



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

August 5, 2010

**CHANGE NOTICE NO.3**  
**TO**  
**CONTRACT NO. 071B8200142**  
**between**  
**THE STATE OF MICHIGAN**  
**and**

NAME & ADDRESS OF CONTRACTOR <b>USA Mobility</b> <b>PO Box 4062</b> <b>Woburn, MA 01888-4062</b>  Email: <a href="mailto:beth.hedrick@usamobility.com">beth.hedrick@usamobility.com</a>	TELEPHONE Beth Hedrick <b>(269) 749-9435</b>
	CONTRACTOR NUMBER/MAIL CODE
	BUYER/CA (517) 241-3215 <b>Steve Motz</b>
Contract Compliance Inspector: <b>Pager Leasing &amp; Services – All State Agencies/Lower Peninsula</b>	
CONTRACT PERIOD: From: <b>June 1, 2008</b> To: <b>May 31, 2012</b>	
TERMS <p style="text-align: center;"><b>N/A</b></p>	SHIPMENT <p style="text-align: center;"><b>N/A</b></p>
F.O.B. <p style="text-align: center;"><b>N/A</b></p>	SHIPPED FROM <p style="text-align: center;"><b>N/A</b></p>
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;"><b>N/A</b></p>	
MISCELLANEOUS INFORMATION:	

**THIS CONTRACT IS EXTENDED TO LOCAL UNITS OF GOVERNMENT.**

**NATURE OF CHANGE(S):**

Effective immediately, this contract is hereby EXTENDED 1 year to May 31, 2012, utilizing an available one-year contract option, as defined in the original contract language. The current reduced rates are effective through this option period.

All other terms and conditions, pricing and specifications remain unchanged.

**AUTHORITY/REASON(S):**

Per vendor and DMB Purchasing Operations agreement and Administrative Board approval on August 3, 2010.

**TOTAL ESTIMATED CONTRACT VALUE REMAINS: \$700,000.00**

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**FOR THE VENDOR:**

**USA Mobility**

---

Firm Name

---

Authorized Agent Signature

---

Authorized Agent (Print or Type)

---

Date

**FOR THE STATE:**

---

Signature

**Steve Motz, Buyer**

---

Name/Title  
**IT Division**

---

Division

---

Date



June 22, 2010

Steve Motz, Buyer  
Information Technology Division  
Purchasing Operations  
Department of Technology Management & Budget

**RE: State of Michigan Paging Contract Extension - 071B8200142**

Mr. Motz -

In response to your email request received on June 16, 2010, I am providing written notification to the state of Michigan that USA Mobility, Inc. will honor the current contract rates (5% discount off of the initial contract terms) if the state will exercise both of the remaining option years for Paging Contract 071B8200142. Originally, USA Mobility, Inc. reduced rates by 5% to assist the state of Michigan with meeting budget requirements. It was our understanding that when the upcoming extension was executed the rates would be adjusted to reflect the terms of the original agreement.

We have a large presence in government sector and certainly understand budget constraints. If the state is willing exercise both of the remaining option years prior to August 31, 2010, USA Mobility, Inc. will leave airtime service rates unchanged throughout the remaining period of performance - May 31, 2012. Please contact me with any questions or concerns.

Thank you,

A handwritten signature in black ink, appearing to read 'Eric C. Ginsberg', written over a white background.

Eric C. Ginsberg  
Director - Government & National Accounts  
USA Mobility, Inc.  
(410) 833-8723  
eFax: (866) 382-2925

cc: Barbara Williams, District Sales Manager, USA Mobility, Inc.  
James Stein, Regional Sales Director - West, USA Mobility, Inc.

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

May 13, 2010

**CHANGE NOTICE NO.2  
 TO  
 CONTRACT NO. 071B8200142  
 between  
 THE STATE OF MICHIGAN  
 and**

NAME & ADDRESS OF CONTRACTOR <b>USA Mobility          PO Box 4062          Woburn, MA 01888-4062</b>  Email: <a href="mailto:beth.hedrick@usamobility.com">beth.hedrick@usamobility.com</a>	TELEPHONE Beth Hedrick <b>(269) 749-9435</b>
	CONTRACTOR NUMBER/MAIL CODE
	BUYER/CA (517) 241-3215 <b>Steve Motz</b>
Contract Compliance Inspector: <b>Pager Leasing &amp; Services – All State Agencies/Lower Peninsula</b>	
CONTRACT PERIOD: From: <b>June 1, 2008</b> To: <b>May 31, 2011</b>	
TERMS <p style="text-align: center;"><b>N/A</b></p>	SHIPMENT <p style="text-align: center;"><b>N/A</b></p>
F.O.B. <p style="text-align: center;"><b>N/A</b></p>	SHIPPED FROM <p style="text-align: center;"><b>N/A</b></p>
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;"><b>N/A</b></p>	
MISCELLANEOUS INFORMATION:	

**THIS CONTRACT IS EXTENDED TO LOCAL UNITS OF GOVERNMENT.**

**NATURE OF CHANGE(S):**

Effective immediately, this contract is hereby **EXTENDED 1 year to May 31, 2011**, utilizing an available one-year contract option, as defined in the original contract language. The current reduced rates are effective through 8/31/2010. Pending approval for exercising the remaining one-year contract option, the reduced pricing will be carried out through 5/31/2012.

All other terms and conditions, pricing and specifications remain unchanged.

**AUTHORITY/REASON(S):**

Per vendor and DMB Purchasing Operations agreement.

**TOTAL ESTIMATED CONTRACT VALUE REMAINS: \$700,000.00**

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

December 3, 2009

**CHANGE NOTICE NO.1 (REVISED)**  
**TO**  
**CONTRACT NO. 071B8200142**  
**between**  
**THE STATE OF MICHIGAN**  
**and**

NAME & ADDRESS OF CONTRACTOR <b>USA Mobility</b> <b>PO Box 4062</b> <b>Woburn, MA 01888-4062</b>  Email: <a href="mailto:beth.hedrick@usamobility.com">beth.hedrick@usamobility.com</a>	TELEPHONE Beth Hedrick <b>(269) 749-9435</b>
	CONTRACTOR NUMBER/MAIL CODE
	BUYER/CA (517) 241-3215 <b>Steve Motz</b>
Contract Compliance Inspector: <b>Pager Leasing &amp; Services – All State Agencies/Lower Peninsula</b>	
CONTRACT PERIOD: From: <b>June 1, 2008</b> To: <b>May 31, 2010</b>	
TERMS <p style="text-align: center;"><b>N/A</b></p>	SHIPMENT <p style="text-align: center;"><b>N/A</b></p>
F.O.B. <p style="text-align: center;"><b>N/A</b></p>	SHIPPED FROM <p style="text-align: center;"><b>N/A</b></p>
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;"><b>N/A</b></p>	
MISCELLANEOUS INFORMATION:	

**THIS CONTRACT IS EXTENDED TO LOCAL UNITS OF GOVERNMENT.**

**NATURE OF CHANGE(S):**

**Per Executive Directive 2009-3, the vendor has offered the following price concessions to the State of Michigan:**

**Effective now through 5/31/2010, the base rates are reduced by 5% on this contract. Exhibit C, is hereby replaced with the updated pricing.**

**Please note as well that the buyer for this contract has been changed to Steve Motz.**

**AUTHORITY/REASON(S):**

**Per vendor and DMB Purchasing Operations agreement.**

**ESTIMATED CONTRACT VALUE REMAINS: \$700,000.00**

**Exhibit C Pricing**

(Updated through revised Change Notice #1)

**SCOPE OF SERVICES AND PRICING****LEASED OPTION:**

Service Type	Usage	Lease Price
Numeric - Statewide	Unlimited	\$2.14 including protection
Alphanumeric - Statewide	Unlimited	\$4.28 including protection
Nationwide Numeric	Unlimited	\$9.45 including protection
Nationwide Alphanumeric	Unlimited	\$14.20 including protection
Nationwide 2way	Unlimited	\$18.95 including protection

**LEASED FLAT RATE DEDUCTIBLES FOR LOST/EQUIPMENT NOT RETURNED**

Equipment Model	Deductible
Numeric	\$15.00
Alphanumeric	\$30.00
2way	\$45.00

**CUSTOMER OWNED OPTION:**

Service Type	Usage	Customer Owned Price
Numeric - Statewide	Unlimited	\$1.85
Alphanumeric - Statewide	Unlimited	\$3.56
Nationwide Numeric	Unlimited	\$7.55
Nationwide Alphanumeric	Unlimited	\$10.40
Nationwide 2way	Unlimited	\$16.10

**BUYOUT OF EXISTING EQUIPMENT (ALL UNITS THEN OWNED BY CUSTOMER)**

Equipment Model	Buyout Cost
Numeric	\$5.00
Alphanumeric	\$10.00
2way	\$35.00

**COST TO PURCHASE EQUIPMENT GOING FORWARD**

Equipment Model	New Equipment Cost
Numeric	\$39.00
Alphanumeric	\$69.00
2way	\$149.00

**ANCILLARY SERVICES (LEASED AND/OR CUSTOMER OWNED)**

Feature/Options	Price
Personal 800#	\$3.00
Additional Phone #	\$0.00
Additional States (MI, OH, IN)	\$0.00
Additional States (MI, IN, IL)	\$0.00

Group Capcode	\$3.75
MultiMessenger Group Leader (WME Group)	\$8.00 (up to 100 followers)
Message Carbon Copy (MCC)	\$1.00
MyAlias (Vanity – john.doe@usamobility.net)	\$1.50
Voicemail	MP1 – \$6.00 MP2 - \$4.00 MP4 - \$2.00

**\*\*\*NO CHARGE FOR GROUND SHIPPING ON ALL ORDERS/REPLACEMENTS\*\*\***

Spare Equipment Type	Price
Numeric	\$1.00*
Alphanumeric	\$2.00*
2way	\$4.00

***\*\*Each individual account will receive 5% of total numeric and alpha units at no charge\*\****

***\*\*\*All 2way spares are billed at \$4.00 each/month\*\*\****

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

November 2, 2009

**CHANGE NOTICE NO.1**  
**TO**  
**CONTRACT NO. 071B8200142**  
**between**  
**THE STATE OF MICHIGAN**  
**and**

NAME & ADDRESS OF CONTRACTOR <b>USA Mobility</b> <b>PO Box 4062</b> <b>Woburn, MA 01888-4062</b>  Email: <a href="mailto:beth.hedrick@usamobility.com">beth.hedrick@usamobility.com</a>	TELEPHONE Beth Hedrick <b>(269) 749-9435</b>
	CONTRACTOR NUMBER/MAIL CODE
	BUYER/CA (517) 241-3215 <b>Steve Motz</b>
Contract Compliance Inspector: <b>Pager Leasing &amp; Services – All State Agencies/Lower Peninsula</b>	
CONTRACT PERIOD: From: <b>June 1, 2008</b> To: <b>May 31, 2010</b>	
TERMS <b>N/A</b>	SHIPMENT <b>N/A</b>
F.O.B. <b>N/A</b>	SHIPPED FROM <b>N/A</b>
MINIMUM DELIVERY REQUIREMENTS <b>N/A</b>	
MISCELLANEOUS INFORMATION:	

**THIS CONTRACT IS EXTENDED TO LOCAL UNITS OF GOVERNMENT.**

**NATURE OF CHANGE(S):**

**Per Executive Directive 2009-3, the vendor has offered the following price concessions to the State of Michigan:**

**Effective now through 5/31/2010, all rates are reduced by 5% on this contract.**

**Please note as well that the buyer for this contract has been changed to Steve Motz.**

**AUTHORITY/REASON(S):**

**Per vendor and DMB Purchasing Operations agreement.**

**ESTIMATED CONTRACT VALUE REMAINS: \$700,000.00**

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

June 18, 2008

NOTICE  
OF  
CONTRACT NO. 071B8200142  
between  
THE STATE OF MICHIGAN  
and

NAME & ADDRESS OF CONTRACTOR <b>USA Mobility</b> <b>PO Box 4062</b> <b>Woburn, MA 01888-4062</b>  <b>Email: <a href="mailto:beth.hedrick@usamobility.com">beth.hedrick@usamobility.com</a></b>	TELEPHONE <b>Beth Hedrick</b> <b>(269) 749-9435</b>
	CONTRACTOR NUMBER/MAIL CODE
	BUYER/CA (517) 335-4804 <b>Douglas S. Collier</b>
Contract Compliance Inspector: <b>Pager Leasing &amp; Services – All State Agencies/Lower Peninsula</b>	
CONTRACT PERIOD: From: <b>June 1, 2008</b> To: <b>May 31, 2010</b>	
TERMS <b>N/A</b>	SHIPMENT <b>N/A</b>
F.O.B. <b>N/A</b>	SHIPPED FROM <b>N/A</b>
MINIMUM DELIVERY REQUIREMENTS <b>N/A</b>	
MISCELLANEOUS INFORMATION:	

**THIS CONTRACT IS EXTENDED TO LOCAL UNITS OF GOVERNMENT.**

**Estimated Contract Value: \$700,000.00**

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

**CONTRACT NO. 071B8200142  
 between  
 THE STATE OF MICHIGAN  
 and**

NAME & ADDRESS OF CONTRACTOR <b>USA Mobility          PO Box 4062          Woburn, MA 01888-4062</b>  Email: <a href="mailto:beth.hedrick@usamobility.com">beth.hedrick@usamobility.com</a>	TELEPHONE Beth Hedrick <b>(269) 749-9435</b> CONTRACTOR NUMBER/MAIL CODE  BUYER/CA (517) 335-4804 <b>Douglas S. Collier</b>
Contract Compliance Inspector: <b>Pager Leasing &amp; Services – All State Agencies/Lower Peninsula</b>	
CONTRACT PERIOD: From: <b>June 1, 2008</b> To: <b>May 31, 2010</b>	
TERMS <b>N/A</b>	SHIPMENT <b>N/A</b>
F.O.B. <b>N/A</b>	SHIPPED FROM <b>N/A</b>
MINIMUM DELIVERY REQUIREMENTS <b>N/A</b>	
MISCELLANEOUS INFORMATION: <b>The terms and conditions of this Contract are those of ITB #071I7200264, this Contract Agreement and the vendor's. In the event of any conflicts between the specifications, and terms and conditions, indicated by the State and those indicated by the vendor, those of the State take precedence.</b>  <b>Estimated Contract Value: \$700,000.00</b>	

**THIS IS NOT AN ORDER:** This Contract Agreement is awarded on the basis of our inquiry bearing the ITB No. 071I7200264. Orders for delivery will be issued directly by the Department of Information Technology through the issuance of a Purchase Order Form.

All terms and conditions of the invitation to bid are made a part hereof.

<b>FOR THE CONTRACTOR:</b>  _____ USA Mobility Firm Name  _____ Authorized Agent Signature  _____ Authorized Agent (Print or Type)  _____ Date	<b>FOR THE STATE:</b>  _____ Signature Douglas S Collier, Buyer _____ Name/Title IT Division _____ Division  _____ Date
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**Article 1 – Statement of Work (SOW)**

**1.0 Project Identification**

**1.001 PROJECT REQUEST**

The State of Michigan (State), through the Michigan Department of Management & Budget (MDMB), with assistance of the Michigan Department of Information Technology (MDIT), has issued this Contract to provide Paging Services as defined herein. The Contract is also designed to take allow for MIdeal and associated agencies including E Rate Discounts funding available through Universal Service Funds Program for all Michigan Schools and Libraries, see <http://www.usac.org/sl/#571590000625733>.

