial numbers, reasons for return and then forwards the approved request for processing.
  - 2. The Contractor reviews the request and provides a return merchandise authorization number (RMA) to the State, along with instructions for return of the equipment.
  - 3. The customer ships the equipment back to The Contractor Depot Repair and Return.
  - 4. The Contractor repairs or replaces any equipment free of charge unless there is evidence of abuse or damage beyond the terms of the service.
  - 5. The Contractor ships the repaired or replacement unit back to the customer.
  - 6. The Contractor closes the RMA and updates the tracking database.
- D. The Contractor confirms that any warranty purchased by L3Harris from a third party, or other manufacturer, will pass through to the State.
- E. Warranty responsibility will be managed by the Contractor (PSPC) at:
  - Customer Care Order (CCC) Management Support
  - 221 Jefferson Ridge Parkway
  - Lynchburg, VA 24501
  - Phone: (800) 368-3277
  - Fax: (321) 409-4393
  - Email: PSPC\_custfocus@L3Harris.com
- F. Michigan locations capable of supporting warranty services:
  - L3Harris (PSPC) Jackson Service Center
  - 3516 Wayland Drive
  - Jackson, MI 49202
  - Phone: (517) 782-6868
  - Email: PSPC\_JSC@L3Harris.com
- G. Requests for repairs out of warranty will require a purchase order unless a service agreement exists.
  - 1. Any repairs out of warranty are subject to a flat rate, per-unit fee, regardless of fault found with the equipment.
  - 2. If the item for repair does not have a flat rate fee listed, a time and material charge will apply.
  - 3. The turn-around time for equipment repair or replacement is typically ten business days.

H. Extended Warranties are available.

1. Extended warranties are an additional cost. Pricing for the extended warranty is dependent upon length of warranty period and the amount/configuration of the equipment covered.
2. Extended warranties are available for up to three years following the initial warranty period, for a total warranty period of five years. The extended warranty includes necessary parts, return shipping to the customer and other items normally required in maintaining the equipment to meet original factory specifications.
3. The extended warranty period will begin immediately following the expiration of the standard warranty.
4. The extended warranty does not include:
  - a. Unit accessories, such as batteries, antennas and speaker microphones.
  - b. Subscriber units damaged outside of its normal operational and environmental specifications, abuse or modification by an unauthorized party.
  - c. Removal of installed equipment from a vehicle or rack,
  - d. software enhancements.

### **1.3. Recall Requirements and Procedures**

When product delivered to customers is known or suspected to be nonconforming due to an escape in a process, the Contractor will evaluate the severity and potential negative impact of such nonconforming product (real or suspected) and make a disposition that best ensures the integrity of any and all such product and best protects the interests of both the Contractor and the State. Nonconforming product found in the hands of customers shall be tracked. In cases where the negative impact is deemed severe or critical, nonconforming product may result in a PRODUCT RECALL.

- A. The Contractor will contact the customer's Program Manager, via email in the event a product recall is necessary and instructions to address the recall will be provided.
- B. The Contractor will utilize its repair and return process to facilitate product recall handling, and issue Return Material Authorizations to track individual customer shipments to and from the factory, when applicable.
- C. In some cases, the defective product may simply be replaced, with arrangements made for disposing of the non-conforming product in the field.
- D. In all cases the contractor will track and ensure the product recall is fully addressed.

### **1.4. Quality Assurance Program**

- A. The Contractor is registered to ISO 9001:2015 Quality Management Systems – Requirements Standard. The British Standards Institution (BSi) serves as The Contractor's third-party Registrar. L3Harris' ISO 9001:2015 certificate (FS 573325) unifies L3Harris' Quality Management process across all operating facilities.
- B. The Contractor's Quality Assurance / Quality Control (QA/QC) Plan describes the plans and procedures that ensure compliance of the proposed system with contractual requirements throughout a project's lifecycle.
  1. A key component of the QA/QC plan is defining the roles and responsibilities of the project implementation team. Including but not limited to the Project Manager, the Project Engineer, the Site Manager, and all subcontractors, if any. For example, the Project Manager's QA/QC responsibilities include:
    - a. Develops, maintains, and coordinates the execution of the Project Management Plan and Project Schedule.

- b. Overall responsibility for execution of the QA/QC Plan.
  - c. Overall responsibility for customer satisfaction.
  - d. Overall responsibility for compliance to all contractual requirements.
  - e. Overall responsibility for issue/risk management.
- C. Quality Assurance is achieved thru both planning, to ensure that all contractual requirements are identified, and internal audits, to ensure that contractual requirements are being met.
- D. Quality Control is achieved as follows:
  - 1. Procurement:
    - a. Suppliers are evaluated to ensure delivered products meet requirements, and their Quality Management Systems (QMS) provide the level of quality assurance and quality control for ongoing compliance with product requirements, delivery, and price.
    - b. The Contractor's subcontractor partners are chosen based on their ability to meet requirements, including proper technical expertise, and QMS systems that ensure qualified personnel in place.
    - c. Subcontracts include appropriate acceptance criteria and standards, action plans to control any nonconforming product, and corrective action plans if necessary.
  - 2. Design: The Contractor's Project Engineers verify design outputs against design inputs, and ensure the design is reviewed with Engineering Subject Matter Experts (SMEs).
    - a. They log and resolve all technical action items and maintain technical design records.
    - b. Configuration Management is exercised to maintain scope control.
  - 3. Implementation:
    - a. The Contractor's personnel and subcontractors follow internal procedures to control factory production as well as field installation. This includes:
      - 1) the use and maintenance of appropriate / calibrated equipment,
      - 2) a safe working environment,
      - 3) compliance with standards and codes, monitoring and control of quality measures / metrics,
      - 4) trained / skilled personnel, and
      - 5) defined acceptance criteria.
    - b. Processes and procedures are also in place for resolving issues with non-conforming products.
    - c. Implementation quality is effectively controlled via Project Communications and Reviews, Schedule Management, Issues/Risk Management, Change Management, Requirements Management, Document Control, Quality Records, and Training

### 1.5. Incentives

- A. From time-to-time, the Contractor may offer promotional incentives and other special sales opportunities, for example: trade-in programs, bundle packages, trial period promotions, etc.
- B. The Contractor is offering volume based discounts, on a per order basis. See **Schedule B-Pricing** for more information.

**MOBILES AND PORTABLES  
(ANY CONFIGURATION)**

**% OFF LIST  
PRICE**

Quantity 10 - 49	35%
Quantity 50 - 99	40%
Quantity 100+	45%

## 1.6 Specific Standards

### A. IT Policies, Standards and Procedures (PSP)

Contractors are advised that the State has methods, policies, standards and procedures that have been developed over the years. Contractors are expected to provide proposals that conform to State IT policies and standards. All services and products provided as a result of this RFP must comply with all applicable State IT policies and standards. Contractor is required to review all applicable links provided below and state compliance in their response.

Public IT Policies, Standards and Procedures (PSP):

[https://www.michigan.gov/dtmb/0,5552,7-358-82547\\_56579\\_56755---,00.html](https://www.michigan.gov/dtmb/0,5552,7-358-82547_56579_56755---,00.html)

### B. Acceptable Use Policy

To the extent that Contractor has access to the State's computer system, Contractor must comply with the State's Acceptable Use Policy, see [http://michigan.gov/dtmb/0,4568,7-150-56355\\_56579\\_56755---,00.html](http://michigan.gov/dtmb/0,4568,7-150-56355_56579_56755---,00.html). All Contractor Personnel will be required, in writing, to agree to the State's Acceptable Use Policy before accessing the State's system. The State reserves the right to terminate Contractor's access to the State's system if a violation occurs.

### C. SOM Digital Standards

All software items provided by the Contractor must adhere to the State of Michigan Application/Site Standards which can be found at [www.michigan.gov/standards](http://www.michigan.gov/standards).

## 2. Service

### 2.1. Professional Service

The following professional services will be provided in order to engineer, service, maintain and repair the products or systems sold under this contract. These professional services will include but are not limited to:

#### A. System Design and Engineering

1. The Contractor's Project Engineer oversees design and implementation of the proposed system; integrates products into an operational system and participates in design review meetings; provides technical support to the project manager; and directs the system acceptance test plan (ATP).
2. The Contractor's RF Integrity Engineer predicts RF coverage from designated transmission sites.

#### B. Installation

The Contractor offers an array of installation services including, but not limited to infrastructure systems, antenna systems, and site equipment, both fixed and mobile.

1. Installation will be expected within the timeframe and at the location agreed upon in the DO.
2. Installation will be considered complete as per **Section 7, Acceptance**.
3. The Contractor will use the "toll-gate approach" to implementation of projects. The methodology standardizes a control point where each phase of the project is reviewed, then approved (or not) before continuing with the next phase.
  - a. **Design Review** – The project manager initiates project implementation with a project kick-off meeting, followed by a preliminary design review. The Contractor's

Team uses the information obtained during the kick-off meeting, preliminary design review, and site surveys, along with regulatory and engineering documentation, to deliver the final system design.

- b. Installation and Optimization – The Contractor's Team develops the installation plan during the detailed design phases of the project and presents it to the State's buyer for review and approval. The installation plan helps drive the activities of the project team, minimizing installation conflicts, and ensures that system implementation proceeds efficiently. Site equipment installations follow industry standards, including L3Harris Grounding and Lightning Protection. We review the installation work after it is complete to ensure we followed these standards.
  - c. Acceptance Testing – The Contractor's Team notifies the State's buyer when installation and optimization are complete, and the system is ready for acceptance testing plans (ATP). The ATP procedures contain a short description, test methodology, and a record form for logging results and acceptance signatures for each test. Upon satisfactory completion of each testing phase, L3Harris will submit initial system acceptance documentation for the State's buyer to sign, marking the successful conclusion of acceptance testing, and readiness for system cutover.
  - d. Cutover Approach – The State's buyer and the Contractor will work together to prepare the cutover plan since they share the same overarching goals in the process – that there are no missed calls, and that each agency maintains adequate departmental communications during the cutover process. The entire cutover plan will be broken into multiple phases to ensure the smooth transition to new system.
  - e. Final Acceptance – Upon the successful completion of acceptance tests, cutover, and submission of the final drawing package, the project manager submits the final system acceptance letter for the State's buyer to sign. With the final acceptance, the project manager arranges a meeting with the field service team to review maintenance support during the warranty period. The Contractor's Team provides the contact information and procedures used to obtain service during the warranty period.
4. The Contractor can program and install mobile radios into the State's vehicles at their facility in Jackson, Michigan.

### C. **Maintenance**

The Contractor will provide on-site Preventative Maintenance as developed for each system or complex project to the level determined by the purchasing agency in their Delivery Order (DO).

- 1. On-site maintenance will be performed according to the recommended manufacturer maintenance schedule for equipment requiring the same.
- 2. Preventative Maintenance requires annual and/or semi-annual checks of major infrastructure components as well as visual checks of site conditions.
- 3. Preventative Maintenance service will be coordinated with the State's Program Manager or designee to ensure the lowest impact to current operations.
- 4. The Contractor's Regional Field Service Manager helps coordinate maintenance activities to ensure that critical communications systems remain consistently operational.
- 5. The State may also contact the Contractors Michigan Service Center to address maintenance issues at 517-782-6868.

#### **D. Technical Support**

1. The Contractor's technical support, also called Premium Technical Support (PTS) offers comprehensive support, 24/7, 365 days per year to support the State with answers to technical and user support questions about your operations, programming, software, maintenance and troubleshooting issues. The following is provided as part of PTS:
  - a. Technical Assistance Center (TAC). State customer calls to this toll free number are recognized as priority. The toll free number is: 1-800-368-3277 (option3).
    - 1) The Contractor guarantees a one-hour call-back window for emergency off- air calls and a two-hour call-back window for non-emergency calls.
    - 2) Calls to TAC are logged and assigned a tracking number efficient handling a reference.
    - 3) TAC will coordinate with on-site personnel when necessary.
    - 4) If the TAC cannot resolve the caller's issue within 48 hours, on-site service may need to be scheduled.
  - b. Priority technical assistance on system and terminal equipment.
  - c. All-access subscription to the online L3Harris Tech-Link website, a complete library of technical resources and product information.
  - d. License and maintenance renewals of third-party software and hardware used in the L3Harris system infrastructure.