USAMOBILITY will be allowed at the State’s option to provide revised pricing, to allow for greater cost savings and new programs and technologies bi-annually.

Paging service includes analog and/or digital transmission. Equipment includes, but is not limited to, all equipment necessary to use the paging services ie pagers, car, spare batteries, chargers, cases, belt clips, etc.).

The State has defined the requested services in the following service packages:

- a. Package D is pagers and paging service.

**Scope of Work and Deliverables**

USAMOBILITY will provide the following to the State of Michigan and its associated agencies:

- a. Paging service and equipment
- b. Web-based catalog and ordering
- c. Billing with electronic detail for analysis and management
- d. Customer service and support
- e. Inventory and usage reporting and optional consolidated billing
- f. Training
- g. Transition services (as required)

A more complete description of the supplies and/or services sought for this project is provided in Section 1.1, Work and Deliverables and Section 1.201, USAMOBILITY Roles and Responsibilities.

The State seeks to have services begin with full implementation of the web-based catalog system and the first equipment order available to the State within 30 days of the contract award.

**Acronyms, Appendices, Attachments & Exhibits**

The following Appendices are included with this Contract:

- Appendix A - List of Michigan Counties
- Appendix B - Pricing Table
- Appendix C - Glossary of Terms

**1.002 BACKGROUND**

As part of MDIT’s Bureau of Infrastructure Services, the Telecommunications Division provides for the telecommunications and network needs of state government in Michigan, ensuring that the state’s communications requirements are met, and ensuring that all voice and data networking components and services necessary to perform the business functions of state government agencies are provided.

The cellular voice, data, and paging services will, in general, be administered at the State Agency level. Overall program coordination and contract monitoring will be provided by the MDIT Telecommunications Division.



The state offers no guarantee of the number of subscribers, or usage volumes. The State reserves the right to procure equipment and services from other sources at the discretion of the State.

The goals of this Contract are to:

- Provide statewide paging services.
- Maintain control of the State's paging costs.

USAMOBILITY shall follow the State methods, policies, standards and guidelines that have been developed. USAMOBILITY is expected to provide its services that conform to State IT policies and standards. All services and products provided must comply with all applicable State IT policies and standards. Requests for exceptions to State IT policies and standards must be made in accordance with MDIT processes. It will be the responsibility of the State to deny the exception request or to seek a policy or standards exception.

The links below will provide information on State of Michigan IT strategic plans, current environment, policies, and standards.

Strategic Plan:

<http://www.michigan.gov/dit/0,1607,7-139-30637-135173--,00.html>

Enterprise Policies, Procedures and Standards:

<http://www.michigan.gov/dit/0,1607,7-139-34305---,00.html>

State of Michigan Project Management Methodology (PMM)

[http://www.michigan.gov/dit/0,1607,7-139-30637\\_31101-58009--,00.html](http://www.michigan.gov/dit/0,1607,7-139-30637_31101-58009--,00.html)

The State's Project Management Methodology (PMM) must be followed.

USAMOBILITY shall comply with all security standards and the security access requirements for individual State facilities.

### **1.003 OUT OF SCOPE**

The following are outside the scope of this Contract:

1. Verification and validation of business requirements
2. Maintenance or repair of State telecommunications infrastructure

### **1.004 ENVIRONMENT**

Information regarding the State's information technology architecture and standards for hardware, database applications, network hardware and monitoring tools, identity management/authentication and development tools may be found at: <http://www.michigan.gov/dit/0,1607,7-139-34305---,00.html>.

### **1.1 WORK AND DELIVERABLES**

USAMOBILITY will provide the equipment, services, customer support/service, and otherwise do all things necessary for or incidental to the performance of work, as set forth below.

#### **General Service Requirements**

USAMOBILITY acknowledges the following requirements, and agrees to provide the goods and services necessary to meet the following. The parameters include, but are not limited to:

1. USAMOBILITY shall adhere to all local, state and federal regulatory agency requirements.
2. USAMOBILITY shall maintain service and quality levels at or above industry standards so as to minimize impaired services, low transmission, transmission interference, and similar deficiencies.
3. The USAMOBILITY shall not attempt to hold the state responsible for personal pager services account charges incurred, or any actions resulting from improper or illegal use of pager equipment / accessories acquired under this Contract, or on pager service accounts established for personal use, as opposed to accounts established as State business accounts.



4. For personal pager accounts established under the employee savings option offered through this contract, employees shall be personally responsible for all charges incurred on their individual accounts.
5. Customers accessing service under this Contract for business purposes shall not be subject to any financial/credit application, nor be denied service of any nature.
6. No direct USAMOBILITY or USAMOBILITY-sponsored telemarketing or commercials will be allowed targeting cellular or paging equipment or services to State of Michigan government (Executive Branch) business or employees without the express approval of the contracting authority (DMB buyer and the contract administrator). The USAMOBILITY agrees to block and prevent such from occurring.
7. All equipment shall comply with applicable published safety standards including, but not limited to:
  - a. National Council on Radiation Protection and Measurements (NCRP).
  - b. American National Standards Institute (ANSI).
8. USAMOBILITY has provided a detailed description of any infrastructure requirements for the Wireless (paging) Telecommunications Services requested.  
Please refer to Exhibit G – Business Continuity Plan
9. USAMOBILITY must include and update proposed Network Technology and Architecture details as follows:
  - a. Provide a description of your wireless service including the technology used.
  - b. Explain the technological advantages of the wireless network your company offers.
  - c. Describe measures to ensure network security.
  - d. Describe your network trouble monitoring capabilities.
  - e. Describe your network's availability and reliability.
  - f. Describe how you will handle a major service disruption or a disaster causing an outage.
  - g. List service level agreements you offer.

## **B. Pager Coverage**

### **1. State of Michigan**

USA Mobility shall:

- a. Provide service area coverage maps annually/ or as new coverage is available as described below or if the agrees upon. The maps shall be geographically accurate, and drawn to a scale of 1:1,000,000 (1 inch=15.78 miles) or less. The coverage map shall include, at a minimum, county boundaries, cities, major highways, and shading or other means to indicate the areas in which pagers work, Roaming partner areas are to be identified along with the partner's name. If multiple technologies are used, the maps must identify the coverage areas for each technology used.
- b.
  - i. Coverage by County for Michigan - Indicate the counties in which geographical pager coverage is LESS than 50% (below negative 95db). Indicate if coverage is provided directly by contractor, or via roaming partner. A list of counties is attached as Appendix A.
  - ii. Lansing area coverage --The State of Michigan has a large number of employee occupied buildings in Lansing and the surrounding area. In- building and pager coverage is necessary. USA Mobility will insure acceptable in-building coverage for Lansing area buildings.
  - iii. Mackinaw Island coverage should also be provided. It is the site of many conventions and a Governor's residence.
  - iv. In the USA Mobility(s)' coverage maps, USA Mobility shall include coverage maps for other State Islands. A map of the State of Michigan, with islands, may be accessed at: <http://www.michigan.gov>.



- v. Describe any future plans for enhancement and expansion (as they become available) of the USA Mobility's network in Michigan.
- vi. Provide updated maps every six months during the Contract period to reflect changes in coverage.

**2. National Coverage – USA Mobility shall:**

- a. Provide detailed, in-network coverage maps (covered directly or through identified roaming agreement partnerships).
- b. Provide detailed off-network (where roaming charges may apply) coverage maps either as part of in-network maps or in separate maps.
- c. Provide updated maps from time to time during the Contract period to reflect changes in coverage.

**3. International Coverage**

- a. If International coverage is provided, USA Mobility shall provide detailed in-network and off-network voice and data coverage maps for Canada and Mexico.
- b. USA Mobility shall also provide a list of additional countries with voice and/or data coverage.
- c. USA Mobility shall provide updated maps every six months during the Contract period to reflect changes in coverage.

**4. Continuation of Service Coverage**

- a. Throughout the term of the contract, the USA Mobility must provide the same or better level of coverage as that proposed and promised in their response to this solicitation.

**5. Performance Testing Period**

- a. USA Mobility shall provide each user of services (hereafter "subscriber") a 30-day performance testing period to test equipment and/or coverage, commencing at the later date of either service activation or equipment receipt.
- b. During this performance testing period, the subscriber may cancel service if coverage and/or service is not acceptable (e.g., consistently dropped calls, poor signal strength, call quality, or pages not received) and will incur no activation charges or termination penalties.
- c. The State will incur standard service charges during this performance testing period.
- d. USA Mobility will provide a full refund for purchased equipment that is returned during the performance testing period.

**6. Coverage Improvement - Consistently Missed Pages**

- a. If the USA Mobility's coverage is found to be inadequate or deficient in areas where the USA Mobility identified in their proposal as having adequate coverage, the USA Mobility shall:
  - i. Describe the process that will be used to improve coverage.
  - ii. Describe the criteria, conditions and procedures that will be used to resolve inadequate coverage issues.
  - iii. Commit to a reasonable time frame for correction of the deficiency.
- b. With the RFP response, and annually thereafter, USA Mobility shall advise the State of new tower or site deployment plans within the State of Michigan. Many areas of the State lack pager coverage which is a serious concern for the citizens and State employees. This requirement applies not only to the USA Mobility, but also any roaming partners utilized within their proposal.
- c. In Michigan, active pages are to be maintained when traveling from the USA Mobility's network to a roaming partner's network (both directions). Identify any areas where this requirement is not met and describe corrective actions anticipated.

**7. Coverage Outages**

- a. USA Mobility must notify the State's Designated Program Manager and the ATCs at least two (2) weeks in advance of any planned service outages and/or scheduled maintenance.
- b. This notification must include impacted coverage areas and an estimated duration of the outage.
- c. Notice shall be provided in a method approved by the State.



- d. USA Mobility shall pro-rate invoices, where coverage outage is 24 hours, a full day of service for each subscriber for each 24 hour period.
- e. If service is unavailable in a county as a result of an unplanned outage for more than twenty-four (24) hour, a full one day service credit shall be provided by USA MOBILITY for all subscribers in the county. Measurement shall be when State subscribers in a covered county, either roaming or direct service, report that service has been unavailable for more than one hour.

**6. Package D Requirements - Paging Services and Products**

For USA Mobility's interested in bidding paging services and products, complete this section. Paging USA Mobility's MUST respond to all requirements set forth in Sections III, A., B. and C. before completing this section. Failure to respond to Sections A., B. and C. will result in disqualification from this procurement. These requirements apply to USA Mobility's submitting proposals for Package D.

- a. USA MOBILITY shall provide the following pager services:
  - i. Pagers must be able to operate from the local exchange carrier to eliminate toll charges.
  - ii. Modes of operation must include numeric, alphanumeric and 2-way.
- b. USA Mobility Wireless, Inc. provides multiple access methods for sending text messages to 1way alphanumeric and 2way paging devices. Methods include TAP, SMTP, SNPP, WCTP and our Send a Page site at [usamobility.com](http://usamobility.com).
- c. USA Mobility Wireless, Inc. offers the following ancillary services:
  - Voice Mail – ability for callers to her a detailed greeting and leave a detailed voice message that will be stored for a set length of time. Pager will alert when voicemail message received.
  - Numeric Retrieval – ability to pick up numeric messages from any touch-tone phone. Numeric retrieval is especially helpful if you travel outside the designated coverage area.
  - Toll Free Numbers – provided for users that may require numbers other then the local exchange. Helpful if you have callers outside the local area that are calling frequently.
  - Message Carbon Copy – ability to have paging messages forward to email or cellular devices.
  - Operator Dispatch – Callers dial a toll free number answered by an Operator that dispatches the message to 1way alphanumeric or 2way devices.
  - MyAlias – unique email address for 1way alphanumeric or 2way devices. Example: [jane.doe@usamobilitynet](mailto:jane.doe@usamobilitynet).
  - Group Paging – USA Mobility Wireless, Inc. offers multiple methods of sending messages to multiple paging devices. Group Capcodes are programmed into each device and messages are received simultaneously. WME Groups can be sent to paging devices as well as outside devices, such as cell phones.
- d. USA Mobility Wireless supports multiple protocols used for sending text messages. These methods include:
  - SMTP – email messaging
  - SNPP – 1way point to point messaging
  - WCTP – 1way and 2way point to point messaging
  - TAP – modem messaging

**D. Service Support and Administration**

- 1. **Coordination with State Agency Telecommunications Coordinators (ATC)s** USA Mobility shall be expected to coordinate contractual activities resulting from this contract with State Agency Telecommunications Coordinators (ATC). The State will provide a list of ATCs to the USA Mobility within five (5) days after the contract is signed.
  - a. After receiving the list of ATCs, the USA Mobility will take orders and make changes to State accounts (excluding local and city accounts) only from these individuals, and assumes liability for costs incurred by accepting a purchase from an unauthorized person.
  - b. USA Mobility acknowledges and agrees that the State shall bear no liability on Contracts entered into for purchases by non-State Authorized Personnel, which liability the State expressly disclaims.
  - c. With regard to non-State Authorized Personnel, USA Mobility agrees to look solely to the respective contracting party for any rights and remedies.



## 2. Customer Service Requirements

### a. Customer Support Availability

- i. Designated Customer Support Representative will be available during normal business hours Monday – Friday 8:00 a.m. - 5:00 p.m. (EDT). Customer service must respond to any customer service requests within four (4) hours of notice.
- ii. USA Mobility must also provide general business customer support, accessible 24 hours a day and seven (7) days a week.
- iii. Toll-free number customer service assistance and account service, available 7 x 24.
- iv. Will a special “non-general consumer” number be provided?
- v. Support “on-hold” times will be less than 5 minutes prior to reaching an agent. Provide present hold queue statistics.

### b. Technical Support Availability

- i. USA Mobility will provide specialized business technical support service available during normal business hours Monday – Friday, 8:00am to 5:00pm (EDT).
- ii. Technical support must respond to any requests within 4 hours of notice.
- iii. USA MOBILITY must also provide general technical support, accessible 24 hours a day and seven (7) days a week.
- iv. Toll-free number technical service technicians, available 7 x 24.
- v. Technical support shall be available for all support questions, including but not limited to hardware problems, service problems and network issues.
- vi. Will a special “non-general consumer” number be provided?
- vii. Support “on-hold” times will be less than 5 minutes prior to reaching an agent. Provide present hold queue statistics.

## 3. Escalation Procedures

USA Mobility must have an escalation procedure in place for issue resolution.

- a. Outline the escalation procedures for problems in the following areas: billing/invoicing, technical support, and network issues.
- b. Identify each level of escalation up to and including corporate, with the associated contact person and their pertinent contact information.

## 4. Unresolved Issues

USA Mobility shall notify the State’s Designated Program Manager in writing of any unresolved issues or problems that have been outstanding for more than ten (10) business days.

## 5. Performance Audits

- a. The State reserves the right to conduct periodic performance audits in all areas of services required by this contract (i.e., delivery, fill rate, variance reports, customer representatives) throughout the term of this contract at the discretion of the State’s Designated Contract Administrator.
- b. The USA Mobility will provide any additional documentation necessary for the performance audit, as requested by the State, within 15 calendar days of request.
- c. For paging providers: As often as deemed appropriate, the State will make twenty (20) test pages during a twenty-four (24) period. If less than 18 are received in a five (5) minutes, then the USA Mobility will provide one-days credit on the State's and all agency bills for each day that this performance criteria is not met. Further, USA MOBILITY will provide a root cause analysis for the failure to meet acceptable performance levels and a corrective actions plan provided. The test pages will be made to pagers in the providers’ coverage areas. If the same paging devices consistently fail this performance test then USA Mobility will have the right to test the device and ensure that it is set to manufacturer standards.