#### **E. Repairs and Service**

1. The Contractor must be able to service and repair the systems or equipment it sells.
2. Repair and service is standard for all Contractor or third party products during the equipment's warranty period for all equipment purchased under this master agreement.
  - a. Repair and service of systems and contractor installed hardware and equipment: Installed hardware and equipment will be repaired by certified master technicians where they are located. To arrange for these repairs and service:
    - 1) If the State requires service and repair support outside of the predetermined maintenance schedule, the State will contact the Contractor's Michigan Service Center at (517) 782-6868, 8am to 5pm EST, Monday through Friday.
      - a) The Contractor will review the repair request with the State and opens a support case number.
      - b) The Contractor will assist the State with troubleshooting over the phone and dispatches repair technicians as needed.
      - c) Dependent on the repair service package arranged for at the time of purchase, the Contractor's technicians will be dispatched and perform the repairs.
  - b. Repair and service of "Box Sales" items: Equipment sold as a "box sale" item may be returned to the Contractor's Depot Repair Facility where equipment will be repaired and serviced by certified master technicians. All equipment will be tested to verify that repairs meet or exceed prescribed specifications prior to its return. To arrange for these repairs and service:

- 1) The State will contact the Contractor's Michigan Service Center at (517) 782-6868, 8am to 5pm EST, Monday through Friday.
- 2) Return Process.
  - a) The Contractor will create a support case number, verify product part numbers, serial numbers, reasons for return and then forwards the approved request for processing.
  - b) The Contractors will review the request and provide a return merchandise authorization number (RMA) to the State's Program Manager, along with instructions for return of the equipment.
  - c) The State will ship the equipment back to the Contractor's Depot Repair and Return center at the address provided by the Contractor.
  - d) The Contractor repairs or replaces any equipment during the warranty period free of charge unless there is evidence of abuse or damage beyond the terms of the service.
  - e) The Contractor will ship the repaired or replacement unit back to the State. The turn-around time for equipment repair or replacement is typically ten business days.
  - f) The Contractor will then close the RMA and update the tracking database.
3. Repair and Service agreements may be purchase for any equipment that falls outside of the initial warranty period. Any repairs out of warranty are subject to a flat rate, per-unit fee, regardless of fault found with the equipment. If the item for repair does not have a flat rate fee listed, a time and material charge will apply based upon the Contractors published service rates (See **Schedule B, Attachment 1- Manufacturer List Price Catalog** item #YSSN1U - SERVICE, SYSTEM TECHNICIAN, DAILY RATE).

**F. System Hardware Upgrades**

System hardware upgrades are offered through the Contractor's Planned Network Upgrade Program.

1. This program provides for network hardware refresh over a multi-year agreement, so the hardware supports the System Release of software and is tailored and priced according to the State's system.
2. Hardware Refresh includes the servers, routers, switches, and IT components of the sites.
3. The hardware is reviewed periodically with software updates to ensure proper operation with the latest update.
4. This program will refresh the hardware on planned intervals that coincide with the service life of the platforms in the Customer's system and are supported by the current System Release.

**G. Software Upgrades**

Software Upgrades are included to keep any systems and complex projects completed under this contract up to date.

1. Software upgrades are planned and managed to provide network updates over a multi-year agreement.
2. The following optional managed services are tailored and priced according to the State's system. Contractor installation can be included with each service:

- a. Security Update Management Service (SUMS-Patch Management) – SUMS is a subscription service provided as part of a Managed Services plan.
  - 1) The SUMS service updates the State's system with the latest third-party Operating System security patches and software settings, and antivirus signatures.
  - 2) The updates are pulled from the SUMS Automation Server to keep the State's system current with the appropriate security and software releases.
  - 3) The Contractor will provide the State's system administrator with releases for the appropriate patches and antivirus signatures on regularly scheduled bi-monthly cycles.
- b. Software Managed Service (SMS) – The SMS service keeps the software current to the Customer's system infrastructure, maintaining the value of the initial purchase.
  - 1) The Contractor performs a system configuration audit with the initial subscription and manages the installation of the SMS updates on a bi-annual basis.
  - 2) For Software Updates and Security Updates, the Contractor will either ship the update to the Customer point of contact via protective packaging or will deliver electronically for download by the Customer.
    - a) With each shipment or download of Software Updates L3Harris will provide at least one (1) set of Software Release notes detailing the contents of the Software Updates and providing installation instructions.
    - b) As part of the Service Managed Program, the Contractor will perform an annual evaluation of the Customer's system.
- c. VIDA Secure Sentry Updates – The VIDA Secure Sentry provides policy and third-party vendor supplied security patches to further enhance protection against cybersecurity attacks such as viruses, malware, and ransomware.
  - 1) VIDA Secure Sentry software releases occur quarterly and will be scheduled for the Contractor's cybersecurity technicians to come on-site and install the updates.

## H. Training

1. Training can be included in a system or complex project build out if requested or otherwise purchased.
2. The Contractor's Technical Training Catalog is offered as part of this contract.
  - a. The catalog includes a description of our training offerings for system administrators/managers, maintenance technicians, dispatch personnel, and radio end users, and pricing.
  - b. The catalog is updated annually as training programs are modified due to customer training feedback and the development of new courses due to the release of new equipment.
  - c. The cost for open-enrollment virtual classroom training, traditional classroom training attended in Lynchburg, and asynchronous training is on a per student basis.
  - d. On-site training is based on the number of training days and includes the instructor's travel and living expenses, and student training materials.

## 2.2. Time Frames

- A. The Contractor will acknowledge requests for quotations within 24 hours of their receipt.



- B. The Contractor will provide the quotation as follows:
  - 1. For “Box Sales” purchases the Contractor will provide a quotation within 24 hours.
  - 2. For systems, timeframe for design/build quotations will be dependent on the scope of the work and variables such as size and complexity, level of effort, location, etc.
- C. Deliveries must be made in accordance with the timelines established in the DO.

### 2.3. Reporting

The Contractor must submit the following written reports:

- A. To the MiDeal Coordinator. The Contractor must provide quarterly reporting as indicated in the **Standard Contract Terms, Sections 9. Administrative Fee and Reporting and 10. Extended Purchasing.**
- B. To the Program Managers and or entities making the purchases. Reports will be provided as requested.
- C. To the Contract Administrator.
  - 1. Item usage report including all purchased made from this contract including quantities, item description and pricing charged, as requested.
  - 2. Other Reports as deemed necessary.

### 2.4. Meetings

The Contractor must attend the following meetings:

- A. Contract Kick-off meeting within 15 calendar days of the Effective Date
- B. Meetings as requested by Agency groups or MiDeal Members deem appropriate.
- C. Meetings as requested by the Contract Administrator as deemed appropriate.

### 2.5. Service Level Agreements (SLA's)

- A. The Contractor will meet the requirements of the service levels that will be established under this contract. Failure to meet the SLA's may result in the State's assessing Service Credits.
- B. SLA's for Radio Systems will be established in the project Statements of Work and made part of the Delivery Order.

SLA Metric 1. Timely Deliveries	
Definition and Purpose:	All orders must be shipped, and product received within the timeframes established in the Delivery Orders
Acceptable Standard:	All deliveries must occur in accordance with the approved Delivery Timeframe. <b>See Schedule A, Section 2.2.B.</b> The acceptable standard is 100% compliance.
Credit due for Failing to Meet the Service Level Agreement.	A percentage credit may be assessed for each occurrence that will not exceed 5% of the total DO amount.  Extenuating circumstances must be relayed to the State prior to the ship date and will be reviewed by the person/entity who placed the order before any Service Credits are assessed. At the discretion of the State, these credits may be applied toward any payable due to the Contractor or be payable directly to the State. Payments made directly to the State will be completed within 10 days upon demand.
SLA Metric 2. Timely Service	

Definition and Purpose:	Products and Services will be provided as per the negotiated timelines established in this contract Section 2.1. Services, or in the timelines established in a DO for Radio System projects.
Acceptable Standard:	Meeting milestone deadlines established in the DO. The acceptable standard is 100% compliance.
Credit due for Failing to Meet the Service Level Agreement.	A percentage credit may be assessed for each occurrence that will not exceed 5% of the total DO amount.  Extenuating circumstances will be reviewed by the person/entity who placed the order before any Service Credits are assessed. At the discretion of the State, these credits may be applied toward any payable due to the Contractor or be payable directly to the State. Payments made directly to the State will be completed within 10 days upon demand.
<b>SLA Metric 3. Accurate Deliveries</b>	
Definition and Purpose:	The Contractor must ensure that items and quantities delivered are exactly the items, brands, and quantities on the Delivery Order. No substitutions will be allowed without prior written permission by the person/entity placing the order.  The entire order will be received on the same day unless a partial delivery has been approved in advance by person/entity placing the order.
Acceptable Standard:	1. Items, brands, and quantities delivered will match the Order Confirmation exactly.  2. Signed and dated packing slips will be provided to with the product at the time of delivery.  3. The entire order must be delivered on the same day unless a partial delivery has been approved in advance by the person/entity placing the order.  4. Orders not received in their entirety, as determined by person/entity placing the order, will be considered inaccurate.  The acceptable standard is 100% compliance.
Credit due for Failing to Meet the Service Level Agreement.	1. A percentage credit may be assessed for each occurrence that will not exceed 5% of the total DO amount.  Extenuating circumstances will be reviewed by the person/entity who placed the order before any Service Credits are assessed. At the discretion of the State, these credits may be applied toward any payable due to the Contractor or be payable directly to the State. Payments made directly to the State will be completed within 10 days upon demand.

### **3. Staffing**

#### **3.1. Contractor Representative**

The Contractor must appoint a Contractor Representative specifically dedicated to this contract, who will be required to be knowledgeable on the contractual requirements and directly responsible for the day to day operations of the Contract.

- A. The Contractor Representative **must** be:
1. Available for State personnel and customer service calls during the hours of 8 a.m. to 5 p.m. ET Monday through Friday.
    - a. The Contractor Representative must respond to the State within 8 business hours to State inquiries Monday through Friday.
  2. Available for calls in the event of an emergency if required and established in the DO.
    - a. The Contractor Representative may be contacted during evening, weekends, or holidays.
    - b. The Contractor Representative will be expected to respond to the State within 4 hours during these times.
- B. The Contractor must notify the Contract Administrator at least 14 calendar days before removing or assigning a new Contractor Representative.
- C. The Contractor may not remove or assign a new Contractor Representative without the prior consent of the State. Prior consent is not required for reassignment for reasons beyond the Contractor's control, including illness, disability, death, leave of absence, personal emergency circumstances, resignation, or termination for cause.
- D. The Contractor Representative is:

Marilyn Brannan  
 221 Jefferson Ridge Parkway,  
 Lynchburg, VA 24501  
 Marilyn.Brannan@L3Harris.com  
 434-385-2866

### 3.2 Contract Administrator

The Contract Administrator for each party is the only person authorized to modify any terms of this Contract, and approve and execute any change under this Contract (each a "**Contract Administrator**"):

State:	Contractor: <b>Bidder Please Provide</b>
Valerie Hiltz 525 W. Allegan Street, 1 <sup>st</sup> Floor NE Lansing, MI 48933 hiltzv@michigan.gov 517-249-0459	Lori Rodriguez 221 Jefferson Ridge Pkwy Lynchburg, Virginia 24501 Lori.Rodriguez@L3Harris.com Office: (434) 455-9240 Mobile: (434) 258-1156

### 3.3. Program Manager

The Program Manager for each party will monitor and coordinate the day-to-day activities of the Contract (each a "**Program Manager**"):

State:	Contractor:
For DNR Forest Resources/Fire: Paul Rogers 525 West Allegan Lansing, MI 48909 RogersP5@michigan.gov Office 517-284-5872	Shakey Kessisian 211 Jefferson Ridge Pkwy Lynchburg, Virginia 24501 Shakey.Kessisian@L3Harris.com 434-219-9940

For MDOC: Kasey Mlujeak MDOC- Jackson Regional Offices MlujeaKL@michigan.gov 517-780-6370	
Others as Varies by Agency/ Division	

### 3.4. Key Personnel

The Contractor will identify Key Personnel specifically assigned to State of Michigan accounts, who will be knowledgeable on the contractual requirements and directly responsible for the day-to-day operations of the Contract. (The State recognizes that these individuals may be dependent on the project and will be identified in the DO).

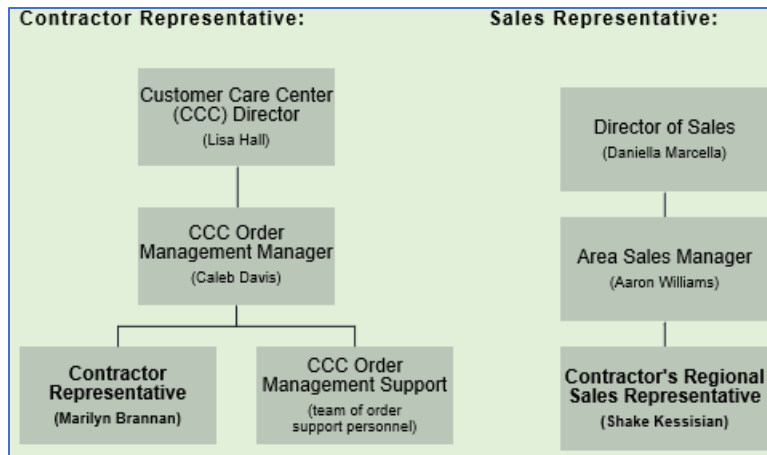
- A. The Contractor Personnel must be available for customer service calls and must be available during the hours of 8 a.m. to 5 p.m. ET Monday through Friday.
- B. The Contractor must notify the Contract Administrator at least 14 calendar days before removing or assigning new Key Personnel.

### 3.5. Telephone Customer Assistance

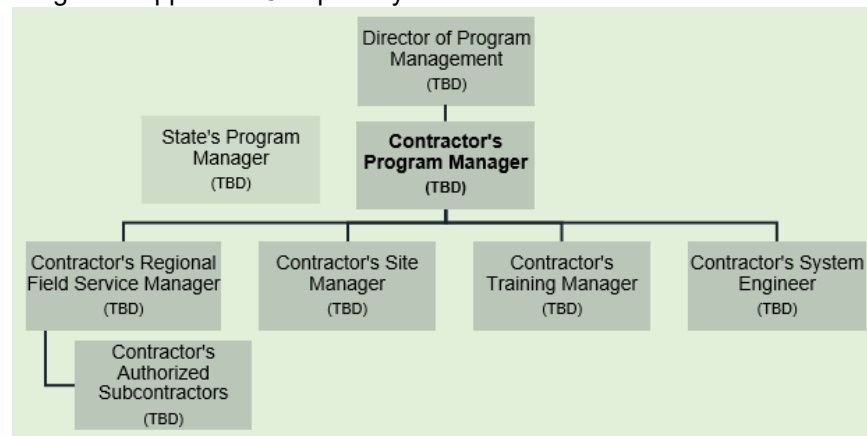
- A. The Contractor's Public Safety and Professional Communications toll free service line is available from 8 a.m. to 8 p.m. Eastern Time with voicemail available after hours. The Customer Care Center can assist with:
  - 1. Order development and placement.
  - 2. Assistance with the configuration of L3Harris products
  - 3. Quotations
  - 4. Order placement,
  - 5. Order status, and
  - 6. Order tracking.
- B. Customer Care Center toll free number: 1-800-368-3277 Option 9.

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### 3.6. Organizational Chart



#### Program Support for Complex Systems:



### 3.7. Disclosure of Subcontractors – Manufacturer Representatives and Dealers

A subcontractor will be defined as any entity, in a business relationship with the Contractor, that will have their employees dispatched to, deliver directly to, or perform any work on behalf of the Contractor off site or at any State location. This could include manufacturer representative, dealers, or authorized resellers.

- A. Any subcontractors will be bound by the terms of this contract, although the State extends no contractual relationship to the Contractor's subcontractors. The State will not accept billing from nor make direct payments to any subcontractor.
- B. The Contractor will give the State 30 calendar days' notice if it intends to replace any subcontractor and provide the same information as required below.
- C. The State may request to remove a subcontractor at any time during the term of the contract, and the Contractor is responsible for replacing that subcontractor within 30 calendar days.
- D. The Contractor will designate one key personnel that will be solely responsible for communicating the needs and substitution requests of subcontractors. At the State's discretion, subcontractors will be permitted to communicate directly with the State on a case by case basis.

L3Harris Manufacturer Representatives or Dealers				
Company Name	Relationship to Contractor	Street Address, City State, Zip	Corporate Phone No.	Portion of the Contract Provided
Advanced Wireless Telecommunications, Inc.	Dealer	49716 Martin Dr, Wixom, MI 48393	248-295-4600	Installation / warranty / maintenance / services / support
Emergency Services LLC	Dealer	1660 Dodson Dr, Muskegon, MI 49442	989-366-9262	Installation / warranty / maintenance / services / support
Radio North LLC	Dealer	955 E Commerce Dr Suite A, Traverse City, MI 49685	231-929-2934	Installation / warranty / maintenance / services / support
Range Telecommunications	Dealer	2342 US 41 West, Marquette, MI 49855	906-228-7000	Installation / warranty / maintenance / services / support
Roe Communications	Dealer	1400 Ramona Ave, Portage, MI 49002	269-327-1045	Installation / warranty / maintenance / services / support
Cynergy Wireless Products	Manufacturer's Representative	1463 Combermere Dr, Troy, MI 48083	248-298-3855	Installation / warranty / maintenance / services / support
AMK Services LLC	Dealer	13005 Parkside Dr, Fishers, IN 46038	855-265-7378	Installation / warranty / maintenance / services / support

### 3.8. Security

Security at State facilities is a priority and the Contractor, and its personnel, must be responsive to and respectful of these needs.

- A. The State reserves the right to deny access to any facility to anyone who fails to comply with any applicable State, Federal, or local law, ordinance or regulation or whose presence may compromise the security of the facility, its patients, or staff.
- B. The Contractor will contract to have criminal background checks on all employees.
- C. The State may investigate Contractor and its subcontractors, and their respective employees, agents, and representatives before they have access to State facilities and systems.
  1. The scope of the investigation is at the discretion of the State; results will be used to determine eligibility for working within State facilities and systems. It may include:
    - a. Michigan State Police background checks (ICHAT),
    - b. Law Enforcement Information Network checks (LEIN), and
    - c. National Crime Information Center (NCIC) Fingerprints.
- D. The Contractor's staff may be required wear State provided identification to make deliveries to or enter State facilities.
- E. Data Security. See **Schedule D- Data Security**.

### 4. Pricing

- A. The Contractor agrees that the pricing on this contract will always reflect the best pricing available anywhere in Michigan or via national co-operatives. Should the Contractor negotiate better contract pricing with any other entity, those new prices will be reflected in the pricing of this contract.
- B. The Contractor agrees to notify the State within 30 calendar days of the new pricing so that this contract may be updated to reflect the same.
- C. The Contractor agrees to meet with the Contract Administrator on an annual basis to review usage and to reconsider discounts offered.

#### 4.1. Price Term

Pricing is firm and fixed for the entire length of the contract.

#### 4.2. Price Changes

The discounts offered at the execution of this contract can always be improved upon, but never will the discounts-off list be less than offered at the execution of this contract. See **4. Pricing**.

#### 4.3 Product Pricing Catalog

The Contractor will provide to the State a copy of its complete catalog(s) with the exact manufacturer list prices as provided to all manufacturer representatives, distributors, dealers, or resellers.

- A. This will be the pricing against which the Discounts Off List will be placed.
- B. This will be the pricing used to verify current product pricing and for audit purposes.
- C. This price list will be provided to the State in either of the two following formats.
  - 1. **PDF Catalog.** This catalog can be provided in a PDF format and delivered to the Contract Administrator via email for publication with this contract.
  - 2. **Web-based Catalog.** This catalog can be provided as a web-based catalog that will be always current.
    - a. This catalog must be read only and independent of a purchasing platform.
    - b. Access to this catalog will be provided via free account registration.

#### 4.4. Obtaining a Quotation

- A. To obtain a quotation for Systems and Complex Purchase or "Box Sales" prior to purchase, contact the Contractor via:
  - 1. email request to: [PSPC\\_Quotes@L3Harris.com](mailto:PSPC_Quotes@L3Harris.com) or
  - 2. by telephoning the Contractor's Customer Care Center at 1-800-368-3277 Option 9.
- B. Be sure to include in your email request or provide during your phone call this contract's Master Agreement number in order to obtain contract pricing.

#### 4.5. Format Required for Quotations

- A. **Quotations for Systems and Complex Purchases.** A professional quote will be required for equipment and services that are for systems requiring significant systems integration/ professional services. By providing quotes in this format, the Contractor provides a level of documentation required by governmental entities for audit purposes.
  - 1. These quotes must be provided on corporate letterhead. If this contract is awarded to a manufacturer and they are having the work subcontracted through manufacturer representatives, dealers or distributors, then the quotation must be provided on the Manufacturer's letterhead or bear the manufacturer's logo and shall include all of the following elements:
    - a. Title Page
    - b. Table of Contents
    - c. Cover Letter – signed by the manufacturer's authorized representative.
    - d. System Description- including equipment and technical diagrams
    - e. Statement of work which provides a description of how the system will be implemented.
    - f. Warranty and maintenance information
    - g. Equipment List- detailed by line item including the manufacturer's part number, quantity, description, list price, contract price (which is the discounted price)

- 1) Third party drop ship equipment will be broken out with line item pricing, if applicable.
  - h. Profession Services List- detailed by line item including quantity, list price and contract price (which is the discounted price)
  - i. Training- description of training included in the proposal, if applicable
  - j. Pricing Summary- subtotals of Equipment and Professional Services that mirror the equipment list and pricing for all services.
  - k. Product Literature- if applicable.
  - l. No additional terms or conditions, other than are provided for in this contract are allowed.
2. Quotations may be provided as required by the requestor in:
    - a. Hard copy via fax, US Postal Service delivery, courier service or in person
    - b. The State prefers PDF format via email
- B. Quotations for Deliverables that are “Box Sales”. The Contractor may provide a quote in a form format for “Box Sales” which are those sales essentially for products with a minimal amount of professional services or system integration. The quotation form must include all the elements of the sample “Simple Quotation” provided in **Schedule A., Attachment 2. No additional terms or conditions, other than are provided for in this contract are allowed.**

## **5. Ordering**

### **5.1. Authorizing Document**

- A. The appropriate authorizing document to order contracted products, deliverables and service will be a Delivery Order (DO) created in SIGMA and provided to the Contractor via:
  1. Email to [PSPC\\_CustFocus@L3Harris.com](mailto:PSPC_CustFocus@L3Harris.com), or
  2. Fax to 1-321-409-4393
- B. A phone order made to the Customer Care Center at 1-800-368-3277 Option 9, if paying via P-Card, provided that the Master Agreement (MA) number is given at the time of the order which will ensure that the products ordered are charged against the contract and all terms, conditions, specifications, and pricing will apply. See P-card purchases outline in **Section 8.2.** below.
- C. MiDeal members may use the official written document of their choosing referencing this Master Agreement.

### **5.2. Order Verification**

- A. The Contractor must have internal controls identify and prevent abnormal orders, for example, orders for items other than were quoted, of unusually large quantities or products not normally purchased.
- B. The Contractor must have controls in place to ensure that individuals place orders through SIGMA for the State of Michigan as required or through the appropriate purchasing paths for MiDeal members.
- C. The Contractor will provide order confirmations to ordering agencies once orders have been placed and tracking services are available once the materials have been shipped and are in the hands of the carriers.

### **5.3. Order Tracking.**

Once orders have been placed, customers can work with their Customer Care Center (CCC) team members by phone, fax, or email to obtain updates on the processing and shipment of their order.



### **5.3. Minimum Orders**

This contract has no minimum order requirements.

### **5.4. Quick Payment Terms**

- A. The Contractor will provide a discount of 1% off of invoice for payments received and processed within 15 days after receipt of the invoice by the State.
- B. The Contractor will provide a discount of 1% off the cost of orders placed and paid via a P-Card.