## 6. State Business Review Meetings

- a. USA Mobility will meet with the State every three (3) months or as otherwise specified to maintain the partnership between the State and the USA MOBILITY. The business review meeting may

involve, but not be limited to, the following:

- i. USA Mobility performance
- ii. Problem resolution
- iii. Mandatory and custom reports
- iv. Improvement opportunities

**7. Exemption from Taxes, Fees and Surcharges**

The State is exempt from all Federal, State and Local taxes. Moreover, since the wireless industry is unregulated to date, the State finds no justification for the payment of any Universal Service Fund (USF) charges or any other taxes, fees or surcharges.

- a. If USA Mobility (s) intends to include any taxes, fees or surcharges in the attached cost models, USA Mobility is to reference and cite the specific regulatory mandate. Provide billing method and presentation on billings for these taxes, fees and/or surcharges for each service bid.

**8. “No Shut Off” Policy for State Accounts**

USA Mobility Wireless, Inc. will flag all accounts as “Government”. If any account becomes greater than 90 days past due, USA Mobility Wireless, Inc. will contact the Agency Telecommunications Coordinator (ATC) in regards to payment. If payment is not issued and no billing issues have been brought to the attention of USA Mobility Wireless, Inc. then an account suspension may happen after written notice to the ATC.

**9. New Materials Required**

- a. All materials and equipment delivered and/or installed under the Contract shall be new (or like new) and be the standard products of a manufacturer regularly engaged in the production of the materials and equipment.
- b. Where two or more units of the same class of materials and/or equipment are required, the units shall be the products of the same manufacturer.
- c. Any manufacturer’s data and/or documentation supplied with the item(s) shall be submitted to the State’s authorized representative.
- d. USA Mobility shall advise the State of the availability of new software that may require equipment be updated. USA MOBILITY agrees to "flash" equipment with the latest available software and features, when authorized by the State, at no charge to the State for the duration of the Contract.

**10. Activation/Termination/Suspension of Service**

**a. Existing Equipment**

- i. USA Mobility shall activate, terminate or suspend service on existing equipment and complete requested plan changes within 24 hours of notification by the Agency Telecommunications Coordinator (ATC).
- ii. Indicate the process required by the ATC to activate, terminate or suspend service. In addition provide any sample forms or WEB site instructions that are required for activation, termination and suspension of service.

**b. Activation of Service - New Equipment**

- i. USA Mobility shall complete service activation on new equipment within 48 hours of shipping. New equipment that is picked up at a USA Mobility store shall be activated immediately.

**c. Activation of Service for Emergency**

- i. In the event of an emergency (e.g. State emergency need during a disaster), USA Mobility must be able to activate equipment within 24 hours after request.
- ii. Indicate the process that is required by the ATC to activate service for emergency purposes in less than 24 hours.
- iii. Indicate the estimated time in regular (not business) hours (e.g., 2 hours) to activate service upon notification, and the number of phones that can be activated in that period.
- iv. USA Mobility Wireless, Inc. will provide the ATC with a quantity of spare devices to be kept on



site; these devices can be activated by the ATC by either emailing or calling the designated customer care team or by utilizing MyAccount. All methods will result in activation in less than 24 hours.

**d. Contract Terms**

- i. Contract shall be coterminous with master agreement.
- ii. Individual contracts for each subscriber are not necessary, and unacceptable.

**e. Temporary Suspension & Reactivation**

- i. The USA Mobility must suspend and reactivate lines within 24 hours of notification by the ATC.
- ii. During periods of suspension, the line must not incur any charges, and the wireless number must not change before, during, or after suspension.
- iii. The maximum period of suspension will be 6 months.
- iv. Describe the process for requesting temporary service suspension and subsequent service reactivation.
- v. USA Mobility shall not charge a fee for activating or deactivating a service

**f. Outage Credit**

For pricing options that include any fixed month fees, for each 24 hour outage period, the USA Mobility must pro-rate the bill for a full day of service for each impacted subscriber.

**11. Replacement Equipment**

- a. The quality of all replacement equipment shall be equal or greater than the quality of the original equipment being replaced.
- b. All replacement parts shall be new unless otherwise agreed in writing.

**12. Lost/Stolen Equipment**

- a. In the event a free piece of equipment is lost or stolen, USA MOBILITY shall replace it at no cost for one time only. Any subsequent losses will be replaced at the cost provided in the pricing table.
- b. If the equipment to be replaced was not free, it shall be replaced by USA Mobility at the contracted rate.

**13. Fraud Monitoring & Prevention**

- a. Fraudulent calls will be the sole responsibility of the USA Mobility. The State will bear no responsibility for such calls, including, but not limited to, number theft by cloning, multiple calls at the same time, international calls on an unauthorized telephone, or calls to areas of known fraud.
- b. USA Mobility agrees to proactively monitor calling volume and patterns.
- c. USA Mobility shall immediately report unusual calling volumes and patterns to the ATC, such as usage or cost doubling from the previous month, or months with zero usage, etc.
- d. If fraud is detected outside of normal business hours, USA Mobility will notify the designated MDIT personnel.
- e. Should the ATC declare such activity as fraudulent, USA Mobility shall immediately deactivate the service.
- f. Describe the process by which call volumes and patterns will be proactively monitored for unusual activity. Specifically, list the triggers that are used to flag suspicious activity.
- g. Provide any other policies and procedures related to fraud detection and prevention, including conditions and expected responsibilities of the State.

**14. Existing Hardware Compatibility/Replacement Requirements**

- a. At the State's discretion, the USA Mobility and/or subscriber shall be allowed to use existing equipment under the new contract where feasible.
- b. Where not feasible, equivalent Pager (on user's current model) must be made available to the end user if their pager must be replaced. If a new pager is required, a compatible AC wall charger must be included.



- c. USA Mobility should specify current pager offerings that will be offered to meet these criteria. The State expects all other devices and accessories to be offered at significant discounts off retail price. Discounts should be detailed.

#### 15. Returned Goods Policy

- a. Materials and supplies deemed unacceptable by the State may be rejected by the State.
- b. Over-deliveries will be accepted only at the State's discretion.
- c. Returned Goods Policy shall include full credit if such items are returned within thirty (30) days following date of receipt.
  - i. If items were ordered in error, the State shall pay return freight charges.
  - ii. If USA Mobility is responsible for mis-shipped goods, USA MOBILITY shall incur return freight charges.
- d. All returned materials and supplies must be authorized by a USA MOBILITY representative and must cite a Return Goods Authorization number.
- e. Restocking charges will not apply if materials or supplies are returned within the Returned Goods Policy time frame and in saleable condition.
- f. USA Mobility shall be responsible for the disposition on all defective, damaged or over-shipped merchandise.
  - i. Return Goods Authorization shall be provided by USA Mobility within seven (7) calendar days of verbal notification.
  - ii. If return authorization is not received within fourteen (14) days, the merchandise may be shipped back to USA Mobility for full credit, freight collect.
- g. USA Mobility shall not ship to the State any material or supply which has been returned to USA MOBILITY either by the State or other customers due to quality or defective issues.
  - i. USA Mobility are required to notify manufacturer of issues and return product to the manufacturer or dispose of product for no further use.

#### 16. Warranties

- a. USA Mobility represents and warrants that it has the right to provide the Services and the pager equipment to be provided under the Contract.
- b. USA Mobility represents and warrants that all services and pager equipment provided by USA Mobility shall meet or exceed the minimum specifications set forth in this contract and as accepted by the State.
- c. USA Mobility represents and warrants that the State shall acquire good and clear title to the pager equipment purchased hereunder, free and clear of all liens and encumbrances.
- d. USA Mobility represents and warrants that each pager product delivered shall be delivered new or like new and not as a "used, substituted, rebuilt, refurbished or reinstalled" Product.
- e. USA Mobility represents and warrants that it has and will obtain and pass through to the State any and all warranties obtained or available from the manufacturer/licensor of the pager product.
- f. USA Mobility represents and warrants that all pager products provided pursuant to the Contract shall, for a period of one (1) year, be free from defects in material, manufacture, design and workmanship. USA Mobility's obligation pursuant to this warranty shall include, but is not limited to, the repair or replacement of the product at no cost to the State. If an item must be returned to the manufacturer for warranty service or replacement during the warranty period, the USA MOBILITY shall be responsible for payment of all shipping charges and supplying the Customer with a substitute item of equipment during the time that repairs are being made.
- g. USA Mobility represents and warrants that all work performed hereunder shall be performed by competent personnel and shall be of professional quality consistent with generally accepted industry standards for the performance of such services and shall comply in all respects with the requirements of the Contract. For any breach of this warranty, the USA MOBILITY shall perform the services again, at no cost to the State, or if the USA Mobility is unable to perform the services as warranted, the USA Mobility shall reimburse the State the fees paid to the USA MOBILITY for the unsatisfactory services.
- h. Warranties shall comply with the highest warranties and representations expressed by USA



Mobility(s) in any written advertisement, correspondence, or other documents provided to USA Mobility's other customers.

- i. If any of the foregoing warranties are breached, USA MOBILITY agrees to correct all defects and nonconformities at USA Mobility's sole expense.
- j. Such warranties shall be effective notwithstanding prior inspection and / or final acceptance of said goods and / or services by the State.
- k. Replacement for Equipment Covered Under Warranty - USA Mobility will provide replacements for equipment that is covered under warranty.
  - i. Specify who (i.e. USA Mobility or manufacturer) is responsible and how the process is handled.
  - ii. Specify turnaround time to receive loaner equipment, and whether replacement item will be new, factory refurbished or non-factory refurbished.
- l. Replacement Parts for Repair - Only new standard parts or parts equal in performance to new parts will be used in effecting repairs.
  - i. Parts that have been replaced will become the property of the USA Mobility.
  - ii. Replacement parts installed will become the property of the State.
- m. Out of Warranty Repairs - USA MOBILITY must provide out of warranty repairs.
  - i. Provide additional details regarding this program.
  - ii. In the proposal, indicate what types of repairs are provided, any information related to how costs are incurred and/or any other relevant information.

### 17. Product Recall Procedures

USA Mobility shall have the following to address product recalls:

- a. USA MOBILITY has a reliable and tested sales notification process that can quickly identify each customer that has received recalled products (provide a description of the process as an attachment).
- b. USA Mobility shall notify the State's Designated Program Manager about the recall within 10 business days of official notification by the Manufacturer of a product recall. Notice shall be provided in a format to be approved by the State.
- c. At the same time, the USA Mobility shall provide the State's Designated Program Manager with the planned process for notifying subscribers at the State.
- d. USA Mobility will send out notifications to the subscribers who have recalled equipment within 30 calendar days of official notification by the manufacturer of product recall.
- e. If necessary to be returned to the manufacturer, recalled products will be returned to the manufacturer at no expense to the State.
- f. USA Mobility shall supply comparable replacement equipment at no cost to coincide with the pick-up of recalled items.

### 18. Ordering

Ordering is defined as new orders, as well as changes to existing accounts.

#### a. Order Process

USA Mobility must provide a detailed description of how their proposed order process works from the time the USA Mobility receives the Purchase Order from the State until the commodity/service is delivered to the State. Detail should include sequential steps as well as durations and USA Mobility resources involved in this delivery.

#### b. Facsimile Ordering System

- i. At contract award, the USA Mobility must be able to process a facsimile request. These requests must come from an ATC.
- ii. Describe this process to implement this requirement.

#### c. Standard State Ordering Process

- i. The USA Mobility shall only accept orders for equipment and services initiated as follows:
  1. Issue a State of Michigan Purchase Order
  2. Purchase with a State of Michigan P-Card
  3. Order through the State of Michigan DMB Web Portal - DMB Purchasing

#### d. Emergency Ordering Process

- i. For emergency orders, USA Mobility shall accept walk-in and telephone orders in addition to the



ordering methods detailed above.

e. **Authorization Guidelines and Liability for Non-Authorized Purchases**

- i. USA Mobility shall deliver equipment and services to procuring agencies in accordance with the terms of this agreement. Accordingly, the USA Mobility shall provide equipment or services only upon the issuance and acceptance by USA Mobility of a valid order by Agency Telecommunications Coordinators.

f. **Walk-in Ordering System**

- i. The USA Mobility will provide walk-in ordering during the USA MOBILITY or affiliate's regular business hours.
- ii. Walk-in orders shall only be accepted from ATCs as specified in Section e., Emergency Ordering Process.
- iii. Specify the detailed process for walk-in ordering, including any limitations or requirements and the documentation required for walk-in purchases.
- iv. Provide any sample forms required for ordering by walk-in.
- v. Provide a list with addresses of available walk-in sites that are trained and fully knowledgeable on the States plans, discounts and equipment – effectively "Approved" stores.

g. **Order Number**

USA Mobility shall not issue duplicate order numbers among ordering ATCs.

h. **Order Acknowledgement**

- i. USA Mobility must provide an ATC with an order receipt acknowledgment within one (1) business day after receipt of an order.
- ii. The order receipt acknowledgement must include the following:
  1. Equipment and/or service plan purchased
  2. USA Mobility order number
  3. Agency order number (Purchase order number)
  4. Subscriber name
  5. Bill-to address
  6. Ship-to address
  7. Ordering department
  8. Account information
  9. Additional information required by the State

k. **Out-of-Stock Notification**

- i. USA Mobility shall notify the ATC within one (1) business day after order acknowledgement if an item is out of stock.
- ii. The ATC shall have the option of substituting an available product, or canceling the item from the order, in which case the USA MOBILITY must provide an option to get comparable equipment to the subscriber within 15 days of the order at no additional cost.
- iii. Under no circumstance is the USA Mobility permitted to make unauthorized substitutions.

l. **Shipment Confirmation**

USA Mobility must provide a shipment confirmation to the ATC the day of order shipment. The shipment confirmation must contain the following information:

- i. Phone number for new lines
- ii. Electronic serial number (ESN)
- iii. Date shipped
- iv. Tracking number
- v. Account number
- vi. Subscriber name
- vii. Additional information mutually agreed upon by the State and the USA MOBILITY

j. **Unfilled Orders**

- i. Unfilled orders and partial shipments shall be so indicated on the packing list.
- ii. USA Mobility will automatically inform the ATC of the availability date of unfilled and partial shipment orders within three (3) business days of order request.

**19. Request to Add (RTA) Process**

- a. The Right to Add (RTA) process is a process by which MDIT is able to submit a request to the USA



MOBILITY(s) to have products and/or services added to the Contract(s). MDIT will send the RTA request and associated documentation to the USA Mobility.

- b. MDIT shall have the option to request additional products to be added to each Contract and/or Product Web Catalog or make exceptions to existing standards.
  - i. USA Mobility (s) must respond within five (5)-business days providing a price quote for submitted request. If the price quote or offering is not acceptable to the Program Manager, the State may purchase outside the Contract.
  - ii. Upon receiving the USA Mobility's recommendation, the Program Manager shall make the final decision to purchase. Approval will be to add the product, purchase as a one-time buy, or allow the State to purchase outside of the Contract(s).
  - iii. In the case of a Catalog addition, the updated information shall be included within five (5) business days.