### **5.5. Order Cancellations and Product Returns**

An accepted and confirmed order may be cancelled in the following manner:

#### **A. Prior to Shipment.**

- 1. The entity placing the order must submit notice and be received by the Contractor prior to shipment of any equipment (including vendor items drop-shipped to the address appearing on the face of Customer's Order).
- 2. Notices must be sent to the attention of Customer Service:  
L3Harris Technologies, Inc.  
Public Safety and Professional Communications  
221 Jefferson Ridge Parkway  
Lynchburg, VA 24501  
Via Email: [PSPC\\_CustomerFocus@l3harris.com](mailto:PSPC_CustomerFocus@l3harris.com), or  
Via Fax 1-800-833-7592
- 3. Cancellation charges equal to 15% of the cancelled portion may be assessed.

#### **B. After Delivery.**

Any ordered and delivered equipment may be cancelled only with the Contractor's consent.

- 1. Notice of request to return must be sent to the attention of Customer Service:  
L3Harris Technologies, Inc.  
Public Safety and Professional Communications  
221 Jefferson Ridge Parkway  
Lynchburg, VA 24501  
Via Email: [PSPC\\_CustomerFocus@l3harris.com](mailto:PSPC_CustomerFocus@l3harris.com), or  
Via Fax 1-800-833-7592
- 2. If the return is approved Customer Service will provide return instructions and the RMA#.
- 3. Equipment to be returned must be new and unopened.
- 4. Credits for returned items will be provided in the next billing cycle minus a restocking fee equal to 25% of the returned items order price.

## **6. Delivery, Shipping and Packaging**

### **6.1. Shipping and Delivery**

- A. Products will be delivered FOB, prepaid by the Contractor. If shipping costs are not included in the product costs, shipping will be billed as a line item on the invoice for that DO.
- B. Standard delivery for Box Sales will primarily be made via Fed Ex.
- C. Infrastructure components that are to be racked and larger subscriber orders will be palletized and shipped via dedicated truck if a dedicated truck and delivery had been quoted and is included as part of the DO.
- D. All deliveries must be made in person and signed for. No deliveries will be allowed to be dropped and outside of business hours or closed locations.

## **6.2. Packaging and Palletizing**

- A. Packaging must be optimized to permit the lowest freight rate.
- B. Shipments must be palletized whenever possible using the manufacturer's standard 4-way shipping pallets.
- C. Sensitive electronic equipment, racks and servers will be packaged per the manufacturers' recommendation.

## **6.3. Packing Slips**

Packing slips must include the product description including model numbers, assigned serial number of equipment shipped, and quantities of each.

## **7. Acceptance**

### **7.1. Acceptance, Inspection and Testing**

The State will use the following criteria to determine the acceptance of the Contract Activities.

- A. **Phase Acceptance/Final Acceptance (Milestone) for quoted systems and projects**
  - 1. The Contractor will work with the State or MiDeal Member to review and accept each phase of the project as it is completed.
    - a. Unfinished work in a project phase must be recorded as a punch list item on the phase acceptance document.
    - b. Punch list items that do not interrupt system operations will not prohibit the start of the next phase of work.
    - c. At the end of the project, final acceptance is granted when all punch list items are completed.
    - d. Provide diagrams and documentation for each phase as agreed upon.
    - e. The Contractor will document punch list items, track and report to the team their progress in order to provide timely feedback on scope changes and document lessons learned.
- B. **Acceptance for "Box Sale" equipment**

Acceptance for "Box Sale" equipment, defined as equipment sold outside of a system implementation, will be in keeping with acceptance as outlined in **Standard Contract Terms, Section 20.**

## **8. Invoice and Payment**

### **8.1. Invoice Requirements**

- A. Invoicing for products and deliverables ordered via a DO will be based on prices established at time of order. Invoices must not be submitted until:
  - 1. Product has been delivered; or
  - 2. Milestone Payment-once the Contractor has completed a milestone.
- B. All invoices submitted to the State must include:
  - 1. Date
  - 2. Master Agreement number
  - 3. Delivery Order (DO) Number
  - 4. Quantity
  - 5. Description of the Contract Activities
  - 6. Unit price as agreed to in Schedule B or per approved quotation.
  - 7. Shipping costs (if any).

8. Total price.

### **8.2. Payment Methods**

- A. The State will make payment for Contract Activities will be via EFT.
- B. P-Card payment will be allowed for "Box Sale" orders under \$5,000.00.

### **8.3. Procedure**

- A. Invoices must be forwarded to the agencies Program Manager via email by the 10<sup>th</sup> day of the following month.

## **10. Licensing Agreement**

See **Schedule C- Software Terms and Exhibit 1 to Schedule C.**

## **11. Liquidated Damages**

- A. Late or improper completion of the Contract Activities of Systems and Complex Purchases will cause loss and damage to the State and it would be impracticable and extremely difficult to fix the actual damage sustained by the State. Therefore, if there is late or improper completion of the Contract Activities the State is entitled to collect liquidated damages in the amount of \$5,000 and an additional \$100 per day for each day Contractor fails to remedy the late or improper completion of the Work. "Box Sales" are exempt from liquidated damages.
- B. Unauthorized Removal of Key Personnel will interfere with the timely and proper completion of the Contract, to the loss and damage of the State, and it would be impracticable and extremely difficult to fix the actual damage sustained by the State. Therefore, the State may assess liquidated damages against Contractor as specified below.
  - 1) The State is entitled to collect \$1,000 per individual per day for the removal of any Key Personnel without prior approval of the State.
  - 2) The State is entitled to collect \$1,000 per individual per day for an unapproved or untrained key personnel replacement.

## **12. Additional Requirements**

Although not currently anticipated, should any of the following become applicable the Contractor will comply with the following:

### **12.1. Environmental and Energy Efficient Products**

The Contractor must identify any energy efficient, bio-based, or otherwise environmental friendly products used in the products. Contractor must include any relevant third-party certification, including the verification of a United States department of agriculture certified bio-based product label.

### **12.2. Hazardous Chemical Identification**

In accordance with the federal Emergency Planning and Community Right-to-Know Act, 42 USC 11001, *et seq.*, as amended, the Contractor must provide a Material Safety Data Sheet listing any hazardous chemicals, as defined in 40 CFR §370.2, to be delivered. Each hazardous chemical must be properly identified, including any applicable identification number, such as a National Stock Number or Special Item Number.

### **12.3. Mercury Content**

Pursuant to MCL 18.1261d, mercury-free products must be procured when possible. All products containing mercury must be labeled as containing mercury.

# STATE OF MICHIGAN

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Two-Way Radio and Radio Systems Sales and Service

## SCHEDULE A, Attachment 1 MPSCS Approved Radios, Consoles and Pagers

(For the latest listing go to: <https://www.michigan.gov/mpscs/0,4640,7-184-62573---,00.html> )



After evaluation by the Michigan Public Safety Communications staff for compliance with the established MPSCS technical and operational standards, the radios and dispatch consoles listed below have met those requirements and are eligible for use on the MPSCS by MPSCS members.

The following Mobile Radios have been approved for use on the MPSCS:

Mobile Radios					
EF JOHNSON			MOTOROLA		
Model	Serial #	Version	Model	Serial #	Version
53xx Series **		ES , EL	Spectra **	494XXX1234	W3, W4, W4M, W5, W5M, W7, W9
VM600		Standard, Lightning w/o IV&D or OTAR	Spectra Plus Consolelette **	526XXX1234	W4,W5,W9
VM900		Standard, Lightning	Spectra Consolelette **	761XXX1234	W5,W7,W9
VM5930		w/o IV&D or OTAR	Spectra Plus Consolelette **	374XXX1234	W5,W7,W9
VM6930		w/o IV&D or OTAR	XTL1500	775XXX1234	MX
VM7930		w/o IV&D or OTAR	XTL2500	514XXX1234	M5
HARRIS			XTL5000	500XXX1234	W3, W5, W5M, W7, W9, O3, O5
Model	Serial #	Version	XTL5000 Consolelette	276XXX1234	W5, W7, W9, O5
M7200 & M7300			APX1500	466XXX1234	O2,O5 w/o IV&D or OTAR
XG-25M		Failsoft, IV&D, OTAR, & KVL not available	APX4500	471XXX1234	O2,O5 w/o IV&D or OTAR
XG-75		IV&D, OTAR, & KVL not available	APX6500	527XXX1234	O2, O3, O5, O7, O9
XG-100M		IV&D, OTAR, & KVL not available	AXP6500 Li	652XXX1234	O2, O3, O5
XG-75		IV&D, OTAR, & KVL not available	APX7500	656XXX1234	O2, O3, O5, O7, O9
KENWOOD			APX7500 Consolelette	761XXX1234	O5,O7
Model	Serial #	Version	APX8500	761XXX1234	O9
NX5900					
TK5910 **					
TK5930					
RELM / BENDIX KING			TAIT		
Model	Serial #	Version	Model	Serial #	Version
KNG-M800			TM9100		
			TM9155		
			TM9400		

\*\* No longer supported for State of Michigan agency users.

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## SCHEDULE A, Attachment 1

### MPSCS Approved Radios, Consoles and Pagers

(For the latest listing go to: <https://www.michigan.gov/mpscs/0,4640,7-184-62573---,00.html> )

The following Portable Radios are approved for use on the MPSCS:

Portable Radios					
EF JOHNSON			MOTOROLA		
Model	Serial #	Version	Model	Serial #	Version
51xx Series **		ES, SL, LT	APX900		
ASCEND **		ES	APX1000	837XXX1234	I, II, III w/o IV&D or OTAR
VP400		w/o IV&D or OTAR	APX3000	536XXX1234	w/o IV&D
VP-600		w/o IV&D or OTAR	APX4000	426XXX1234	I, II, III w/o IV&D or OTAR
VP-900		w/o IV&D or OTAR	APX6000	481XXX1234	I, II, III
VP6430		w/o IV&D or OTAR	APX6000 Extreme	756XXX1234	I, II, III
KENWOOD			APX6000 LI	755XXX1234	I, II, III
Model	Serial #	Model #	APX7000	655XXX1234	1.5, 3.5
TK5400 **		K1, K2 w/o IV&D or OTAR	APX7000 Extreme	562XXX1234	1.5, 3.5
TK5410 **		K1, K2	APX8000	576XXX1234	I, II, III w/o IV&D
TK5430		K1, K2	Saber **	310XXX1234	II, III
VP5430		w/o IV&D or OTAR	SRX2200		w/o IV&D or OTAR
NX5400		w/o IV&D or OTAR	XTS1500	687XXX1234	I, I.5
MA/COM - HARRIS			XTS2500	205XXX1234	I, I.5, II, III
Model	Serial #	Version	XTS3000 **	326XXX1234	I, II, III
P7200		MAPT-T7HXX	XTS5000	721XXX1234	I, II, III
XG-15P		Fallsort, IV&D, OTAR, & KVL not available	TAIT		
XG-25P		Fallsort, IV&D, OTAR, & KVL not available	Model	Serial #	Version
Unity XG-75		IV&D, OTAR, & KVL not available	TP9100		
Unity XG-100P		Fallsort, IV&D, OTAR, & KVL not available	TP9400		w/o IV&D or OTAR
XL-185P		IV&D, OTAR not available	THALES		
XL-200P		IV&D, OTAR, & KVL not available	Model	Serial #	Version
RELM / BENDIX KING			LIBERTY		4102023-501
Model	Serial #	Version			
KNG-P800					

\*\* No longer supported for State of Michigan agency users.

The following Paging Receivers have been approved for use on the MPSCS:

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## Two-Way Radio and Radio Systems Sales and Service

### SCHEDULE A, Attachment 1

#### MPSCS Approved Radios, Consoles and Pagers

(For the latest listing go to: <https://www.michigan.gov/mpscs/0,4640,7-184-62573---,00.html> )

Paging Receivers		
Unication 		
Model	Serial #	Version
G4		700 / 800 Mhz

The following Dispatch Consoles have been approved for use on the MPSCS:

Integrated Dispatch Consoles	
MOTOROLA	
Model	Notes
MCC7100	Must remain connected at all times to the MPSCS Radio Network. Not approved for use off MPSCS network.
MCC7500	Must remain connected at all times to the MPSCS Radio Network.