## 20. Online Accounts

- a. The USA Mobility shall provide secure online access for ATCs to manage accounts and order services. Only ATCs shall be allowed online access to accounts and ordering.
- b. The USA Mobility may provide additional online capabilities. Describe any additional online capabilities that will be provided in conjunction with the above requirements, such as higher security, fraud notification, usage reports/analysis, etc.
- c. Accounts Change/Termination Acknowledgement - USA Mobility must provide the appropriate ATC with an account change or termination acknowledgement within 24 hours of a change or termination request.

## 21. Product Web Catalog Requirements

- a. The electronic, web-based catalog available via the public Internet for ordering.
- b. Upon award, the State will work with each USA Mobility to determine the requirements for the Product Web Catalog. The State will provide hot links to each USA Mobility's Product Web Catalog via the State's DMB Purchasing Portal.
- c. The web-based catalog will describe all of the products, support and training available from each particular Contract.
- d. The catalog will be the source of documentation for all business processes and practices associated with the Contract(s) as well as contractual requirements, where applicable, and appropriate service levels, return policy, etc.
- e. The web-based catalog must provide the following information:
  - i. Access to the current pricing schedule for equipment and services to include (1) the pricing plans with the State's discounts (2) list of Basic Equipment (3) list of additional equipment with related price and the State's discounts.
  - ii. Updated local, national and international coverage maps.
  - iii. A "how to order" page to be developed with the State's Designated Program Manager and the appropriate subscriber representatives (e.g., ATCs) upon contract award.
  - iv. USA Mobility contact information in sales and customer/technical support for each agency/department at the State.
  - v. List of Primary Customer Service Representatives by department and contact information.
  - vi. List of Agency Telecommunication Coordinators (ATCs).
  - vii. Detailed equipment and accessory descriptions; pictures when possible.
  - viii. Additional links or information (where relevant) on the screen to access additional product literature, the USA Mobility's home page, the history of the company, etc.
  - ix. Any other specific information included within each of these categories will be mutually agreed upon by the USA Mobility and the Program Manager and will be reviewed as part of the regularly scheduled quarterly Joint Operations meeting.
  - x. Review and approval of the Product Web Catalog will be the responsibility of the MDIT Program Manager.
- e. The category-specific sections of the Catalog must be updated within five business days specific to product and price information. The intent is that price information be updated more frequently whenever possible.



- f. Approval of all product updates to the catalog is the responsibility of the MDIT Program Manager and will be handled in the following manner:
  - i. Any price decrease changes to products currently in the Product Web Catalog will be updated immediately and with prior approval by the MDIT Program Manager.
  - ii. Any price increase to the Product Web Catalog must be reviewed and approved by the Program Manager.
  - iii. Any new products released by a manufacturer which obsolete and replace a product currently in the Product Web Catalog, will be updated immediately, at no increase in price, and without prior approval by the Program Manager. The obsolete product will also be removed from the catalog immediately and without prior approval by the MDIT Program Manager. Notice must be provided to the State of any such changes.
  - iv. Upon notification to the MDIT Program Manager, any products made end of life by a manufacturer and without replacement product will be removed from the catalog by the USA Mobility without prior approval.
  - v. Any new product(s) to be added to the Product Web Catalog that is not a direct replacement of a product currently in the catalog must follow the Request to Add procedure of Section 18, above.
  - vi. At a minimum, the USA Mobility must provide the following information to the MDIT Program Manager:
    - 1. Manufacturer Name
    - 2. Product Name and Description
    - 3. USA MOBILITY Part Number
    - 4. Manufacturer Part Number
    - 5. Manufacturer Retail Price
    - 6. Discount
- g. If the product(s) is approved for the Contract(s), the State's Program Manager will notify the USA MOBILITY that the product(s) must be added to the Contract(s) and published in the catalog.
- h. Any approved changes, revisions, and/or additions to the Product Web Catalog, which are completed in a given month will be reported monthly by the USA MOBILITY to the Program Manager. Report format and data will be mutually agreed upon and be reviewed periodically as a part of the regularly scheduled quarterly Joint Operations meetings.
- i. USA Mobility Wireless, Inc. will work with the State of Michigan to design and implement the Web Catalog. USA Mobility will assign a web designer to assist in this project. After design in completed, USA Mobility will work with ATC to maintain site and make changes as necessary.

## 22. Delivery

### a. Delivery Cost

All prices provided shall be F.O.B. destination; freight prepaid by the USA Mobility, to the receiving point designated upon order. Responsibility and liability for loss or damage for all orders shall remain with the USA MOBILITY until final inspection and acceptance, when all responsibility shall pass to the ordering organization, except the responsibility for latent defects, fraud, and the USA Mobility's warranty obligations.

### b. Emergency Deliveries

USA Mobility shall provide a process for emergency deliveries.

- i. Please indicate the process for requesting delivery for emergency situations.
- ii. Specify if expedited delivery costs will be waived.

### c. Delivery Location

Deliveries shall be made to the location specified on the order, which in most cases will be a location within the State of Michigan.

### d. Shipped Equipment

All shipped orders shall include a packing slip with the following:

- i. ATC's name, section or unit name, location (street address, building, floor, and room number)
- ii. Designated contact/name of ordering person (if different than ATC)
- iii. Billing address
- iv. Ship-to address



- v. USA MOBILITY Order number
- vi. Agency order number (purchase order #)
- vii. Description of items
- viii. Additional information required by the State
- ix. Packages containing multiple products shall be clearly labeled as such.
- e. **Activation for New Subscribers**  
For new subscribers, USA MOBILITY shall ship equipment activated, registered, and ready to use, unless specified otherwise.
- f. **Damaged and Defective Items**
  - i. USA MOBILITY shall provide credit and/or replacement for freight-damaged or defective items and replace the items within 48 hours after notification by the ATC.
  - ii. USA MOBILITY will be responsible for the credit and/or replacement of any freight-damaged or defective products at time of delivery.
  - iii. USA MOBILITY cannot require the ATC to deal directly with the manufacturer.
  - iv. USA MOBILITY shall provide the ATC with a prepaid and self-addressed container suitable for the return of the item.
- g. **Items Shipped in Error**
  - i. The ATC will notify the USA MOBILITY of a USA Mobility's error in shipment.
  - ii. USA MOBILITY must accept returns of items shipped in error, and credit the procuring agency for the full amount.
  - iii. Additionally, USA MOBILITY shall provide the agency with a prepaid and self-addressed container suitable for the return of the item.
- h. **Restocking Policy**
  - i. USA MOBILITY shall not impose a restocking fee on the State if an item is returned due to damage, incorrect product shipped, or an order entry error by the USA Mobility's customer service representative.
  - ii. USA MOBILITY will not impose a restocking fee on authorized purchaser for inventory that is returned, but exchanged for other inventory.
- i. **Delivery Time Minimum Requirements**  
The USA MOBILITY must complete delivery of in-stock products within a maximum of three (3) business days after order acknowledgement.
- j. **On-Time Delivery**  
USA MOBILITY shall maintain an overall monthly average of 95 percent for on-time delivery. The on-time delivery rate shall be calculated by dividing the number of on-time deliveries by the total number of deliveries. That is, for orders reported as filled by the order entry system, the shipments shall be received within the times specified in this document at least 95 percent of the time. Emergency or Expedited deliveries will ship priority overnight as long as request is received prior to 2:00pm CST. USA Mobility will also provide the ATC with a quantity of spare devices to keep on site in the event of emergency requests, these spare devices can be programmed immediately upon a phone call to the Government Customer Service team.

## 23. State's Designated Program Manager Reporting

- a. **Format of State's Designated Program Manager Reports**
  - i. The reports provided to the State's Designated Program Manager shall reflect State, and separately local and city, usage and purchases under the contract for the respective month.
  - ii. All reports shall be provided in electronic format compatible with Microsoft Excel 2000 and Access 2000.
- b. **State's Designated Report Filter**
  - i. To protect subscriber confidentiality (i.e. employee personal phones purchased using the State contract), USA MOBILITY shall exclude subscriber names, numbers, and certain call details (e.g., number called) when requested and as specified by the State's Designated Program Manager for reports.
  - ii. USA MOBILITY agrees to replace subscriber names and phone numbers with a single unique key identifier and will provide a mapping of the unique key identifier to the subscriber names and phone numbers to the ATC upon request.



- iii. A unique subscriber number will be incorporated in place of the subscriber name and number on any reports provided to the State's Designated Contract Administrator.
- c. **Overall Service Report**
  - i. USA MOBILITY must provide a monthly overall statewide service report at the subscriber account level.
  - ii. Summary reports will be provided at the agency and state level.
  - iii. Reports will be submitted to the State's Designated Program Manager every month by the 15th day following the end of the month.
- d. **Overall Equipment Sales Report**
  - i. USA MOBILITY must provide monthly statewide and agency level summaries of wireless equipment (including handsets, handheld devices, accessories, etc.) purchase orders.
  - ii. Reports will be submitted to the State's Designated Program Manager or the appropriate ATC, every month by the 15th day following the end of the month.
  - iii. These reports shall be provided at no cost.

## 24. Agency Reporting Requirements

### a. Format of Agency Reports

The USA MOBILITY shall submit the following management reports to the State's Designated Program Manager and to each ATC as requested. The reports shall reflect the Agency's usage under the contract for the respective month. All reports shall be provided in electronic format available by email, CD, DVD, ftp, etc., and compatible with Microsoft Excel 2000 and Access 2000, with hardcopies available upon request at no extra charge. Vendors should provide samples for proposed reports.

- i. **Wireless Services Optimization Reports** - USA MOBILITY must provide a quarterly optimization report for each wireless service subscriber.
  - 1. The goal of these optimization reports is to ensure that each subscriber uses the most appropriate plan. This includes identifying subscribers that may be consistently incurring overage charges, and therefore should move to a higher plan, or subscribers consistently under-utilizing a plan, and therefore should move to a lower plan.
  - 2. When determining the optimal plan for a subscriber, USA MOBILITY must analyze the effective cost of all plans bid (including custom plans) and exclude any months of suspended service from the analysis.
  - 3. A 'Zero Usage' report will be provided showing any subscribers who have 4 or more months of non-use.
  - 4. The optimization report will be submitted in electronic and/or hardcopy formats on a quarterly basis, by the 15th day of the first month of the new quarter.
  - 5. USA MOBILITY may be required to submit this report to the State's Designated Program Manager and the ATCs at anytime upon request.
- ii. **Voice and Combined Voice/PTT/Push-To-Talk Service Usage Report**

USA MOBILITY must provide voice and combined voice/PTT-related usage reports upon request.

  - 1. Describe any additional reporting elements related to usage for voice and combined voice/PTT service that are available.
- iii. **Data Service Usage Report**

USA MOBILITY must provide data-related usage reports upon request.

  - 1. Describe any additional reporting elements related to usage for data service that are available. The reports should include usage volumes, costs, plans and indications of non-use.
- iv. **Pager Service Usage Report**

USA MOBILITY must provide pager-related usage reports upon request.

  - 1. Describe any additional reporting elements related to usage for pager service that are available. The reports should include page volumes, costs, plans and indications of non-use.
  - 2. The USA MOBILITY will provide quarterly reports of pagers that have had no usage for the prior 4 months. The report will be listed by agency.



v. **Individual Subscriber Usage Reports**

The USA MOBILITY will provide a courtesy copy (electronic or paper format, as specified by the ATC) of each subscriber's usage on a monthly basis to the subscriber or the ATC, upon request.

1. Subscribers' usage reports must include full itemization of call details (such as the information on the USA Mobility's standard bill for consumer accounts) to enable verification of usage, including: (1) call date, call number, call length, call time, and (2) plan cost, per minute charges, overage cost, additional features charges and other fees, etc.

vi. **Additional Management Reports**

The USA MOBILITY shall describe additional management reports available, as well as furnish copies or samples of current management reports.

1. USA MOBILITY shall indicate the flexibility of the reporting system and the ease of changing both format and components tracked.
2. USA Mobility's response and samples shall become the benchmark for this requirement.

**25. Privacy**

- a. USA MOBILITY must safeguard subscriber names and information and agrees not to share or sell this information to others, especially for the purposes of marketing, without explicit consent from the State.
- b. The USA MOBILITY will list all numbers on the "National Do Not Call Registry".

**26. Transition**

a. **Transition Support**

The State intends to transition the majority of subscribers to the awarded primary USA MOBILITY(s). The USA MOBILITY will provide support to each State Agency to facilitate moving subscribers onto the new contract, including service plans and equipment changes as needed.

b. **Implementation Plan**

Immediately upon contract award or the effective date of the Contract, USA MOBILITY shall begin implementation of the contract, and within seven (7) business days shall submit to the State's Designated Program Manager a detailed implementation plan containing the following:

- i. The process used to implement the contract, including time to implement the new pricing structure, products and service levels
- ii. A tentative schedule with key milestones for modifying the USA Mobility's system to add each party to the contract, including how the USA MOBILITY will address transitioning subscribers from other carriers, implementing service switching, and the number of days needed to make this transition.
- iii. A tentative schedule for modifying the USA Mobility's system to transition existing subscribers to the new contract, implementing service switching and the number of days needed to make this transition.
- iv. USA Mobility's quality assurance program that will affect service and delivery.
- v. The method proposed to ensure USA Mobility's ability to effectively handle implementation problems (e.g., adding extra staff during the implementation period, USA MOBILITY staff training, State staff training).
- vi. How the USA MOBILITY will ensure the transition occurs with minimal disruption to authorized personnel and subscribers.
- vii. How the USA MOBILITY intends to educate the various subscribers in the State to facilitate adoption of products and to buy off the established contract. USA Mobility's ordering telephone, facsimile numbers, Internet address, the names of ordering contact persons, and telephone numbers and names of sales representatives.
- viii. The training plan for statewide roll-out phases of contract implementation.

c. **Implementation Plan Process Review**

- i. Upon submitting the implementation plan, the USA MOBILITY shall meet with the State (the State's Designated Program Manager and others as relevant) to discuss the plan and finalize the USA Mobility's draft implementation plan.
- ii. The State will have the opportunity to validate and verify the overall process.



- iii. The implementation of this contract will be ongoing as customers request to utilize this contract. The State will assist the successful USA MOBILITY(s) by providing customer information such as previous contract subscriber names, and any other materials reasonably available from the State.
- iv. The USA MOBILITY's draft implementation plan shall be finalized within five (5) working days after input from the State.

d. **Transition Support for New Subscribers**

Upon award of contract, USA MOBILITY(s) must support the State and help transition subscribers from other carriers. Provide details on the level of support that will be provided to facilitate the transition, including the following:

- i. The number of customer service representatives' available following award to answer questions and transition subscribers.
- ii. The number of planned onsite Information and training sessions.
- iii. The ability to provide onsite representatives to sign up new and transitioning subscribers.
- iv. USA Mobility will work in conjunction with State's Designated Program Manager to create the Transition/Implementation plan. USA Mobility will develop the initial plan based on number of agencies and units per agency. The timeline will be reviewed and agreed upon by both parties before implementation begins. USA Mobility strives to keep all transitions as simple as possible for the end-users, with as little disruption to their day-to-day business.

e. **Transition Support for Subscriber from Different Service Provider**

USA MOBILITY agrees that subscribers who are transitioned from a different service provider shall be treated as new subscribers, and qualify for all terms and conditions agreed upon in the Contract resulting from this RFP, such as no cost basic equipment, and where possible, allowing them the option of retaining their current equipment for use on USA Mobility's network.

f. **Transition Support for Existing Subscribers**

USA MOBILITY shall convert all existing State subscribers to the new contract terms, unless otherwise specified by the ATC.

- i. For awarded USA Mobility's, who are also the incumbent providers to the State, they must provide the following:
  1. USA MOBILITY shall provide a report of existing State subscribers by department to the State's Program Manager and the respective ATC. This report shall outline the current plan details and cost for each subscriber, and suggest the most appropriate common plan for the transition, recognizing that some subscribers should be optimized.
  2. The converted subscribers must be able to retain their current number (assuming the same area code), and, if possible, their equipment.
  3. Indicate the typical timeframe needed to provide a report with plan recommendations for existing subscribers.
  4. Indicate the typical timeframe needed to transition 100 subscribers to the new contract terms.

g. **Transition Costs for Existing Subscribers**

The USA MOBILITY shall immediately make available new contract pricing without imposing any fees (e.g., change fees) for existing subscribers that transition. USA MOBILITY shall identify the billing cycle that the new rates and the cycle retroactive adjustments will appear.

26. **Training**

a. **Training Plan**

The USA MOBILITY shall provide training to facilitate the rapid and smooth transition of the State's subscribers to the new contract upon request.

- i. USA MOBILITY shall provide a training plan describing the nature and schedule of such training and the timing of the training sessions.
- ii. The training plan shall identify the USA Mobility's resources that will be used for the training effort.
- iii. The training plan shall be mutually agreed to and have the approval of the State's Program Manager prior to commencement of that training.

b. **Training Materials**



At least one (1) copy of all training materials to be used by USA Mobility’s trainers must be delivered to the State at the time of the training session. These training materials must be able to be copied without copy write infringement or incurring fees, and will be used by the State in any internal training deemed necessary.

**27. Disengagement Strategies**

- a. The State expects full, complete, and timely cooperation in disengaging the relationship in the event that the Contract expires or terminates.
- b. The current USA MOBILITY shall acknowledge henceforward and agree to assist the State and any subsequent awarded USA MOBILITY(s) with all aspects of changeover of service, and shall provide pertinent customer information to the subsequent awarded USA MOBILITY (s) within thirty (30) days following the Contract award; it is the State’s expectation that transition of vendors following a subsequent Contract award will be accomplished in a totally cooperative environment.
- c. Current State provider (s) shall provide State account / customer contact information to awarded USA MOBILITY(s). A complete inventory of subscriber phone numbers, owner, responsible agency, equipment types and features will be provided.
- d. Current providers will assist the State, through customer service, to inform State departments / customers of subsequent-awarded USA MOBILITY and provide information to State customers as requested by the State's Program Manager, including redirection of State customers as requested by the State of Michigan.
- e. Current provider(s) shall agree to cooperate and collaborate for a maximum of six (6) months with the State or the replacement provider and otherwise take all reasonable steps to assist the State in effecting a smooth disengagement upon the expiration or termination of the Contract.
- f. Current provider(s) shall agree not to interrupt the provision of services to the agencies or any obligations related to disengagement, disable any hardware used to provide Services, or perform any other action that prevents, slows down, or reduces in any way the provision of Services or the agency’s ability to conduct its activities, unless the State agrees that a satisfactory disengagement has occurred. Provide the State a detailed disengagement strategy to include all service offerings identified in USA Mobility’s response to this RFP.

**28. Additional Support and Services (Reserved)**

**1.2 Roles and Responsibilities**

**1.201 USA MOBILITY STAFF, ROLES, AND RESPONSIBILITIES**

1.202

The USA MOBILITY has included resumes for all Key Personnel identified as Contract Administrator, Customer Service Representative (Primary and Secondary), and Project Manager. All Key Personnel shall be subject to the State’s interview and approval.

USA MOBILITY has identified a Contract Administrator. The duties of the Contract Administrator shall include, but not be limited to:

- i) Supporting the management of the Contract,
- ii) Facilitating dispute resolution, and
- iii) Advising the State of performance under the terms and conditions of the Contract. The State reserves the right to require a change in the current Contract Administrator if the assigned Contract Administrator is not, in the opinion of the State, adequately serving the needs of the State.

USA MOBILITY has designated, a primary and secondary customer service representative (CSR), identified as a Key Personnel, (not the standard customer service support offered to the public) for the State’s Designated Program Manager and each Agency/Department.

- 1. State’s Designated Program Manager may request a substitute CSR if the person assigned is unsatisfactory, as determined by the State.
- 2. This representative must be present at all regularly scheduled quarterly Joint Operations Meeting meetings related to the Contract to be awarded from this RFP, and will be responsible for the following:



- a. Coordinating all orders for awarded services and hardware
  - b. Coordinating all invoicing/summary billing inquiries
  - c. Coordinating responses to all concerns related to service or hardware
  - d. Activating and terminating services
  - e. Making changes to accounts
  - f. Assisting in problem resolution
3. Specify how many customer service representatives will be assigned to the State of Michigan, and their enterprise/government account experience. (For example, by region, by agency, etc...
  4. At least one Customer Service Representative will be available during the State's operating hours.
  5. All service representatives will have on-line access to information to provide immediate response to inquiries concerning the status of orders and requests for maintenance services.
  6. Representatives will be available by phone, fax, or email (local and toll-free number preferred).

USA MOBILITY has provided a Project Manager, identified as a Key Personnel, to work closely with the designated personnel from the State to insure a smooth transition to the services. The Project Manager will coordinate all of the activities of the USA MOBILITY personnel assigned to the project and create all reports required by State. USA Mobility's project manager responsibilities include, at a minimum:

- Manage all defined USA MOBILITY responsibilities in this Scope of Services.
- Manage USA Mobility's sub USA Mobility's, if any
- Develop the transition/implementation plan and schedule, and update as needed
- Serve as the point person for all transition/implementation issues
- Assess and report on services
- Escalate issues, risks, and other concerns
- Proactively propose/suggest options and alternatives for consideration
- Monitoring billing for accuracy

USA MOBILITY has identified and provided resumes for the following staff that must be assigned to the contract:

- Network Engineer – to provide Level 2 technical support to the State for design issues and resolution of problems such as extended downtime, blockage or data transmission issues.
- Service Manager – to act as the primary escalation point for service and maintenance issues; provide notice and information on network service issues that may affect services; manage and provide reports on service levels, and document service and maintenance provided.

USA MOBILITY has provided, and update when changed, an organizational chart indicating lines of authority for personnel involved in performance of this Contract and relationships of this staff to other programs or functions of the firm. This chart must also show lines of authority to the next senior level of management and indicate who within the firm will have prime responsibility and final authority for the services.

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

### **1.202 STATE STAFF, ROLES, AND RESPONSIBILITIES**

The Michigan Dept. of Information Technology, Telecommunications Division is responsible for the administration of the services within the contract. MDIT shall provide a Program Manager. The MDIT Program Manager will serve as a contact for all issues pertaining to the execution of services under the contract. As of the effective date for contract commencement the MDIT Program Manager shall be:

Steve McMahan  
 Michigan Dept. of Information Technology – Telecommunications  
 608 W. Allegan  
 Lansing, MI 48913  
 Phone: 517-373-6353  
 E-mail: mcmahons@michigan.gov

The State's Program Manager will provide the following services:

- Provide State facilities, as needed
- Coordinate the State resources necessary for the project
- Facilitate coordination between various external USA Mobility's
- Facilitate communication between different State departments/divisions
- Escalation of outstanding/high priority issues
- Conducting regular and ongoing review of the services
- Documentation and archiving of all reports
- Arrange, schedule and facilitate State staff attendance at all project meetings

The State project team will consist of the following members:

- Steering committee - MDIT Telecommunication and Network Management Director and the Program Manager, who will serve as chair of the steering committee.
- Executive Subject Matter Expert (SME's)
- Project support

The project steering committee will provide the following services:

- Approve the implementation schedule
- Authorize modifications for scope, resources, and budget of the project
- Ensure senior management commitment to the project
- Act as a final arbiter on proposed changes that significantly affect the business interests of the State

The Executive SME will be empowered to:

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

Issues shall be escalated for resolution from level 1 through level 3, as defined below:

Level 1 – Project Support – MDIT Program Manager

Level 2 – Project Manager/Executive SME – MDIT Telecommunication and Network Management Director

Level 3 – Steering Committee Member – MDIT Telecommunication and Network Management Director and DMB Purchasing/Buyer

MDIT shall provide a Program Manager whose duties shall include but not be limited to:

- Supporting the management of the Contract,
- Advising MDIT of USA Mobility's performance under the terms and conditions of the Contract, and
- Periodic verification of pricing and monthly reports submitted by USA MOBILITY.

### **1.203 OTHER ROLES AND RESPONSIBILITIES**

The State Agency Telecommunication Coordinators may provide additional information and requirements needed for reporting and ordering of equipment and services.

## **1.3 Project Plan**

### **1.301 PROJECT PLAN MANAGEMENT**

#### **1. Orientation Meeting**

- a. Upon execution of the Contract, the USA MOBILITY will be required to attend an orientation meeting to discuss the content and procedures of the Contract.
- b. The meeting will be held in Lansing, Michigan, at a date and time mutually acceptable to MDIT and the USA MOBILITY.



- i. MDIT shall bear no cost for the time and travel of the USA MOBILITY for attendance at the meeting.

**2. Performance Review Meetings**

- a. MDIT will require the USA MOBILITY to attend periodic meetings to review the USA Mobility’s performance under the Contract.
- b. The meetings will be held in Lansing, Michigan, or by teleconference, at a date and time mutually acceptable to MDIT and the USA MOBILITY.
  - i. MDIT shall bear no cost for the time and travel of the USA MOBILITY for attendance at the meeting.

**1.302 REPORTS**

In addition to the reports identified in Work and Deliverables, Section 1.1, the USA MOBILITY shall also provide any other information MDIT and/or MDMB may request, both for the State in its entirety and for MDIT agencies individually.

**1.4 Project Management**

**1.401 ISSUE MANAGEMENT**

An issue is an identified event that if not addressed may affect schedule, scope, quality, or budget.

The USA MOBILITY shall provide process flow for creating and maintaining an issue log for issues relating to the provision of services under this Contract. The issue management log must be communicated to the State’s Program Manager on an agreed upon schedule, with email notifications and updates. The issue log must be updated and must contain the following minimum elements:

- Description of issue
- Issue identification date
- Responsibility for resolving issue.
- Priority for issue resolution (to be mutually agreed upon by the State and the USA MOBILITY)
- Resources assigned responsibility for resolution
- Resolution date
- Resolution description

**1.402 RISK MANAGEMENT**

A risk is an unknown circumstance or event that, if it occurs, may have a positive or negative impact on the Contract. Risk management generally involves (1) identification of the risk, (2) assigning a level of priority based on the probability of occurrence and impact to the project, (3) definition of mitigation strategies, and (4) monitoring of risk and mitigation strategy.

USA Mobility’s proposal must define risks identified as being significant to the success of the project. Include how you would propose to effectively monitor and manage these risks, including reporting of risks to the State.

**1.403 CHANGE MANAGEMENT**

Change management is defined as the process to communicate, assess, monitor, and control all changes to system resources and processes. The State also employs change management in its administration of the Contract. **See section 2.100 for details.**

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

## 1.5 Acceptance

### 1.501 CRITERIA

The State will consider equipment accepted when delivery of the equipment is made to the specified delivery address, AND; complete packing slips with applicable serial numbers are provided to the State. USA MOBILITY will not invoice for equipment, and the State will not authorize payment of invoices, until both of the above conditions have been met. Where direct shipment or delivery of equipment to State agency sites are a requirement of the purchase order, the USA MOBILITY is responsible to ensure that a copy of the signed receiving documents are forwarded to MDIT before payment will be authorized. Equipment discovered to be defective or failing to conform to the specifications may be rejected upon initial inspection or at any later time if the defects contained in the equipment or non-compliance with the specifications was not reasonably ascertainable upon initial inspection.

Acceptance of services is tied to adequate performance of the required Services.

### 1.502 FINAL ACCEPTANCE

Acceptance is tied to adequate performance of required Services and delivery of equipment meeting the requirements of this SOW.

## 1.6 Compensation and Payment

### 1.601 COMPENSATION AND PAYMENT

1. USA MOBILITY agrees all the prices, terms, warranties, and benefits provided in this Contract are comparable to or better than the terms presently being offered by USA MOBILITY to any other governmental entity purchasing the same quantity under similar terms. If, during the term of this Contract, USA MOBILITY shall enter into contracts with any other governmental entity providing greater benefits or more favorable terms than those provided by this Contract, USA MOBILITY shall be obligated to provide the same to the State for subsequent purchases.
2. See Exhibit C Pricing

### B. Payment

USA MOBILITY will submit properly itemized invoices to authorized agent for each department named within the order.

### C. Invoicing and Payment

#### 1. Format of Service Invoicing

- a. Agencies may require USA MOBILITY to invoice electronically pursuant to agency guidelines. Future guidelines may require the USA MOBILITY to supply electronic invoices in lieu of paper-based invoices.
- b. USA MOBILITY shall make invoices available in the following formats at no cost:
  - i. Electronic format compatible with Microsoft Excel 2000 at a minimum, on physical media (CD, DVD, etc.)
  - ii. Hard copies – paper-based
- c. Indicate whether invoices can be provided electronically in ASCII format.
- d. Indicate if electronic copies as described above can be available online (web, ftp, email, etc.) if requested.

#### 2. Service Invoice Requirements

USA MOBILITY shall provide the ability for the State's Program Manager and ATCs to invoice accounts separately, or by grouping specified accounts into a master/parent invoice.

#### 3. Individual Account Service Invoicing

- a. The State is very concerned about the time and effort required to resolve billing errors caused by the USA MOBILITY(s). As an incentive to the USA MOBILITY(s) to minimize billing errors, the State requests that credits for errors found by the State plus an additional 20 percent of the error be



credited to the State if errors are not corrected within 30 days.

- b. If invoicing by individual account, invoices must be received monthly, and must use the USA Mobility's letterhead. USA MOBILITY must work with the State's Program Manager for setting the Monthly Billing Cycle date.
- c. Individual agencies may require different or additional elements to meet departmental guidelines.
- d. Each invoice must contain at a minimum the following elements:
  - i. USA MOBILITY name, address, and telephone number
  - ii. Invoice Number
  - iii. Invoice Period / invoice date
  - iv. Contract Number
  - v. Vendor's Remittance Address
  - vi. Account Number
  - vii. Cost Center - alphanumeric field designated by the ATC for internal audit control, if used
  - viii. Agency Index Code - five-digit number designated by the State
  - ix. Itemized Charges – Monthly Service, Feature, Airtime, Long Distance, Roaming, Data, etc.
  - x. Payment Remittance Address
  - xi. State Provided Purchase Order Number
  - xii. Order Date
  - xiii. Description and quantity of each line item purchased
  - xiv. Itemized Usage – Plan minutes used, overage minutes used, text messages sent, etc.
  - xv. Adjustments
  - xvi. Total Service Charges
  - xvii. Total Charges
  - xviii. Totals - total for each cost center (if multiples are used on the same order), and total charges for ordering organization. The bottom of each invoice shall have a total for all orders, a total for all credits, and amount due
  - xix. USA MOBILITY / manufacturer catalog / reference number
  - xx. USA Mobility's list price
  - xxi. Appropriate State percentage discount
  - xxii. State net price
  - xxiii. Any additional discounts offered for volume orders, prompt payment, or other USA MOBILITY offered incentives
- e. Invoicing must be provided in detail by:
  - i. rate per unit
  - ii. extended total of each line item invoiced
  - iii. all discounts must be shown as separate line items
  - iv. any approved fees or surcharges must be identified and listed separately
  - v. all subcontracted services must be invoiced separately
- f. Other services invoices must supply plan identification and adequate itemized usage to validate billed amount.