Please contact the MPSCS Template Design Unit (TDU) or Radio Programming Unit (RPU) for individual model compatibility with features such as:

- Data
- GPS
- OTAR (**O**ver **T**he **A**ir **R**ekeying of encryption keys)
- Console Features and functions

# STATE OF MICHIGAN

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Two-Way Radio and Radio Systems Sales and Service

## SCHEDULE A, Attachment 2 Sample- Simple Quotation Form

Company or Mfg Logo Here			Company Address Here			Date:	
						Quote #:	
						Customer #:	
Prepared By:			Phone:			Email:	
Prepared For:			Bill To:			Ship To:	
Company:			Address:			Address:	
Phone:							
Email:							
Fax:							
All specifications, terms, conditions, and pricing are in accordance with State of Michigan Master Agreement # 21xxxxxxxxxxx							
EQUIPMENT and SERVICE DETAILS AND PRICING							
Quantity	Model	Description	Unit List Price	Percentage Discount	Contract Price	Total Price	
20	XXX1	xxx Portable	\$ 2,200.00	30	\$ 1,540.00	\$ 30,800.00	
20	XXX2	xxx Digital Trunking	\$ 1,570.00	30	\$ 1,099.00	\$ 21,980.00	
20	XXX3	Battery	\$ 125.00	25	\$ 85.00	\$ 1,700.00	
						\$ -	
						\$ -	
						\$ -	
						\$ -	
						\$ -	
						\$ -	
		Services				\$ -	
20	SVC03	Radio programming and template generation	\$ 95.00	15	\$ 80.75	\$ 1,615.00	
						\$ -	
						\$ -	
						\$ -	
					Quote Total	\$ 56,095.00	

# STATE OF MICHIGAN

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Two-Way Radio and Radio Systems Sales and Service

## SCHEDULE B- PRICING

CATEGORY	Equipment Class	DISCOUNT PERCENTAGE OFF MANUFACTURER LIST PRICE
Mobiles and Portables	C, N, NB	26%
*Quantity 10 - 49 (any configuration)	C, N, NB	35%
*Quantity 50 - 99 (any configuration)	C, N, NB	40%
*Quantity 100+ (any configuration)	C, N, NB	45%
Fixed Stations	S, P	26%
Consoles	S, P	26%
Fixed Network Equipment	V, VC, 77	10%
System Infrastructure	S, P	26%
Options and The Contractor Accessories	C, N, NB, S, P	26%
Software	L	26%
Licenses	LD	26%
Standard Vendor Accessories and Aftermarket (other than The Contractor)	V, VC, 77	10%
Spare Parts for Items in Equipment Class	C, N, NB, S, P	26%
Spare Parts for Items in Equipment Class	V, VC, 77	10%
Pagers	V, VC, 77	10%
Pager Accessories	V, VC, 77	10%
Dropship (Non-Catalog Products)		0%
Services (Engineering and Other Professional)		0%
Equipment & Services	Equipment and services listed in the catalog in the catalog with other equipment codes not listed above.	0%

\*On a per Purchase Order basis, for mobiles and portables with equipment class codes C, N, and NB. Equipment Class Codes are denoted in the catalogs.

See Schedule B, Attachment 1 for Manufacturer List Price Catalogs- Located as a Separate Document



# STATE OF MICHIGAN

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**Two-Way Radio and Radio Systems Sales and Service**

## **SCHEDULE C SOFTWARE TERMS**

**1. DEFINITIONS.** In addition to the definitions found in the Contract Terms, for the purposes of this Contract, the following terms have the following meanings:

**“Authorized Users”** means all Persons authorized by the State to access and use the Software under this Contract, subject to the maximum number of users specified in the applicable Statement of Work.

**“Harmful Code”** means any: (a) virus, trojan horse, worm, backdoor or other software or hardware devices the effect of which is to permit unauthorized access to, or to disable, erase, or otherwise harm, any computer, systems or software; or (b) time bomb, drop dead device, or other software or hardware device designed to disable a computer program automatically with the passage of time or under the positive control of any Person, or otherwise prevent, restrict or impede the State's or any Authorized User's use of such software.

**“Integration Testing”** has the meaning set forth in **Section 4.2(c)**.

**“Open-Source Components”** means any software component that is subject to any open-source copyright license agreement, including any GNU General Public License or GNU Library or Lesser Public License, or other obligation, restriction or license agreement that substantially conforms to the Open Source Definition as prescribed by the Open Source Initiative or otherwise may require disclosure or licensing to any third party of any source code with which such software component is used or compiled.

**“Open-Source License”** has the meaning set forth in **Section 2.3**.

**“Operating Environment”** means, collectively, the platform, environment, and conditions on, in or under which the Software is intended to be installed and operate, as set forth in the Statement of Work, including such structural, functional and other features, conditions and components as hardware, operating software and system architecture and configuration.

**“Specifications”** means the specifications for the Software set forth in the applicable Statement of Work and, to the extent consistent with and not limiting of the foregoing, the Documentation.

**“State Materials”** means all materials and information, including documents, data, know-how, ideas, methodologies, specifications, software, content and technology, in any form or media, directly or indirectly provided or made available to Contractor by or on behalf of the State in connection with this Contract.

**“Support Services”** means the software maintenance and support services Contractor is required to or otherwise does provide to the State pursuant to Contractor's Maintenance and Support Schedule, as appended as Exhibit 1 to this **Schedule B**.

**“Technical Specification”** means, with respect to any Software, the document setting forth the technical specifications for such Software and included in the Statement of Work.

**“Testing Period”** has the meaning set forth in Section 4.2(b).

**“User Data”** means all data, information and other content of any type and in any format, medium or form, whether audio, visual, digital, screen, GUI or other, that is input, uploaded to, placed into or collected, stored, processed, generated or output by any device, system or network by or on behalf of the State, including any and all works, inventions, data, analyses and other information and materials resulting from any use of the Software by or on behalf of the State under this Contract, except that User

Data does not include the Software or data, information or content, including any GUI, audio, visual or digital or other display or output, that is generated automatically upon executing the Software without additional user input.

“**Warranty Period**” means the ninety (90) calendar-day period commencing on the date of the State's Acceptance of the Software.

## **2. LICENSE GRANT AND RESTRICTIONS.**

2.1 Software License. Contractor hereby grants to the State and its Authorized Users the right and license to use the Software and Documentation in accordance with the terms and conditions of this Contract.

2.2 Use. The State will pay Contractor the corresponding Fees set forth in **Schedule B – Pricing and Fees**, for all Authorized Users access and use of the Software. Such Fees will be Contractor's sole and exclusive remedy for use of the Software, including any excess use.

2.3 Open-Source Licenses. Any use hereunder of Open-Source Components shall be governed by, and subject to, the terms and conditions of the applicable open-source license (“Open-Source License”). Contractor shall identify and describe in an exhibit to the Statement of Work each of the Approved Open-Source Components of the Software, and include an exhibit attaching all applicable Open-Source Software Licenses or identifying the URL where these licenses are publicly available.

2.4 Source Code. Software will not have any built-in licensing or expiration period prior to the end of the Contract.

## **3. SOFTWARE IMPLEMENTATION.**

3.1 Implementation. Contractor will deliver, install, configure, integrate, and otherwise provide and make fully operational the Software on or prior to the applicable Milestone Date in accordance with the criteria set forth in the Statement of Work.

3.2 Site Preparation. Unless otherwise set forth in the Statement of Work, Contractor is responsible for ensuring the relevant Operating Environment is set up and in working order to allow Contractor to deliver and install the Software on or prior to the applicable Milestone Date. Contractor will provide the State with such notice as is specified in the Statement of Work, prior to delivery of the Software to give the State sufficient time to prepare for Contractor's delivery and installation of the Software. If the State is responsible for Site preparation, Contractor will provide such assistance as the State requests to complete such preparation on a timely basis.

## **4. TESTING AND ACCEPTANCE.**

4.1 Pre-Delivery Testing By Contractor. Before delivering and installing the Software, Contractor must:

- (a) test the Software to confirm that it is fully operable, meets all applicable Specifications and will function in accordance with the Specifications and Documentation when properly installed in the Operating Environment;

- (b) scan the Software using industry standard scanning software and definitions to confirm it is free of Harmful Code; and

- (c) remedy any Non-Conformity or Harmful Code identified and retest and rescan the Software.

4.2 Acceptance Testing.

- (a) Unless otherwise specified in the Statement of Work, upon installation of the Software, Acceptance Tests will be conducted to ensure the Software conforms to the requirements of this Contract, including the applicable Specifications and Documentation.

(b) All Acceptance Tests will take place at the designated Site(s) in the Operating Environment described in the Statement of Work, commence on the Business Day following installation of the Software and be conducted diligently for up to thirty (30) Business Days, or such other period as may be set forth in the Statement of Work (the “**Testing Period**”). Acceptance Tests will be conducted by the party responsible as set forth in the Statement of Work or, if the Statement of Work does not specify, the State, provided that:

- (i) for Acceptance Tests conducted by the State, if requested by the State, Contractor will make suitable Contractor Personnel available to observe or participate in such Acceptance Tests; and
- (ii) for Acceptance Tests conducted by Contractor, the State has the right to observe or participate in all or any part of such Acceptance Tests.

Contractor is solely responsible for all costs and expenses related to Contractor’s performance of, participation in, and observation of Acceptance Testing.

(c) Upon delivery and installation of any API, Configuration or Customization to the Software under the Statement of Work, additional Acceptance Tests will be performed on the modified Software as a whole to ensure full operability, integration, and compatibility among all elements of the Software (“**Integration Testing**”). Integration Testing is subject to all procedural and other terms and conditions set forth in **Section 4**.

(d) The State may suspend Acceptance Tests and the corresponding Testing Period by written notice to Contractor if the State discovers a material Non-Conformity in the tested Software or part or feature of the Software. In such event, Contractor will immediately, and in any case within ten (10) Business Days, correct such Non-Conformity, whereupon the Acceptance Tests and Testing Period will resume for the balance of the Testing Period.

**4.3 Notices of Completion, Non-Conformities, and Acceptance.** Within fifteen (15) Business Days following the completion of any Acceptance Tests, including any Integration Testing, the party responsible for conducting the tests will prepare and provide to the other party written notice of the completion of the tests. Such notice must include a report describing in reasonable detail the tests conducted and the results of such tests, including any uncorrected Non-Conformity in the tested Software.

(a) If such notice is provided by either party and identifies any Non-Conformities, the parties’ rights, remedies, and obligations will be as set forth in **Section 12.3** and **Section 12.4**.

(b) If such notice is provided by the State, is signed by the State’s Business Owner and Program Manager, and identifies no Non-Conformities, such notice constitutes the State’s Acceptance of such Software.

(c) If such notice is provided by Contractor and identifies no Non-Conformities, the State will have thirty (30) Business Days to use the Software in the Operating Environment and determine, in the exercise of its sole discretion, whether it is satisfied that the Software contains no Non-Conformities, on the completion of which the State will, as appropriate:

- (i) notify Contractor in writing of Non-Conformities the State has observed in the Software and of the State’s non-acceptance thereof, whereupon the parties’ rights, remedies and obligations will be as set forth in **Section 4.4** and **Section 4.5**; or
- (ii) provide Contractor with a written notice of its Acceptance of such Software, which must be signed by the State’s Business Owner and Program Manager.

**4.4 Failure of Acceptance Tests.** If Acceptance Tests identify any Non-Conformities, Contractor, at Contractor’s sole cost and expense, will remedy all such Non-Conformities and re-deliver the Software, in accordance with the requirements set forth in the Statement of Work. Redelivery will occur as promptly

as commercially possible and, in any case, within thirty (30) Business Days following, as applicable, Contractor's:

- (a) completion of such Acceptance Tests, in the case of Acceptance Tests conducted by Contractor; or
- (b) receipt of the State's notice under **Section 4.2(a)** or **Section 4.3(c)(i)**, identifying any Non-Conformities.

**4.5 Repeated Failure of Acceptance Tests.** If Acceptance Tests identify any Non-Conformity in the Software after a second or subsequent delivery of the Software, or Contractor fails to re-deliver the Software on a timely basis, the State may, in its sole discretion, by written notice to Contractor:

- (a) continue the process set forth in **Section 4.2**;
- (b) accept the Software as a nonconforming deliverable, in which case the Fees for such Software will be reduced equitably to reflect the value of the Software as received relative to the value of the Software had it conformed; or
- (c) deem the failure to be a non-curable material breach of this Contract and the Statement of Work and terminate this Contract for cause in accordance with **Section 28** of the Contract Terms.

**4.6 Acceptance.** Acceptance ("**Acceptance**") of the Software (subject, where applicable, to the State's right to Integration Testing) will occur on the date that is the earliest of the State's delivery of a notice accepting the Software under **Section 4.3(b)**, or **Section 4.3(c)(ii)**.

**5. TRAINING.** Contractor shall provide, at no additional charge, training on all uses of the Software permitted hereunder in accordance with the times, locations and other terms set forth in the Statement of Work. Upon the State's request, Contractor shall timely provide training for additional Authorized Users or other additional training on all uses of the Software for which the State requests such training, at such reasonable times and locations and pursuant to such rates and other terms as are set forth in the Pricing Schedule.

## **6. SUPPORT SERVICES; MAINTENANCE RELEASES; NEW VERSIONS.**

**6.1 Support Services for On-Premise Software.** If the Operating Environment for the Software is internally hosted by the State, Contractor shall provide the State with the Support Services described in the Maintenance and Support Schedule attached as **Exhibit 1** to this **Schedule C**. Such Support Services shall be provided:

- (a) Free of charge during the Warranty Period, it being acknowledged and agreed that the License Fee includes full consideration for such Services during such period.
- (b) Thereafter, for so long as the State elects to receive Support Services for the Software, in consideration of the State's payment of Support Services Fees in accordance with the rates set forth in the Pricing Schedule.

**6.2 Maintenance Releases.** Provided that the State is current on its Support Services Fees, during the Term, Contractor shall provide the State, at no additional charge, with all Maintenance Releases, each of which will constitute Software and be subject to the terms and conditions of this Contract.

**6.3 New Versions.** Provided that the State is current on its Support Services Fees, during the Term, Contractor shall provide the State, at no additional charge, with all New Versions, each of which will constitute Software and be subject to the terms and conditions of this Contract.

**6.4 Installation.** The State has no obligation to install or use any Maintenance Release or New Versions. If the State wishes to install any Maintenance Release or New Version, the State shall have the right to have such Maintenance Release or New Version installed, in the State's discretion, by Contractor or other authorized party as set forth in the Statement of Work. Contractor shall provide the State, at no additional charge, adequate Documentation for installation of the Maintenance Release or New Version,

which has been developed and tested by Contractor and Accepted by the State. The State's decision not to install or implement a Maintenance Release or New Version of the Software will not affect its right to receive Support Services throughout the Term of this Contract.

## **7. SOFTWARE REPRESENTATIONS AND WARRANTIES.**

7.1 Contractor further represents and warrants to the State that:

- (a) it is the legal and beneficial owner of the entire right, title and interest in and to the Software, including all Intellectual Property Rights relating thereto;
- (b) it has, and throughout the license term, will retain the unconditional and irrevocable right, power and authority to grant and perform the license hereunder;
- (c) the Software, and the State's use thereof, is and throughout the license term will be free and clear of all encumbrances, liens and security interests of any kind;
- (d) neither its grant of the license, nor its performance under this Contract does or to its knowledge will at any time:
  - (i) conflict with or violate any applicable law;
  - (ii) require the consent, approval or authorization of any governmental or regulatory authority or other third party; or
  - (iii) require the provision of any payment or other consideration to any third party;
- (e) when used by the State or any Authorized User in accordance with this Contract and the Documentation, the Software or Documentation as delivered or installed by Contractor does not or will not:
  - (i) infringe, misappropriate or otherwise violate any Intellectual Property Right or other right of any third party; or
  - (ii) fail to comply with any applicable law;
- (f) as provided by Contractor, the Software does not or will not at any time during the license term contain any:
  - (i) Harmful Code; or
  - (ii) Open-Source Components or operate in such a way that it is developed or compiled with or linked to any Open-Source Components, other than Approved Open-Source Components specifically described in the Statement of Work.
- (g) all Documentation is and will be complete and accurate in all material respects when provided to the State such that at no time during the license term will the Software have any material undocumented feature; and
- (h) it will perform all Services in a timely, skillful, professional and workmanlike manner in accordance with commercially reasonable industry standards and practices for similar services, using personnel with the requisite skill, experience and qualifications, and will devote adequate resources to meet its obligations under this Contract.
- (i) when used in the Operating Environment (or any successor thereto) in accordance with the Documentation, all Software as provided by Contractor, will be fully operable, meet all applicable specifications, and function in all respects, in conformity with this Contract and the Documentation; and
- (j) no Maintenance Release or New Version, when properly installed in accordance with this Contract, will have a material adverse effect on the functionality or operability of the Software.

7.2 Disclaimer. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS AGREEMENT, CONTRACTOR HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, WITH RESPECT TO THIS CONTRACT.

## EXHIBIT 1 TO SCHEDULE C

**1. Definitions.** For purposes of this **Exhibit 1 to Schedule C**, the following terms have the meanings set forth below. All initial capitalized terms in this Schedule that are not defined in this **Section 1** shall have the respective meanings given to them in the Contract or its associated respective Schedules.

**“Actual Uptime”** means the total minutes in the Service Period that the Hosted Services are Available.

**“Availability”** has the meaning set forth in **Section 3(a)**.

**“Availability Requirement”** has the meaning set forth in **Section 3(a)**.

**“Available”** has the meaning set forth in **Section 3(a)**.

**“Contractor Service Manager”** has the meaning set forth in **Section 2.1**.

**“Corrective Action Plan”** has the meaning set forth in **Section 4.3**.

**“Critical Service Error”** has the meaning set forth in **Section 4**.

**“Exceptions”** has the meaning set forth in **Section 3.2**.

**“Force Majeure Event”** has the meaning set forth in **Section 5.1**.

**“High Service Error”** has the meaning set forth in **Section 4**.

**“Hosted Services”** has the meaning set forth in **Schedule E**.

**“Low Service Error”** has the meaning set forth in **Section 4**.

**“Medium Service Error”** has the meaning set forth in **Section 4**.

**“Resolve”** has the meaning set forth in **Section 4.1(a)**.

**“Scheduled Downtime”** has the meaning set forth in **Section 3.3**.

**“Scheduled Uptime”** means the total minutes in the Service Period.

**“Service Availability Credits”** has the meaning set forth in **Section 3.6(a)**.

**“Service Level Credits”** has the meaning set forth in **Section 4.2**.

**“Service Level Failure”** means a failure to perform the Software Support Services fully in compliance with the Support Service Level Requirements.

**“Service Period”** has the meaning set forth in **Section 3(a)**.

**“Software”** has the meaning set forth in the Contract.

**“Software Support Services”** has the meaning set forth in **Section 4.1**.

**“State Service Manager”** has the meaning set forth in **Section 2.2**.

**“State Systems”** means the information technology infrastructure, including the computers, software, databases, electronic systems (including database management systems) and networks, of the State or any of its designees.

**“Support Request”** has the meaning set forth in **Section 4**.

**“Support Service Level Requirements”** has the meaning set forth in **Section 4**.

**“Term”** has the meaning set forth in the Contract.

## **2. Service Availability and Service Availability Credits.**

(a) Availability Requirement. Contractor will make the Hosted Services Available, as measured over the course of each calendar month during the Term and any additional periods during which Contractor does or is required to perform any Hosted Services (each such calendar month, a **“Service Period”**), at least 99.98% of the time, excluding only the time the Hosted Services are not Available solely as a result of one or more Exceptions (the **“Availability Requirement”**). **“Available”** means the Hosted Services are available and operable for access and use by the State and its Authorized Users over the Internet in material conformity with the Contract. **“Availability”** has a correlative meaning. The Hosted Services are not considered Available in the event of a material performance degradation or inoperability of the Hosted Services, in whole or in part. The Availability Requirement will be calculated for the Service Period as follows:  $(\text{Actual Uptime} - \text{Total Minutes in Service Period Hosted Services are not Available Due to an Exception}) \div (\text{Scheduled Uptime} - \text{Total Minutes in Service Period Hosted Services are not Available Due to an Exception}) \times 100 = \text{Availability}$ .

2.2 Exceptions. No period of Hosted Service degradation or inoperability will be included in calculating Availability to the extent that such downtime or degradation is due to any of the following (**“Exceptions”**):

- (a) failures of the State’s or its Authorized Users’ internet connectivity;
- (b) Scheduled Downtime as set forth in **Section 3.3**.

2.3 Scheduled Downtime. Contractor must notify the State at least twenty-four (24) hours in advance of all scheduled outages of the Hosted Services in whole or in part (**“Scheduled Downtime”**). All such scheduled outages will: (a) last no longer than five (5) hours; (b) be scheduled between the hours of 12:00 a.m. and 5:00 a.m., Eastern Time; and (c) occur no more frequently than once per week; provided that Contractor may request the State to approve extensions of Scheduled Downtime above five (5) hours, and such approval by the State may not be unreasonably withheld or delayed.

2.4 Software Response Time. Software response time, defined as the interval from the time the end user sends a transaction to the time a visual confirmation of transaction completion is received, must be less than two (2) seconds for 98% of all transactions. Unacceptable response times shall be considered to make the Software unavailable and will count against the Availability Requirement.

2.5 Service Availability Reports. Within thirty (30) days after the end of each Service Period, Contractor will provide to the State a report describing the Availability and other performance of the



Hosted Services during that calendar month as compared to the Availability Requirement. The report must be in electronic or such other form as the State may approve in writing and shall include, at a minimum: (a) the actual performance of the Hosted Services relative to the Availability Requirement; and (b) if Hosted Service performance has failed in any respect to meet or exceed the Availability Requirement during the reporting period, a description in sufficient detail to inform the State of the cause of such failure and the corrective actions the Contractor has taken and will take to ensure that the Availability Requirement are fully met.

## 2.6 Remedies for Service Availability Failures.

(a) If the actual Availability of the Hosted Services is less than the Availability Requirement for any Service Period, such failure will constitute a Service Error for which Contractor will issue to the State the following credits on the fees payable for Hosted Services provided during the Service Period ("**Service Availability Credits**"):

Availability	Credit of Fees
≥99.98%	None
<99.98% but ≥99.0%	15%
<99.0% but ≥95.0%	50%
<95.0%	100%

(b) Any Service Availability Credits due under this **Section 3.6** will be applied in accordance with payment terms of the Contract.

(c) If the actual Availability of the Hosted Services is less than the Availability Requirement in any two (2) of four (4) consecutive Service Periods, then, in addition to all other remedies available to the State, the State may terminate the Contract on written notice to Contractor with no liability, obligation or penalty to the State by reason of such termination.

2.7 Service Monitoring and Management. Contractor will continuously monitor and manage the Hosted Services to optimize Availability that meets or exceeds the Availability Requirement. Such monitoring and management includes:

(a) proactively monitoring on a twenty-four (24) hour by seven (7) day basis all Hosted Service functions, servers, firewall and other components of Hosted Service security;

(b) if such monitoring identifies, or Contractor otherwise becomes aware of, any circumstance that is reasonably likely to threaten the Availability of the Hosted Service, taking all necessary and reasonable remedial measures to promptly eliminate such threat and ensure full Availability; and

(c) if Contractor receives knowledge that the Hosted Service or any Hosted Service function or component is not Available (including by written notice from the State pursuant to the procedures set forth herein):

- (i) confirming (or disconfirming) the outage by a direct check of the associated facility or facilities;
- (ii) if Contractor's facility check in accordance with clause (i) above confirms a Hosted Service outage in whole or in part: (A) notifying the State in writing pursuant to the procedures set forth herein that an outage has occurred, providing such details as may be available, including a Contractor trouble ticket number, if appropriate, and time of outage; and (B) working all problems causing and caused by the outage until they are Resolved as Critical Service Errors in accordance with the Support Request

Classification set forth in **Section 4**, or, if determined to be an internet provider problem, open a trouble ticket with the internet provider; and

- (iii) notifying the State that Contractor has fully corrected the outage and any related problems, along with any pertinent findings or action taken to close the trouble ticket.