#### 4. **Format of Equipment Invoicing**

Equipment invoices shall be provided in hardcopy (paper) and/or electronic format.

#### 5. **Equipment Invoice Requirements**

- a. Equipment invoices must be generated and sent to the billing address as specified on the order within 30 days of acknowledgement of order receipt by USA MOBILITY.
- b. Equipment invoices must be standalone (i.e., separate from service invoices). Each invoice must use the USA Mobility's letterhead. Individual agencies may require additional elements to meet departmental guidelines, which shall be provided at no extra cost.
- c. Each invoice must contain a minimum of the following elements:
  - i. Contract Number
  - ii. USA MOBILITY Name
  - iii. Vendor's Remittance Address



- iv. Agency Order Number/Purchase Order #
- v. USA MOBILITY Order Number
- vi. Agency Billing Code
- vii. Cost Center
- viii. Account Number
- ix. Order Date
- x. Unit Product Details – Manufacturer, model number, description, etc.
- xi. Product Cost Details – A detailed breakdown of product cost by line-item: product published cost, product discount, product cost to State, etc.
- xii. A separate line-item for tax and delivery charges
- xiii. Quantity
- xiv. Person Placing Order
- xv. Method of Ordering
- xvi. Ship to Address
- xvii. Additional information required by the State

f. **Credit Card**

- i. USA MOBILITY shall only accept Credit Card purchases from an ATC.
- ii. A sales receipt itemizing purchased goods must be received by the cardholder within five (5) business days.

g. **Invoice Recordkeeping**

- i. USA MOBILITY shall maintain detailed records pertaining to the cost of services rendered and products delivered for a period of three years from the date of acceptance of each purchase order.
- ii. These records shall be subject to inspection by the purchasing entity and appropriate governmental authorities within the purchasing entity's geographical location.
- iii. The purchasing entity shall have the right to audit billings either before or after payment.
- iv. Payment under this agreement shall not negate the right of the purchasing entity to recover excessive or illegal payments.

h. **Service Credits**

- i. When crediting agencies/subscribers, USA MOBILITY shall do the following:
  - 1. The credit will be issued by the USA Mobility's customer service representative and will appear on the agency's next monthly invoice as a separate line item.
  - 2. The USA MOBILITY can also instruct the purchasing entity to deduct the credit amount from the current invoice if that would be more in line with the procuring agencies satisfaction and requirements.

i. **Equipment Credits**

A credit memo will be sent to the ATC and the Program Manager by the USA MOBILITY and will contain the following information:

- i. Credit date of issue
- ii. Subscriber/account number
- iii. The invoice number and date
- iv. Reason for credit
- v. Amount of credit issued

j. **Rebates**

- i. **All Rebates shall be applied to the State as credits immediately.**

k. **Invoicing Dispute Resolution**

- i. USA MOBILITY will respond to invoicing disputes within 2 days of notice and provide a plan for resolution within 5 days of notice to the State's Designated Contract Administrator and/or ATCs.
- ii. The USA MOBILITY will also provide status updates on resolution as requested.

l. **Invoice Tools**

Provide a description of any, at no cost, invoicing tools that will be provided and its capabilities.

**6. Other Pricing**

- a. Price Protection - All materials, supplies, and services ordered by and / or provided to the State shall be price protected and considered maximum at the established net prices referenced in USA



Mobility's submittal response throughout the Contract period as noted. Additional discounts offered by USA MOBILITY for materials and services during the term of the Contract will be accepted.

- b. Pricing Review
  - i. The USA MOBILITY agrees to meet with the State's Program Manager a minimum of every six (6) months to determine in good faith whether (and, if so, what) downward changes to the rates and charges and related terms are appropriate in light of then-current alternatives and pricing available in the competitive, full marketplace for wireless equipment and services. The intent of the meeting is that the pricing for the equipment and services, is adjusted throughout the term to maintain the original discount offered to the then prevailing available full market pricing.
  - ii. The duration of the review shall last no more than thirty (30) calendar days.
  - iii. If the parties reach agreement to reduce pricing based upon that review, an Agreement amendment that shall be signed by both parties and processed in accordance with Section 1.403, Change Management.

## **7. Technology Refresh and Market Rate Changes**

- a. During the term of the contract, it may be necessary to refresh technology to adjust to major industry changes and significant new technology advancements. If the telecommunications industry experiences a technological breakthrough rendering products or services proposed herein ineffective or obsolete, the State and the USA MOBILITY agree to jointly review technological advances pertaining to the products and services included in this Contract and mutually agree to amend the terms and conditions of the original agreement as deemed necessary by both parties, following the Change Management process of Section 1.403.
- b. During the term of the contract, the telecommunications industry rates may decrease for services included in this contract. In this event, USA MOBILITY will decrease the rates whereby they are consistent with the original discounts. USA MOBILITY will adjust rates downward to ensure that the State receives the lowest pricing that USA MOBILITY has offered to any other customer.
- c. Technology Refresh and Market Rate Changes will be reviewed and potentially renegotiated every six months as a part of the regularly scheduled quarterly Joint Operations meetings.

## **8. Volume Discounts**

- a. During the term of the contract, the volume of products and/or services may increase from the initial volume statistics used to determine the rates quoted in the RFP. The USA MOBILITY must provide rates associated with a larger purchase volume in the event the State's aggregate volume increases during the term of the contract.
- b. Volume discounts will also be reviewed and potentially renegotiated every six months as a part of the regularly scheduled quarterly Joint Operations meetings.

## **1.7 Additional Terms and Conditions Specific to this SOW**

### **1.701 ADDITIONAL TERMS AND CONDITIONS SPECIFIC TO THIS SOW**

#### **1. Reservation of Selection of IT Product Standards:**

MDIT reserves the right to consider all products proposed by the USA MOBILITY and accepted by the State as part of the selected USA MOBILITY 's bid to this RFP as a potential State IT Product Standard and may at its discretion ratify said products as IT Standards for the State of Michigan

**Appendix A**  
**List of Michigan Counties**

Michigan Counties List

1 Alcona	29 Gratiot	57 Missaukee
2 Alger	30 Hillsdale	58 Monroe
3 Allegan	31 Houghton	59 Montcalm
4 Alpena	32 Huron	60 Montmorency
5 Antrim	33 Ingham	61 Muskegon
6 Arenac	34 Ionia	62 Newaygo
7 Baraga	35 Iosco	63 Oakland
8 Barry	36 Iron	64 Oceana
9 Bay	37 Isabella	65 Ogemaw
10 Benzie	38 Jackson	66 Ontonagon
11 Berrien	39 Kalamazoo	67 Osceola
12 Branch	40 Kalkaska	68 Oscoda
13 Calhoun	41 Kent	69 Otsego
14 Cass	42 Keweenaw	70 Ottawa
15 Charlevoix	43 Lake	71 Presque Isle
16 Cheboygan	44 Lapeer	72 Roscommon
17 Chippewa	45 Leelanau	73 Saginaw
18 Clare	46 Lenawee	74 Sanilac
19 Clinton	47 Livingston	75 Schoolcraft
20 Crawford	48 Luce	76 Shiawassee
21 Delta	49 Mackinac	77 St. Clair
22 Dickinson	50 Macomb	78 St. Joseph
23 Eaton	51 Manistee	79 Tuscola
24 Emmet	52 Marquette	80 Van Buren
25 Genesee	53 Mason	81 Washtenaw
26 Gladwin	54 Mecosta	82 Wayne
27 Gogebic	55 Menominee	83 Wexford
28 Grand Traverse	56 Midland	



## Appendix B Glossary of Terms

The following words and phrases, when used in this contract, shall have the indicated meanings. (Terms capitalized within a particular definition are defined elsewhere within the Contract.)

**“AFFILIATE”** shall mean any entity, employees, directors, partners, joint venture participants, parent corporations, subsidiaries, or any other person that, directly or indirectly, controls, is controlled by, or is under common control with USA MOBILITY or Qualified Provider, whether through ownership of more than fifty (50%) of the voting securities, by contract, managing authority or otherwise.

**“AGENCY”** or (**“AGENCIES”**) shall mean a tax supported public entity (or entities) empowered to expend public funds to purchase Deliverables and Services from the Contract.

**“AGREEMENT”** shall have the same meaning as “Contract” and the terms shall be used interchangeably.

**“AMPS”** shall mean Advanced Mobile Phone Service.

**“ANSI”** shall mean American National Standards Institute.

**“ATC”** shall mean the State’s designated Agency Telecom Coordinator(s).

**“BID”** shall mean an offer made in response to the RFP to perform a contract for work and labor describer in the RFP in accordance with the terms and conditions provided in the Contract.

**“BIDDER”** shall mean a supplier who submits a Bid to the State in response to the RFP.

**“BUSINESS DAY”** shall mean 8:00 a.m. to 5:00 p.m. Eastern Standard Time, Monday through Friday, excluding State holidays.

**“CD”** shall mean Compact Disc.

**“COMMERCIAL SOFTWARE”** shall mean Software developed or regularly used that: (i) has been sold, leased, or licensed to the general public; (ii) has been offered for sale, lease or license to the general public; (iii) has not been offered, sold, leased, or licensed to the general public but will be available for commercial sale, lease, or license in time to satisfy the delivery requirements of the contract; or (iv) satisfies a criterion expressed in (i), (ii) or (iii) above and would require only minor modifications to meet the requirements of the Contract.

**“CONTRACT”** shall mean the State of Michigan Standard Agreement, the SOW and the Proposal, together with all attachments thereto (including General Provisions), documents incorporated therein by reference, and all regulatory filings made pursuant thereto for the applicable Services. The term “Contract” shall have the same meaning as “Agreement” and the term shall be used interchangeably.

**“USA MOBILITY”** shall mean the entity which responded to the RFP and all of its Affiliates providing Deliverables and/or Services under this Contract.

**“CONVERGED SERVICES”** shall mean voice, video, and data services that run over a converged network. Includes advanced data and information services and application such as IP-based voice, integrated messaging, advanced data and information services and applications such as IP-based voice, integrated messaging, web-based conference calling, voice enabled instant messaging, Enhanced Class features – features that enhance productivity and performance such as selective call waiting, group ring, and find-me,

follow-me etc.

**“CONVERGENCE”** shall mean the definition of network architecture that allows for voice, video, and data communications to run over a single (converged) network.

**“CPE”** or **“CUSTOMER PREMISE EQUIPMENT”** shall mean customer owned telecommunications Equipment located at a customer location.

**“CUSTOMER”** shall mean an Agency that is purchasing goods and services from the Contract.

**“DATA PROCESSING SYSTEM (SYSTEM)”** shall mean the total complement of USA MOBILITY-furnished Machines, including one or more central processors (or instruction processors) and Operating Software, which are acquired to operate as an integrated group.

**“db”** shall mean decibel.

**“DELIVERABLES”** shall mean the Goods, Software, Information Technology, telecommunications technology and other items (e.g. reports) to be delivered pursuant to the applicable Contract, including any such items furnished incident to the provision of Services.

**“DELIVERY DATES”** shall mean the dates specified by the State for the delivery by USA MOBILITY or Qualified Provider of certain Deliverables or Services.

**“DESIRABLE ITEMS”** shall mean attributes or conditions in the RFP that are defined by the words “should” or “may”.

**“DOCUMENTATION”** shall mean nonproprietary manuals and other printed materials necessary or useful to the State in its use or maintenance of the Equipment or Software provided hereunder. Manuals and other printed materials customized for the State hereunder constitute Documentation only to the extent that such materials are described in or required by the Statement of Work.

**“DVD”** shall mean Digital Video Disc.

**“EFFECTIVE DATE”** shall mean the later date on which the Contract has been both executed by USA MOBILITY or Qualified Provider and has been executed and approved by the State in accordance with the terms therein.

**“END-USER”** shall mean an individual within an Agency that is utilizing the feature or service provided under the Contract.

**“END TO END SERVICE”** shall mean the USA MOBILITY is responsible for providing Service(s) on a statewide basis, whether provided by USA MOBILITY or any sub of USA Mobility’s.

**“EQUIPMENT”** is an all-inclusive term, which refers either to individual Machines or to a complete Data Processing System or subsystem, including its Hardware and Operating Software (if any).

**“EQUIPMENT FAILURES”** shall mean a malfunction in the Equipment, excluding all external factors, which prevents the accomplishment of the Equipment’s intended function(s). If microcode or Operating Software residing in the Equipment is necessary for the proper operation of the Equipment, a failure of such microcode or Operating Software which prevents the accomplishment of the Equipment’s intended functions shall be deemed to be an Equipment failure.

**“E911”** shall mean the wireless Enhanced 911 (E911) FCC rules which seek to improve the effectiveness and reliability of wireless 911 service by providing 911 dispatchers with additional information on wireless 911 calls.

“**FCC**” shall mean the Federal Communications Commission.

“**FOC**” shall mean Final Operating Capability.

“**GOODS**” shall mean all types of tangible personal property, including but not limited to materials, supplies, and Equipment (including computer and telecommunications Equipment).

“**GPS**” shall mean Global Positioning System.

“**HARDWARE**” usually refers to computer Equipment and is contrasted with Software. See also Equipment.

“**IMS**” shall mean Instant Messaging Service.

“**IT**” or “**INFORMATION TECHNOLOGY**” shall mean all electronic technology systems and services, automated information handling, System design and analysis, conversion of data, computer programming, information storage and retrieval, telecommunications which include voice, video, and data communications, requisite System controls, simulation, electronic commerce, and all related interactions between people and Machines.

“**LEGISLATURE**” shall mean the Michigan State Legislature.

“**MACHINE**” shall mean an individual unit of Data Processing System or subsystem, separately identified by a type and/or model number, comprised of but not limited to mechanical, electro-mechanical, and electronic parts, microcode, and special features installed thereon and including any necessary Software, e.g., central processing unit, memory module, tape unit, card reader, etc.

“**MATERIAL DEVIATION**” shall mean a deviation from a requirement that is not in substantial accord with the RFP Requirements, provides an advantage to one Bidder over other Bidders, or has a potentially significant effect on the delivery, quantity or quality of items proposed, amount paid to the Bidder, or for the cost to the State.

“**MDIT**” shall mean the Michigan Department of Information Technology.

“**MDMB**” shall mean the Michigan Department of Management and Budget.

“**MIGRATION**” or “**MIGRATE**” shall mean all tasks, Deliverables and activities related to or necessary for the migration of the provision of Services pursuant to the Contracts for Services.

“**MPSC**” shall mean the Michigan Public Service Commission.

“**NCRP**” shall mean National Council on Radiation Protection and Measurements.

“**NCS**” shall mean the National Communications System.

“**NOTICE OF TERMINATION**” shall mean a written notice of termination from the State to USA MOBILITY or Qualified Provider pursuant to the Contract.

“**OPERATING SOFTWARE**” shall mean those routines, whether or not identified as Program Products, that reside in the Equipment and are required for the Equipment to perform its intended function(s), and which interface the operator, other USA MOBILITY-supplied programs, and user programs to the Equipment.

“**PBX**” shall mean Private Branch Exchange.

“**PDA**” shall mean Personal Digital Assistant device.

“**PERFORMANCE TESTING PERIOD**” shall mean a period of time during which the State, by appropriate tests and production runs, evaluates the performance of newly installed Equipment and Software prior to its acceptance by the State.