**3. Support Service Level Requirements.** Contractor will correct all Service Errors and respond to and Resolve all Support Requests in accordance with the required times and other terms and conditions set forth in this **Section 4** ("**Support Service Level Requirements**"), and the Contract.

3.1 Support Requests. The State will classify its requests for Service Error corrections in accordance with the descriptions set forth in the chart below (each a "**Support Request**"). The State Service Manager will notify Contractor of Support Requests by email, telephone or such other means as the parties may hereafter agree to in writing.

<b>Support Request Classification</b>	<b>Description:</b>  <b>Any Service Error Comprising or Causing any of the Following Events or Effects</b>
Critical Service Error	<ul style="list-style-type: none"><li>• Issue affecting entire system or single critical production function;</li><li>• System down or operating in materially degraded state;</li><li>• Data integrity at risk;</li><li>• Declared a Critical Support Request by the State; or</li><li>• Widespread access interruptions.</li></ul>
High Service Error	<ul style="list-style-type: none"><li>• Primary component failure that materially impairs its performance; or</li><li>• Data entry or access is materially impaired on a limited basis.</li></ul>
Medium Service Error	<ul style="list-style-type: none"><li>• Hosted Service is operating with minor issues that can be addressed with an acceptable (as determined by the State) temporary work around.</li></ul>
Low Service Error	<ul style="list-style-type: none"><li>• Request for assistance, information, or services that are routine in nature.</li></ul>

(a) Response and Resolution Time Service Levels. Response and Resolution times will be measured from the time Contractor receives a Support Request until the respective times Contractor has (i) responded to, in the case of response time and (ii) Resolved such Support Request, in the case of Resolution time. "**Resolve**" (including "**Resolved**", "**Resolution**" and correlative capitalized terms) means that, as to any Service Error, Contractor has provided the State the corresponding Service Error correction and the State has confirmed such correction and its acceptance thereof. Contractor will respond to and Resolve all Service Errors within the following times based on the severity of the Service Error:

<b>Support Request Classification</b>	<b>Service Level Metric  (Required Response Time)</b>	<b>Service Level Metric  (Required Resolution Time)</b>	<b>Service Level Credits  (For Failure to Respond to any Support Request Within the Corresponding Response Time)</b>	<b>Service Level Credits  (For Failure to Resolve any Support Request Within the Corresponding Required Resolution Time)</b>
Critical Service Error	One (1) hour	Three (3) hours	Five percent (5%) of the Fees for the month in which the initial Service Level Failure begins and five percent (5%) of such monthly Fees for each additional hour or portion thereof that the corresponding Service Error is not responded to within the required response time.	Five percent (5%) of the Fees for the month in which the initial Service Level Failure begins and five percent (5%) of such monthly Fees for the first additional hour or portion thereof that the corresponding Service Error remains un-Resolved, which amount will thereafter double for each additional one-hour increment.
High Service Error	One (1) hour	Four (4) hours	Three percent (3%) of the Fees for the month in which the initial Service Level Failure begins and three percent (3%) of such monthly Fees for each additional hour or portion thereof that the corresponding Service Error is not responded to within the required response time.	Three percent (3%) of the Fees for the month in which the initial Service Level Failure begins and three percent (3%) of such monthly Fees for the first additional hour or portion thereof that the corresponding Service Error remains un-Resolved, which amount will thereafter double for each additional one-hour increment.
Medium Service Error	Three (3) hours	Two (2) Business Days	N/A	N/A

Low Service Error	Three (3) hours	Five (5) Business Days	N/A	N/A
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(b) Escalation. With respect to any Critical Service Error Support Request, until such Support Request is Resolved, Contractor will escalate that Support Request within sixty (60) minutes of the receipt of such Support Request by the appropriate Contractor support personnel, including, as applicable, the Contractor Service Manager and Contractor's management or engineering personnel, as appropriate.

3.2 Support Service Level Credits. Failure to achieve any of the Support Service Level Requirements for Critical and High Service Errors will constitute a Service Level Failure for which Contractor will issue to the State the corresponding service credits set forth in **Section 4.1(a)** ("**Service Level Credits**") in accordance with payment terms set forth in the Contract.

3.3 Corrective Action Plan. If two or more Critical Service Errors occur in any thirty (30) day period during (a) the Term or (b) any additional periods during which Contractor does or is required to perform any Hosted Services, Contractor will promptly investigate the root causes of these Service Errors and provide to the State within five (5) Business Days of its receipt of notice of the second such Support Request an analysis of such root causes and a proposed written corrective action plan for the State's review, comment and approval, which, subject to and upon the State's written approval, shall be a part of, and by this reference is incorporated in, the Contract as the parties' corrective action plan (the "**Corrective Action Plan**"). The Corrective Action Plan must include, at a minimum: (a) Contractor's commitment to the State to devote the appropriate time, skilled personnel, systems support and equipment and other resources necessary to Resolve and prevent any further occurrences of the Service Errors giving rise to such Support Requests; (b) a strategy for developing any programming, software updates, fixes, patches, etc. necessary to remedy, and prevent any further occurrences of, such Service Errors; and (c) time frames for implementing the Corrective Action Plan. There will be no additional charge for Contractor's preparation or implementation of the Corrective Action Plan in the time frames and manner set forth therein.

#### **4. Force Majeure.**

4.1 Force Majeure Events. Subject to **Section 5.3**, neither party will be liable or responsible to the other party, or be deemed to have defaulted under or breached the Contract, for any failure or delay in fulfilling or performing any term hereof, when and to the extent such failure or delay is caused by: acts of God, flood, fire or explosion, war, terrorism, invasion, riot or other civil unrest, embargoes or blockades in effect on or after the date of the Contract, national or regional emergency, or any passage of law or governmental order, rule, regulation or direction, or any action taken by a governmental or public authority, including imposing an embargo, export or import restriction, quota or other restriction or prohibition (each of the foregoing, a "**Force Majeure Event**"), in each case provided that: (a) such event is outside the reasonable control of the affected party; (b) the affected party gives prompt written notice to the other party, stating the period of time the occurrence is expected to continue; (c) the affected party uses diligent efforts to end the failure or delay and minimize the effects of such Force Majeure Event.

4.2 State Performance; Termination. In the event of a Force Majeure Event affecting Contractor's performance under the Contract, the State may suspend its performance hereunder until such time as Contractor resumes performance. The State may terminate the Contract by written notice to Contractor if a Force Majeure Event affecting Contractor's performance hereunder continues substantially uninterrupted for a period of five (5) Business Days or more. Unless the State terminates the Contract pursuant to the preceding sentence, any date specifically designated for Contractor's performance under the Contract will automatically be extended for a period up to the duration of the Force Majeure Event.

4.3 Exclusions; Non-suspended Obligations. Notwithstanding the foregoing or any other provisions of the Contract or this Schedule:

- (a) in no event will any of the following be considered a Force Majeure Event:
  - (i) shutdowns, disruptions or malfunctions of Contractor Systems or any of Contractor's telecommunication or internet services other than as a result of general and

widespread internet or telecommunications failures that are not limited to the Contractor Systems; or

- (ii) the delay or failure of any Contractor Personnel to perform any obligation of Contractor hereunder unless such delay or failure to perform is itself by reason of a Force Majeure Event.

# STATE OF MICHIGAN

Master Agreement No. 210000000897  
**Two-Way Radio and Radio Systems Sales and Service**

## **SCHEDULE D** **DATA SECURITY REQUIREMENTS**

**1. Definitions.** For purposes of this Schedule, the following terms have the meanings set forth below. All initial capitalized terms in this Schedule that are not defined in this **Schedule** shall have the respective meanings given to them in the Contract.

**“Contractor Security Officer”** has the meaning set forth in **Section 2** of this Schedule.

**“FedRAMP”** means the Federal Risk and Authorization Management Program, which is a federally approved risk management program that provides a standardized approach for assessing and monitoring the security of cloud products and services.

**“FISMA”** means The Federal Information Security Modernization Act of 2014 (Pub.L. No. 113-283 (Dec. 18, 2014.)).

**“Hosting Provider”** means any Permitted Subcontractor that is providing any or all of the Hosted Services under this Contract.

**“NIST”** means the National Institute of Standards and Technology.

**“PCI”** means the Payment Card Industry.

**“PSP”** or **“PSPs”** means the State’s IT Policies, Standards and Procedures.

**“SSAE”** means Statement on Standards for Attestation Engagements.

**“Security Accreditation Process”** has the meaning set forth in **Section 6** of this Schedule

**2. Security Officer.** Contractor will appoint a Contractor employee to respond to the State’s inquiries regarding the security of the Hosted Services who has sufficient knowledge of the security of the Hosted Services and the authority to act on behalf of Contractor in matters pertaining thereto (**“Contractor Security Officer”**).

**3. Contractor Responsibilities.** Contractor is responsible for establishing and maintaining a data privacy and information security program, including physical, technical, administrative, and organizational safeguards, that is designed to:

- (a) ensure the security and confidentiality of the State Data;
- (b) protect against any anticipated threats or hazards to the security or integrity of the State Data;
- (c) protect against unauthorized disclosure, access to, or use of the State Data;
- (d) ensure the proper disposal of any State Data in Contractor’s or its subcontractor’s possession; and
- (e) ensure that all Contractor Representatives comply with the foregoing.

The State has established Information Technology (IT) PSPs to protect IT resources under the authority outlined in the overarching State 1305.00 Enterprise IT Policy. In no case will the safeguards of Contractor’s data privacy and information security program be less stringent than the safeguards used by the State, and Contractor must at all times comply with all applicable public and non-public State IT

policies and standards, of which the publicly available ones are at [https://www.michigan.gov/dtmb/0,5552,7-358-82547\\_56579\\_56755---,00.html](https://www.michigan.gov/dtmb/0,5552,7-358-82547_56579_56755---,00.html).

This responsibility also extends to all service providers and subcontractors with access to State Data or an ability to impact the contracted solution. Contractor responsibilities are determined from the PSPs based on the services being provided to the State, the type of IT solution, and the applicable laws and regulations.

**4. Acceptable Use Policy.** To the extent that Contractor has access to the State's IT environment, Contractor must comply with the State's Acceptable Use Policy, see [https://www.michigan.gov/documents/dtmb/1340.00.01\\_Acceptable\\_Use\\_of\\_Information\\_Technology\\_Standard\\_458958\\_7.pdf](https://www.michigan.gov/documents/dtmb/1340.00.01_Acceptable_Use_of_Information_Technology_Standard_458958_7.pdf). All Contractor Personnel will be required, in writing, to agree to the State's Acceptable Use Policy before accessing State systems. The State reserves the right to terminate Contractor's and/or subcontractor(s) or any Contractor Personnel's access to State systems if the State determines a violation has occurred.

**5. Protection of State's Information.** Throughout the Term and at all times in connection with its actual or required performance of the Services, Contractor will:

5.1 ensure that the Software and State Data is securely hosted, supported, administered, accessed, and backed up in a data center(s) that resides in the continental United States, and minimally meets Uptime Institute Tier 3 standards ([www.uptimeinstitute.com](http://www.uptimeinstitute.com)), or its equivalent;

5.2 maintain and enforce an information security program including safety and physical and technical security policies and procedures with respect to its Processing of the State Data that complies with the requirements of the State's data security policies as set forth in this Contract, and must, at a minimum, remain compliant with FISMA and NIST Special Publication 800-53 MOD Controls using identified controls and minimum values as established in applicable State PSPs;

5.3 provide technical and organizational safeguards against accidental, unlawful or unauthorized access to or use, destruction, loss, alteration, disclosure, encryption, transfer, commingling or processing of such information that ensure a level of security appropriate to the risks presented by the processing of State Data and the nature of such State Data, consistent with best industry practice and applicable standards (including, but not limited to, compliance with FISMA, NIST, CMS, IRS, FBI, SSA, HIPAA, FERPA and PCI requirements as applicable);

5.4 take all reasonable measures to:

(a) secure and defend all locations, equipment, systems and other materials and facilities employed in connection with the Services against "malicious actors" and others who may seek, without authorization, to destroy, disrupt, damage, encrypt, modify, copy, access or otherwise use Hosted Services or the information found therein; and

(b) prevent (i) the State and its Authorized Users from having access to the data of other customers or such other customer's users of the Services; (ii) State Data from being commingled with or contaminated by the data of other customers or their users of the Services; and (iii) unauthorized access to any of the State Data;

5.5 ensure that State Data is encrypted in transit and at rest using FIPS validated AES encryption modules and a key size of 128 bits or higher;

5.6 ensure the Hosted Services support Identity Federation/Single Sign-on (SSO) capabilities using Security Assertion Markup Language (SAML), Open Authentication (OAuth) or comparable State approved mechanisms;

5.7 ensure the Hosted Services implements NIST compliant multi-factor authentication for privileged/administrative and other identified access.

**6. Security Accreditation Process.** Throughout the Term, Contractor will assist the State, at no additional cost, with its **Security Accreditation Process**, which includes the development, completion and on-going maintenance of a system security plan (SSP) using the State's automated governance, risk and compliance (GRC) platform, which requires Contractor to submit evidence, upon request from the State, in order to validate applicable Contractor's security controls within two weeks of the State's request. On an annual basis, or as otherwise required by the State such as for significant changes, re-assessment of the system's controls will be required to receive and maintain authority to operate (ATO). All identified risks from the SSP will be remediated through a Plan of Action and Milestones (POAM) process with remediation time frames based on the risk level of the identified risk. For all findings associated with the Contractor's solution, at no additional cost, Contractor will be required to create or assist with the creation of State approved POAMs and perform related remediation activities. The State will make any decisions on acceptable risk, Contractor may request risk acceptance, supported by compensating controls, however only the State may formally accept risk. Failure to comply with this section will be deemed a material breach of the Contract.

**7. Unauthorized Access.** Contractor may not access, and shall not permit any access to, State systems, in whole or in part, whether through the Hosted Services or otherwise, without the State's express prior written authorization. Such authorization may be revoked by the State in writing at any time in its sole discretion. Any access to State systems must be solely in accordance with the Contract and this Schedule, and in no case exceed the scope of the State's authorization pursuant to this Section. All State-authorized connectivity or attempted connectivity to State systems shall be only through the State's security gateways and firewalls and in compliance with the State's security policies set forth in the Contract as the same may be supplemented or amended by the State and provided to Contractor from time to time.

**8. Security Audits.**

8.1 During the Term, Contractor will maintain complete and accurate records of its data protection practices, IT security controls, and the security logs relating to State Data, including but not limited to any backup, disaster recovery or other policies, practices or procedures relating to the State Data and any other information relevant to its compliance with this Contract.

8.2 Without limiting any other audit rights of the State, the State has the right to review Contractor's data privacy and information security program prior to the commencement of Services and from time to time during the term of this Contract. The State, at its own expense, is entitled to perform, or to have performed, an on-site audit of Contractor's data privacy and information security program. If the State chooses to perform an on-site audit, Contractor will, make all such records, appropriate personnel and relevant materials available during normal business hours for inspection and audit by the State or an independent data security expert that is reasonably acceptable to Contractor, provided that the State: (i) gives Contractor at least five (5) Business Days prior notice of any such audit; (ii) undertakes such audit no more than once per calendar year, except for good cause shown; and (iii) conducts or causes to be conducted such audit in a manner designed to minimize disruption of Contractor's normal business operations and that complies with the terms and conditions of all data confidentiality, ownership, privacy, security and restricted use provisions of the Contract. The State may, but is not obligated to, perform such security audits, which shall, at the State's option and request, include penetration and security tests, of any and all Hosted Services and their housing facilities and operating environments.

8.3 During the Term, Contractor will, when requested by the State, provide a copy of Contractor's or Hosting Provider's FedRAMP System Security Plan(s) or SOC 2 Type 2 report(s) to the State within two weeks of the State's request. The System Security Plan and SSAE audit reports will be recognized as Contractor's Confidential Information.



8.4 With respect to State Data, Contractor must implement any required safeguards as identified by the State or by any audit of Contractor's data privacy and information security program.

8.5 The State reserves the right, at its sole election, to immediately terminate this Contract or a Statement of Work without limitation and without liability if the State determines that Contractor fails or has failed to meet its obligations under this **Section 8**.

**9. Application Scanning.** During the Term, Contractor must, at its sole cost and expense, scan all Contractor provided applications, and must analyze, remediate and validate all vulnerabilities identified by the scans as required by the State Secure Web Application and other applicable PSPs.

Contractor's application scanning and remediation must include each of the following types of scans and activities:

9.1 Dynamic Application Security Testing (DAST) – Scanning interactive application for vulnerabilities, analysis, remediation, and validation (may include Interactive Application Security Testing (IAST)).

(a) Contractor must either a) grant the State the right to dynamically scan a deployed version of the Software; or b) in lieu of the State performing the scan, Contractor must dynamically scan a deployed version of the Software using a State approved application scanning tool, and provide the State a vulnerabilities assessment after Contractor has completed such scan. These scans and assessments i) must be completed and provided to the State quarterly (dates to be provided by the State) and for each major release; and ii) scans must be completed in a non-production environment with verifiable matching source code and supporting infrastructure configurations or the actual production environment.

9.2 Static Application Security Testing (SAST) - Scanning Source Code for vulnerabilities, analysis, remediation, and validation.

(a) For Contractor provided applications, Contractor, at its sole expense, must provide resources to complete static application source code scanning, including the analysis, remediation and validation of vulnerabilities identified by application Source Code scans. These scans must be completed for all Source Code initially, for all updated Source Code, and for all Source Code for each major release and Contractor must provide the State a vulnerability assessment after Contractor has completed the required scans.

9.3 Software Composition Analysis (SCA) – Third Party and/or Open Source Scanning for vulnerabilities, analysis, remediation, and validation.

(a) For Software that includes third party and open source software, all included third party and open source software must be documented and the source supplier must be monitored by the Contractor for notification of identified vulnerabilities and remediation. SCA scans may be included as part of SAST and DAST scanning or employ the use of an SCA tool to meet the scanning requirements. These scans must be completed for all third party and open source software initially, for all updated third party and open source software, and for all third party and open source software in each major release and Contractor must provide the State a vulnerability assessment after Contractor has completed the required scans if not provided as part of SAST and/or DAST reporting.

9.4 In addition, application scanning and remediation may include the following types of scans and activities if required by regulatory or industry requirements, data classification or otherwise identified by the State.

(a) If provided as part of the solution, all native mobile application software must meet these scanning requirements including any interaction with an application programming interface (API).

(b) Penetration Testing – Simulated attack on the application and infrastructure to identify security weaknesses.

**10. Nonexclusive Remedy for Security Breach.**

11.1 Any failure of the Services to meet the requirements of this Schedule with respect to the security of any State Data or other Confidential Information of the State, including any related backup, disaster recovery or other policies, practices or procedures, is a material breach of the Contract for which the State, at its option, may terminate the Contract immediately upon written notice to Contractor without any notice or cure period, and Contractor must promptly reimburse to the State any Fees prepaid by the State prorated to the date of such termination.

# STATE OF MICHIGAN

Master Agreement No. 210000000897

## Two-Way Radio and Radio Systems Sales and Service

### SCHEDULE E

#### Federal Provisions Addendum

The provisions in this addendum may apply if the purchase will be paid for in whole or in part with funds obtained from the federal government. If any provision below is not required by federal law for this Contract, then it does not apply and must be disregarded. If any provision below is required to be included in this Contract by federal law, then the applicable provision applies and the language is not negotiable. If any provision below conflicts with the State's terms and conditions, including any attachments, schedules, or exhibits to the State's Contract, the provisions below take priority to the extent a provision is required by federal law; otherwise, the order of precedence set forth in the Contract applies. Hyperlinks are provided for convenience only; broken hyperlinks will not relieve Contractor from compliance with the law.

1. **Federally Assisted Construction Contracts.** If this contract is a “**federally assisted construction contract**” as defined in [41 CRF Part 60-1.3](#), and except as otherwise may be provided under [41 CRF Part 60](#), then during performance of this Contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

(4) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The Contractor will comply with all provisions of [Executive Order 11246](#) of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Contractor will furnish all information and reports required by [Executive Order 11246](#) of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in [Executive Order 11246](#) of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in [Executive Order 11246](#) of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of [Executive Order 11246](#) of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

## **2. Davis-Bacon Act (Prevailing Wage)**

- a. If applicable, the Contractor (and its Subcontractors) for **prime construction contracts** in excess of \$2,000 must comply with the Davis-Bacon Act ([40 USC 3141-3148](#)) as supplemented by Department of Labor regulations ([29 CFR Part 5](#), "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction").
- b. The Contractor (and its Subcontractors) shall pay all mechanics and laborers employed directly on the site of the work, unconditionally and at least once a week, and without subsequent deduction or rebate on any account, the full amounts accrued at time of payment, computed at wage rates not less than those stated in the advertised specifications, regardless of any contractual relationship which may be alleged to exist between the Contractor or subcontractor and the laborers and mechanics;
- c. The Contractor will post the scale of wages to be paid in a prominent and easily accessible place at the site of the work;
- d. There may be withheld from the Contractor so much of accrued payments as the contracting officer considers necessary to pay to laborers and mechanics employed by the Contractor or any Subcontractor on the work the difference between the rates of wages required by the Contract to be paid laborers and mechanics on the work and the rates of wages received by the laborers and mechanics and not refunded to the Contractor or Subcontractors or their agents.

## **3. Copeland "Anti-Kickback" Act.** If applicable, the Contractor must comply with the [Copeland "Anti-Kickback" Act \(40 USC 3145\)](#), as supplemented by Department of Labor regulations ([29 CFR Part 3](#), "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"), which prohibits the Contractor and subrecipients from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

## **4. Contract Work Hours and Safety Standards Act.** If the Contract is **in excess of \$100,000** and **involves the employment of mechanics or laborers**, the Contractor must comply with [40 USC](#)

[3702](#) and [3704](#), as supplemented by Department of Labor regulations ([29 CFR Part 5](#)), as applicable.

5. **Rights to Inventions Made Under a Contract or Agreement.** If the Contract is funded by a federal “funding agreement” as defined under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
6. **Clean Air Act.** If this Contract is **in excess of \$150,000**, the Contractor must comply with all applicable standards, orders, and regulations issued under the Clean Air Act (42 USC 7401-7671q) and the Federal Water Pollution Control Act (33 USC 1251-1387). Violations must be reported to the federal awarding agency and the regional office of the Environmental Protection Agency.
7. **Debarment and Suspension.** A “contract award” (see [2 CFR 180.220](#)) must not be made to parties listed on the government-wide exclusions in the [System for Award Management](#) (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
8. **Byrd Anti-Lobbying Amendment.** If this Contract **exceeds \$100,000**, bidders and the Contractor must file the certification required under [31 USC 1352](#).
9. **Procurement of Recovered Materials.** Under [2 CFR 200.322](#), a non-Federal entity that is a state agency or agency of a political subdivision of a state **and its contractors** must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at [40 CFR part 247](#) that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

### Byrd Anti-Lobbying Certification

The following certification and disclosure regarding payments to influence certain federal transactions are made under FAR 52.203-11 and 52.203-12 and [31 USC 1352](#), the “Byrd Anti-Lobbying Amendment.” Hyperlinks are provided for convenience only; broken hyperlinks will not relieve Contractor from compliance with the law.

1. [FAR 52.203-12](#), “Limitation on Payments to Influence Certain Federal Transactions” is hereby incorporated by reference into this certification.
2. The bidder, by submitting its proposal, hereby certifies to the best of his or her knowledge and belief that:
  - a. No federal **appropriated** funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress on his or her behalf in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan, or cooperative agreement;
  - b. If any funds **other than federal appropriated funds** (including profit or fee received under a covered federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress on his or her behalf **in connection with this solicitation**, the bidder must complete and submit, with its proposal, [OMB standard form LLL, Disclosure of Lobbying Activities](#), to the Solicitation Manager; and
  - c. He or she will include the language of this certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of \$150,000 must certify and disclose accordingly.
3. This certification is a material representation of fact upon which reliance is placed at the time of Contract award. Submission of this certification and disclosure is a prerequisite for making or entering into this Contract under [31 USC 1352](#). Any person making an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision is subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

Signed by:

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[Type name and title]

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[Type company name]

Date: \_\_\_\_\_