“**PIM**” shall mean Personal Information Management.

“**PMM**” shall mean the State’s Project Management Methodology.

“**POP3**” shall mean Post Office Protocol Version 3.

“**PSAP**” shall mean Public Safety Answering Point.

“**PTT**” shall mean the Push To Talk functionality of a wireless device.

“**QUALIFIED PROVIDER**” shall mean the entity identified in the introductory paragraph to the General Provisions and all of its Affiliates providing Deliverables and/or Services under applicable Contract.

“**REQUIREMENT**” shall mean the technical and administrative performance and delivery Requirements established by the State throughout the RFP.

“**RIM**” shall mean Research In Motion, the current Blackberry device manufacturer.

“**RFP**” shall mean Request For Proposal as defined in Section 1 of the Scope of Work.

“**SEALED PROPOSAL**” shall mean a Proposal that is contained/wrapped/boxed in such a manner that no part of the Proposal is revealed.

“**SERVICES**” shall mean, collectively, the services, functions and responsibilities described in the Contract as they may be supplemented, enhanced, modified or replaced during the Term in accordance with the Contract, including any Enhancements approved by the State.

“**SME**” shall mean Subject Matter Expert.

“**SOFTWARE**” is an all-inclusive term which refers to any computer programs, routines, or subroutines supplied by the USA MOBILITY, including Operating Software, programming aids, application programs, and program products.

“**SOW**” shall mean Statement Of Work.

“**STANDARDS**” shall mean the State defining business standards as well as industry defined and accepted standards for communications published by recognized organizations such as IEEE, IETF, ITU, ANSI, TIA/EIA, etc.

“**STATE**” shall mean MDMB/MDIT, or as MDMB/MDIT may designate, in its sole discretion, any other department, division, or unit of the State of Michigan, any agency or governmental entity of the State of Michigan or any local jurisdiction within the State of Michigan empowered to expend public funds, and their end-users, intended to receive the benefit of the Services.

“**STATEMENT OF WORK**” is Article 1 and any additional statements of work entered into by the State and USA MOBILITY pursuant to this Contract.

“**SUPPLIER**” shall mean a business entity, Bidder, offeror, vendor, USA MOBILITY, or Qualified Provider.

“**SYSTEM**” shall mean the complete collection of Hardware, Software and Services as described in this Contract, integrated and functioning together, and performing in accordance with this Contract.

“**TAP**” shall mean Telocator Alphanumeric Protocol.

“**TERM**” shall have the meaning given it in Section xx.

“**UNIFIED MESSAGING**” shall mean access to e-mail, voice mail and faxes by a common interface by computer or by telephone. The end user can access these messages from a variety of devices – PCs, Telephones, PDAs, etc.

“**USF**” shall mean Universal Service Fund.

“**VoIP**” shall mean Voice Over Internet Protocol.

“**Wi-Fi**” shall mean a brand originally licensed by the Wi-Fi Alliance to describe the embedded technology of wireless local area networks (WLAN) based on the IEEE 802.11 specifications. Wi-Fi was developed to be used for mobile computing devices, such as laptops in Local Area Networks, but is now increasingly used for more services, including Internet and VoIP phone access, gaming, and basic connectivity of consumer electronics such as televisions, DVD players, and digital cameras. More standards are in development that will allow Wi-Fi to be used by cars on highways in support of an Intelligent Transportation System to increase safety, gather statistics, and enable mobile commerce

“**WiMAX**” shall mean **Worldwide Interoperability for Microwave Access** as defined by the WiMAX Forum, formed in June 2001 to promote conformance and interoperability of the IEEE 802.16 standard. WiMAX aims to provide wireless data over long distances, in a variety of different ways, from point to point links to full mobile cellular type access. The Forum describes WiMAX as "a standards-based technology enabling the delivery of last mile wireless broadband access as an alternative to cable and DSL".

“**2G**” shall mean second generation wireless technology. The main differentiator to previous mobile telephone systems, retrospectively dubbed 1G, is that the radio signals that 1G networks use are analog, while 2G networks are digital.

“**3G**” shall mean third generation wireless technology. The services associated with 3G provide the ability to transfer simultaneously both voice data (a telephone call) and non-voice data (such as downloading information, exchanging email, and Instant Messaging Service).

“**4G**” shall mean fourth generation wireless technology for which a standards and features are not yet fully defined. 4G is not just one defined technology or standard, but rather a collection of technologies and protocols to enable the highest throughput, lowest cost wireless network possible. The Wireless World Research Forum (WWRF) defines 4G as a network that operates on Internet technology, combines it with other applications and technologies such as Wi-Fi and WiMAX, and runs at speeds ranging from 100 Mbps (in cell-phone networks) to 1 Gbps (in local Wi-Fi networks).[http://en.wikipedia.org/wiki/4G - note-what-is-4g# note-what-is-4g](http://en.wikipedia.org/wiki/4G_-_note-what-is-4g#_note-what-is-4g)

**Appendix C**  
**Service Level Agreement**  
 See requirements

**Paging Service Level Agreement (SLA)**

<b>Criteria</b>	<b>Purpose/Definition</b>	<b>Service Level</b>
Notification/Response  (Defined below as Severity 1, 2 or 3)	Response times are related to Customer identified/reported issues. Notifications are provided to customers who are subscribed to and configured in the USA Mobility Customer Early Response Team (“CERT”) system.	
Notification of Severity One/ Emergency (All Units at one location affected by preferred input method or transmitter failure)	Initial response time and how often updates are given.	90% / <= 60 Minutes
Notification of Severity Two/Priority Issues (Multiple units at one location affected)	Initial response time and how often updates are given.	90% / <=4 Hours
Severity Three/Routine Issues (One unit at location affected)	Initial response time and how often updates are given.	90% / <= 24 Hours
Network Availability	Averaged across all units, the overall network is available to process messages without blockage in the network, measured on an annual basis.	99.9%
Network Reliability (Successful Transmission of Numeric and Alpha Messages)	Averaged across all units, percentage of alpha and numeric pages that are transmitted successfully.	99.9%

Criteria	Purpose/Definition	Service Level
Numeric and Alpha Message Latency	Maximum number of minutes between distribution and receipt of pages	90% of messages transmitted within average of 60 seconds.  99% messages transmitted within average of 90 seconds.

Without limiting the generality of the foregoing, telecommunications services, including the Services, may be adversely affected by various conditions, including but not limited to electrical interference, terrain, weather, Acts of God or governmental authority (including limitations on the availability of telephone numbers or spectrum), equipment failure, user error and the failure of any satellite or other connecting telecommunications facilities, or circumstances beyond Company’s control (each a “Force Majeure Event”). Periodic service interruptions may be necessary to perform maintenance on the networks and facilities. Company, therefore cannot and does not guarantee the availability of the Services at all times and under all circumstances, nor that all messages will be received in a timely manner. Wireless messaging services are not secure methods of transmission, and Company cannot and does not guarantee against improper actions of third parties that interfere with the privacy of messages or the integrity of the Services. Services related to databases and information content may contain inaccuracies from time to time that occur at the source or in the transmission process (including but not limited to errors in stock quotations, sports results and news reports), and Company cannot and does not guarantee the accuracy or availability of such Services. Company’s prices for the Services do not include insurance for these inherent risks.

**FORCE MAJEURE.** Except for Customer payment obligations hereunder, operation of this Agreement shall be suspended during any period where a party’s failure or delay in performance is the result of any Force Majeure Event.

**Article 2 – General Terms and Conditions**

**2.010 Contract Structure and Administration**

**2.011 Definitions**

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

- (a) “Days” means calendar days unless otherwise specified.
- (b) “24x7x365” means 24 hours a day, seven days a week, and 365 days a year (including the 366th day in a leap year).
- (c) “Additional Service” means any Services/Deliverables within the scope of the Contract, but not specifically provided under any Statement of Work, that once added will result in the need to provide the CONTRACTOR with additional consideration. “Additional Service” does not include New Work.
- (d) “Amendment Labor Rates” means the schedule of fully-loaded hourly labor rates attached as

**Article 1, Attachment C.**

- (e) “Audit Period” has the meaning given in **Section 2.111**.
- (f) “Business Day,” whether capitalized or not, shall mean any day other than a Saturday, Sunday or State-recognized legal holiday (as identified in the Collective Bargaining Agreement for State employees) from 8:00am EST through 5:00pm EST unless otherwise stated.
- (g) “Incident” means any interruption in Services.
- (h) “Business Critical” means any function identified in any Statement of Work as Business Critical.
- (i) “Deliverable” means physical goods and/or commodities as required or identified by a Statement of Work
- (j) “Key Personnel” means any Personnel designated in **Article 1, Section 1.201 and/or Exhibit A**, as Key Personnel.
- (k) “New Work” means any Services/Deliverables outside the scope of the Contract and not specifically provided under any Statement of Work, that once added will result in the need to provide the CONTRACTOR with additional consideration. “New Work” does not include Additional Service.
- (l) “Services” means any function performed for the benefit of the State.
- (m) “State Location” means any physical location where the State performs work. State Location may include state-owned, leased, or rented space.
- (n) “Subcontractor” means a company CONTRACTOR delegates performance of a portion of the Services to, but does not include independent Contractors engaged by CONTRACTOR solely in a staff augmentation role.
- (o) “Work in Process” means a Deliverable that has been partially prepared, but has not been presented to the State for Approval.

**2.012 Attachments, Appendices and Exhibits**

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

**2.013 Statements of Work**

- (a) The parties agree that the Services/Deliverables to be rendered by CONTRACTOR pursuant to this Contract (and any future amendments of it) will be defined and described in detail in Statements of Work or Purchase Orders (PO) executed under this Contract. CONTRACTOR shall not be obliged or authorized to commence any work to implement a Statement of Work until authorized via a PO issued against this Contract, or an amendment to this Contract (see 2.106). CONTRACTOR shall perform in accordance with this Contract, including the Statements of Work/Purchase Orders executed under it.
- (b) Unless otherwise agreed by the parties, each Statement of Work (as defined in Article 1) will include, or incorporate by reference to the appropriate Contract Article 1 Attachment containing, the following information:
  - a description of the Services to be performed by CONTRACTOR under the Statement of Work;



- a project schedule (including the commencement and completion dates for all tasks, subtasks (for all projects of sufficient duration and complexity to warrant sub task breakdown), and Deliverables);
- a list of the Deliverables to be provided, if any, including any particular specifications and acceptance criteria for such Deliverables, and the dates on which the Deliverables are scheduled to be completed and delivered to the State;
- all Deliverable price schedules and other charges associated with the Statement of Work, the overall fixed price for such Statement of Work and any other appropriate pricing and payment terms;
- a specification of Contractor's and the State's respective performance responsibilities with respect to the performance or completion of all tasks, subtasks and Deliverables;
- a listing of any Key Personnel of CONTRACTOR and/or its Sub Contractors for that Statement of Work and any future Statements of Work;
- any other information or provisions the parties agree to include.

(c) Reserved.

(d) The initial Statements of Work, as of the Effective Date, are attached to this Contract.

#### **2.014 Issuing Office**

This Contract is issued by the Department of Management and Budget, Office of Purchasing Operations and the Department of Information Technology (collectively, including all other relevant State of Michigan departments and agencies, the "State"). Purchasing Operations is the sole point of contact in the State with regard to all procurement and contractual matters relating to the Contract. **Purchasing Operations is the only State office authorized to change, modify, amend, alter or clarify the prices, specifications, terms and conditions of this Contract.** The CONTRACTOR Administrator within the Office of Purchasing Operations for this Contract is:

##### **Doug Collier**

Office of Purchasing Operations  
 Department of Management and Budget  
 Mason Bldg, 2nd Floor  
 PO Box 30026  
 Lansing, MI 48909  
 Collierd1@michigan.gov  
 517-335-4804

#### **2.015 Contract Compliance Inspector**

Upon receipt at PURCHASING OPERATIONS of the properly executed Contract, it is anticipated that the Director of DMB Purchasing Operations, in consultation with the Department of Information Technology will direct that the person named below, or any other person so designated, be authorized to monitor and coordinate the activities for the Contract on a day-to-day basis during its term. However, monitoring of this Contract implies **no authority to change, modify, clarify, amend, or otherwise alter the prices, terms, conditions and specifications of such Contract as that authority is retained by the Office of Purchasing Operations.** The Contract Compliance Inspector for this Contract is:

##### **Michael Breen**

Department of Information Technology  
 Constitution Hall, 1st Floor N Tower  
 Lansing, MI 48909  
 breenm@michigan.gov  
 (517) 241-7720

#### **2.016 Program Manager**

The following individual will oversee the project:

**Steve McMahon**

Michigan Dept. of Information Technology – Telecommunications  
608 W. Allegan  
Lansing, MI 48913  
Phone: 517-373-6353  
E-mail: mcmahons@michigan.gov

**2.020 Contract Objectives/Scope/Background**

**2.021 Background**

See Article 1

**2.022 Purpose**

See Article 1

**2.023 Objectives and Scope**

See Article 1

**2.024 Interpretation**

Sections 2.021 through 2.023 are intended to provide background and context for this Contract and are not intended to expand the scope of the obligations under this Contract or to alter the plain meaning of the terms and conditions of this Contract. However, to the extent the terms and conditions of this Contract are unclear or otherwise ambiguous, such terms and conditions are to be interpreted and construed in light of the provisions of this Section.

**2.025 Form, Function and Utility**

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

**2.030 Legal Effect and Term**

**2.031 Legal Effect**

Except as otherwise agreed in writing by the parties, the State assumes no liability for costs incurred by CONTRACTOR or payment under this Contract, until CONTRACTOR is notified in writing that this Contract (or Change Order) has been approved by the State Administrative Board (if required), approved and signed by all the parties, and a Purchase Order against the Contract has been issued.

**2.032 Contract Term**

This Contract is for a period of two (2) years commencing on the date that the last signature required to make the Contract enforceable is obtained. All outstanding Purchase Orders shall also expire upon the termination (cancellation for any of the reasons listed in 2.210) of the Contract, unless otherwise extended pursuant to the Contract. Absent an early termination for any reason, Purchase Orders issued but not expired, by the end of the Contract's stated term, will remain in effect for the balance of the fiscal year for which they were issued.

**2.033 Renewal(s)**

This Contract may be renewed in writing by mutual agreement of the parties not less than thirty (30) days before its expiration. The Contract may be renewed for up to three (3) additional one (1) year periods. Successful completion of negotiations surrounding the terms of the extension, will be a pre-requisite for the exercise of any option year.

**2.040 CONTRACTOR Personnel**

**2.041 CONTRACTOR Personnel**

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

(b) Key Personnel

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

(ii) Key Personnel shall be dedicated as defined in **Exhibit C** to the Project for its duration in the applicable Statement of Work with respect to other individuals designated as Key Personnel for that Statement of Work.

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

(iv) CONTRACTOR shall not remove any Key Personnel from their assigned roles or the Contract without the prior written consent of the State. If the CONTRACTOR does remove Key Personnel without the prior written consent of the State, it shall be considered an unauthorized removal ("Unauthorized Removal"). It shall not be considered an Unauthorized Removal if Key Personnel must be replaced for reasons beyond the reasonable control of CONTRACTOR, including illness, disability, leave of absence, personal emergency circumstances, resignation or for cause termination of the Key Personnel's employment. It shall not be considered an Unauthorized Removal if Key Personnel must be replaced because of promotions or other job movements allowed by CONTRACTOR personnel policies or Collective Bargaining Agreement(s) as long as the State receives prior written notice before shadowing occurs and CONTRACTOR provides thirty (30) days of shadowing unless parties agree to a different time period. The CONTRACTOR with the State shall review any Key Personnel replacements, and appropriate transition planning will be established. Any Unauthorized Removal may be considered by the State to be a material breach of the Contract, in respect of which the State may elect to exercise its rights under **Section 2.210**.

(v) It is acknowledged that an Unauthorized Removal will interfere with the timely and proper completion of the Contract, to the loss and damage of the State, and that it would be impracticable and extremely difficult to fix the actual damage sustained by the State as a result of any Unauthorized Removal. Therefore, CONTRACTOR and the State agree that in the case of any Unauthorized Removal in respect of which the State does not elect to exercise its rights under **Section 2.210**, the State may assess liquidated damages against CONTRACTOR as specified below.

For the Unauthorized Removal of any Key Personnel designated in the applicable Statement of Work, the liquidated damages amount shall be \$25,000.00 per individual provided CONTRACTOR identifies a replacement approved by the State pursuant to **Section 2.041** and assigns the replacement to the Project to shadow the Key Personnel s/he is replacing for a period of at least thirty (30) days prior to such Key Personnel's removal.



If CONTRACTOR fails to assign a replacement to shadow the removed Key Personnel for at least thirty (30) days, in addition to the \$25,000.00 liquidated damages for an Unauthorized Removal, CONTRACTOR shall pay the amount of \$833.33 per day for each day of the thirty (30) day shadow period that the replacement Key Personnel does not shadow the removed Key Personnel, up to \$25,000.00 maximum per individual. The total liquidated damages that may be assessed per Unauthorized Removal and failure to provide thirty (30) days of shadowing shall not exceed \$50,000.00 per individual.

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

(d) Re-assignment of Personnel at the State's Request. The State reserves the right to require the removal from the Project of CONTRACTOR personnel found, in the judgment of the State, to be unacceptable. The State's request shall be written with reasonable detail outlining the reasons for the removal request. Additionally, the State's request shall be based on legitimate, good-faith reasons. Replacement personnel for the removed person shall be fully qualified for the position. If the State exercises this right, and the CONTRACTOR cannot immediately replace the removed personnel, the State agrees to an equitable adjustment in schedule or other terms that may be affected by the State's required removal. If any such incident with removed personnel results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Service will not be counted in **Section 2.076** for a time as agreed to by the parties.

(e) Staffing Levels.

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

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

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

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

**2.042 CONTRACTOR Identification**

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

**2.043 Cooperation with Third Parties**

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

**2.044 Subcontracting by CONTRACTOR**

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

(b) CONTRACTOR shall not delegate any duties under this Contract to a Subcontractor unless the Department of Management and Budget, Office of Purchasing Operations has given written consent to such delegation. The State shall have the right of prior written approval of all Subcontractors and to require CONTRACTOR to replace any Subcontractors found, in the reasonable judgment of the State, to be unacceptable. The State’s request shall be written with reasonable detail outlining the reasons for the removal request. Additionally, the State’s request shall be based on legitimate, good-faith reasons. Replacement Subcontractor(s) for the removed Subcontractor shall be fully qualified for the position. If the State exercises this right, and the CONTRACTOR cannot immediately replace the removed Subcontractor, the State will agree to an equitable adjustment in schedule or other terms that may be affected by the State’s required removal. If any such incident with a removed Subcontractor results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Work will not be counted in **Section 2.076** for a time agreed upon by the parties.

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

(d) Except where specifically approved in writing by the State on a case-by-case basis, CONTRACTOR shall flow down the obligations in **Sections 2.040, 2.110, 2.150, 2.160, 2.171(c), 2.172(b),**

**2.180, 2.260, 2.276, 2.297** in all of its agreements with any Subcontractors.

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

**2.045 CONTRACTOR Responsibility for Personnel**

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

**2.050 State Standards**

**2.051 Existing Technology Standards**

The CONTRACTOR will adhere to all existing standards as described within the comprehensive listing of the State’s existing technology standards at [http://www.michigan.gov/dit/0,1607,7-139-30639\\_30655---,00.html](http://www.michigan.gov/dit/0,1607,7-139-30639_30655---,00.html).

**2.052 PM Methodology Standards**

The State has adopted a standard documented Project Management Methodology (PMM) for use on all Information Technology (IT) based projects. See the State’s PMM website at <http://www.michigan.gov/projectmanagement>.

The CONTRACTOR shall use the State’s PPM to manage this Contract. If the CONTRACTOR requires training on the PMM, those costs shall be the responsibility of the CONTRACTOR, unless otherwise stated.

**2.053 Adherence to Portal Technology Tools**

The State has adopted the following tools for its Portal Technology development efforts:

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

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

CONTRACTORS that are compelled to use alternate tools must have received an exception from DIT, Enterprise Application Services Office, e-Michigan Web Development team, before this Contract is effective.

**2.054 Acceptable Use Policy**

To the extent that CONTRACTOR has access to the State computer system, CONTRACTOR must comply with the State’s Acceptable Use Policy, see <http://www.michigan.gov/dit/0,1607,7-139-34305-73760--,00.html>. All CONTRACTOR employees must be required, in writing, to agree to the State’s Acceptable Use Policy before accessing the State system. The State reserves the right to terminate Contractor’s access to the State system if a violation occurs.

**2.060 Deliverables**

**2.061 Ordering**

(a) Any Services/Deliverables to be furnished under this Contract shall be ordered by issuance of written Purchase Orders/Blanket Purchase Order by the State after approval by the Contract Administrator or his/her designee. All orders are subject to the terms and conditions of this Contract. In the event of conflict between an order and this Contract, the Contract shall take precedence as stated in **Section 2.293**. In no event shall

any additional terms and conditions contained on a Purchase Order/Blanket Purchase Order be applicable, unless specifically contained in that Purchase Order/Blanket Purchase Order's accompanying Statement of Work.

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

**2.062 Software**

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

**2.063 Hardware**

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

**2.064 Equipment to be New and Prohibited Products**

(a) Equipment to be New

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

(b) Prohibited Products

The State will not accept salvage, distressed, outdated or discontinued merchandise. Shipping of such merchandise to any State agency, as a result of an order placed against the Contract, shall be considered default by the CONTRACTOR of the terms and conditions of the Contract and may result in cancellation of the Contract by the State. The brand and product number offered for all items shall remain consistent for the term of the Contract, unless Purchasing Operations has approved a change order pursuant to **Section 2.106**.

**2.070 Performance**

**2.071 Performance, In General**

The State engages CONTRACTOR to execute the Contract and perform the Services/provide the Deliverables, and CONTRACTOR undertakes to execute and complete the Contract in its entirety in accordance with the terms and conditions of this Contract and with the participation of State representatives as specified in this Contract.

**2.072 Time of Performance**

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

(b) Without limiting the generality of **Section 2.072(a)**, CONTRACTOR shall notify the State in a timely manner upon becoming aware of any circumstances that may reasonably be expected to jeopardize the timely and successful completion of any Deliverables/Services on the scheduled due dates in the latest State-approved delivery schedule and, in such event, shall inform the State of the projected actual delivery date.

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

**2.073 Liquidated Damages (Reserved)**

**2.074 Bankruptcy**

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

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

**2.075 RESERVED - Time is of the Essence**

**2.076 Service Level Agreements (SLAs)**

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

(i) SLAs will not be calculated for individual Incidents where any event of Excusable Failure has occurred as defined in **Section 2.202**,

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

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

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

1. Time period(s) will not apply where USA MOBILITY does not have access to a physical State Location and where access to the State Location is necessary for problem identification and resolution.
2. Time period(s) will not apply where USA MOBILITY needs to obtain timely and accurate information or appropriate feedback and is unable to obtain timely and accurate

information or appropriate feedback from the State.

(b) Chronic Failure for any Service(s) will be defined as three (3) unscheduled outage(s) or interruption(s) on any individual Service for the same reason or cause or if the same reason or cause was reasonably discoverable in the first instance over a rolling thirty (30) day period. Chronic Failure will result in the State's option to terminate the effected individual Service(s) and procure them from a different vendor for the chronic location(s) with CONTRACTOR to pay the difference in charges for up to three (3) additional months. The termination of the Service will not affect any tiered pricing levels.

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

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

**2.080 Delivery and Acceptance of Deliverables**

**2.081 Delivery Responsibilities**

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

(a) Shipment responsibilities - Services performed/Deliverables provided under this Contract shall be delivered "F.O.B. Destination, within Government Premises." The CONTRACTOR shall have complete responsibility for providing all Services/Deliverables to all site(s) unless otherwise stated. Actual delivery dates will be specified on the individual purchase order.

(b) Delivery locations - Services will be performed/Deliverables will be provided at every State of Michigan location within Michigan unless otherwise stated in the SOW. Specific locations will be provided by the State or upon issuance of individual purchase orders.

(c) Damage Disputes - At the time of delivery to State Locations, the State shall examine all packages. The quantity of packages delivered shall be recorded and any obvious visible or suspected damage shall be noted at time of delivery using the shipper's delivery document(s) and appropriate procedures to record such.

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

**2.082 Delivery of Deliverables**

(a) Where applicable, the Statements of Work/POs contain lists of the Deliverables to be prepared and delivered by CONTRACTOR including, for each Deliverable, the scheduled delivery date and a designation of whether the Deliverable is a document ("Written Deliverable"), a good ("Physical Deliverable") or a Service. All Deliverables shall be completed and delivered for State review and written approval and, where applicable, installed in accordance with the State-approved delivery schedule and any other applicable terms and conditions of the Contract.

**2.083 Testing**

(a) Prior to delivering any of the above-mentioned Statement of Work Physical Deliverables or Services to the State, CONTRACTOR will first perform all required quality assurance activities to verify that the Physical Deliverable or Service is complete and in conformance with its specifications listed in the applicable Statement of Work or Purchase Order. Before delivering a Physical Deliverable or Service to the State, CONTRACTOR shall certify to the State that (1) it has performed such quality assurance activities, (2) it has performed any applicable testing, (3) it has corrected all material deficiencies discovered during such quality assurance activities and testing, (4) the Deliverable or Service is in a suitable state of readiness for the State's review and approval, and (5) the Deliverable/Service has all Critical Security patches/updates applied.

(b) If a Deliverable includes installation at a State Location, then CONTRACTOR shall (1) perform any applicable testing, (2) correct all material deficiencies discovered during such quality assurance activities and testing, and (3) inform the State that the Deliverable is in a suitable state of readiness for the State's review and approval. To the extent that testing occurs at State Locations, the State shall be entitled to observe or otherwise participate in testing.

**2.084 Approval of Deliverables, In General**

(a) All Deliverables (Physical Deliverables and Written Deliverables) and Services require formal written approval by the State, in accordance with the following procedures. Formal approval by the State requires that the Deliverable be confirmed in writing by the State to meet its specifications, which will include the successful completion of Testing as applicable in **Section 2.083**, to be led by the State with the support and assistance of CONTRACTOR. The parties acknowledge that the approval process set forth herein will be facilitated by ongoing consultation between the parties, visibility of interim and intermediate Deliverables and collaboration on key decisions.

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

(c) Prior to commencement of its review or testing of a Deliverable/Service, the State may inspect the Deliverable/Service to confirm that all components of the Deliverable/Service have been delivered without material deficiencies. If the State determines that the Deliverable/Service has material deficiencies, the State may refuse delivery of the Deliverable/Service without performing any further inspection or testing of the Deliverable/Service. Otherwise, the review period will be deemed to have started on the day the State receives the Deliverable or the Service begins, and the State and CONTRACTOR agree that the Deliverable/Service is ready for use and, where applicable, certification by CONTRACTOR in accordance with **Section 2.083(a)**.

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

(e) If, after three (3) opportunities (the original and two repeat efforts), CONTRACTOR is unable to correct all deficiencies preventing Final Acceptance of a Deliverable/Service, the State may: (i) demand that CONTRACTOR cure the failure and give CONTRACTOR additional time to cure the failure at the sole expense of CONTRACTOR; or (ii) keep the Contract in force and do, either itself or through other parties, whatever CONTRACTOR has failed to do, in which event CONTRACTOR shall bear any excess expenditure incurred by the State in so doing beyond the Contract price for such Deliverable/Service and will pay the State an additional sum equal to ten percent (10%) of such excess expenditure to cover the State's general expenses provided the State can furnish proof of such general expenses; or (iii) terminate the particular Statement of Work for default, either in whole or in part by notice to CONTRACTOR provided CONTRACTOR is unable to cure such breach. Notwithstanding the foregoing, the State shall not use, as a basis for exercising its termination rights under this Section, deficiencies discovered in a repeat State Review Period that could reasonably have been discovered during a prior State Review Period.

(f) The State, at any time and in its reasonable discretion, may halt the testing or approval process if such process reveals deficiencies in or problems with a Deliverable/Service in a sufficient quantity or of a sufficient severity as to make the continuation of such process unproductive or unworkable. In such case, the State may stop using the Service or return the applicable Deliverable to CONTRACTOR for correction and re-delivery prior to resuming the testing or approval process.

**2.085 Process For Approval of Written Deliverables**

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

**2.086 Process for Approval of Services**

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

**2.087 Process for Approval of Physical Deliverables**

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

**2.088 Final Acceptance**

Unless otherwise stated in the Statement of Work or Purchase Order, “Final Acceptance” of each Deliverable shall occur when each Deliverable/Service has been approved by the State following the State Review Periods identified in **Sections 2.080-2.087**. Payment will be made for Deliverables installed and accepted. Upon acceptance of a Service, the State will pay for all Services provided during the State Review Period that conformed to the acceptance criteria.

**2.090 Financial**

**2.091 Pricing**

(a) Fixed Prices for Services/Deliverables

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

(b) Adjustments for Reductions in Scope of Services/Deliverables

If the scope of the Services/Deliverables under any Statement of Work issued under this Contract is subsequently reduced by the State, the parties shall negotiate an equitable reduction in Contractor's charges under such Statement of Work commensurate with the reduction in scope, using the rates in **listed in the Pricing Section** unless specifically identified in an applicable Statement of Work.

(c) Services/Deliverables Covered

For all Services/Deliverables to be provided by USA MOBILITY (and its Sub, if any) under this Contract, the State shall not be obligated to pay any amounts in addition to the charges specified in this Contract.

(d) Labor Rates

All time and material charges if any will be at the rates specified in the Pricing Section

**2.092 Invoicing and Payment Procedures and Terms**

(a) Invoicing and Payment – In General

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

(ii) Each CONTRACTOR invoice will show details as to charges by Service/Deliverable component and location at a level of detail reasonably necessary to satisfy the State's accounting and charge-back requirements. Invoices for Services performed on a time and materials basis will show, for each individual, the number of hours of Services performed during the billing period, the billable skill/labor category for such person and the applicable hourly billing rate. Prompt payment by the State is contingent on the Contractor's invoices showing the amount owed by the State minus any holdback amount to be retained by the State in accordance with **Section 2.094**.

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

(b) Taxes (See Section 2.305 and Article 3, Section 3.022-3.024 for additional )

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

(c) Out-of-Pocket Expenses

CONTRACTOR acknowledges that the out-of-pocket expenses that CONTRACTOR expects to incur in performing the Services/ providing the Deliverables (such as, but not limited to, travel and lodging, document reproduction and shipping, and long distance telephone) are included in Contractor's fixed price for each Statement of Work. Accordingly, Contractor's out-of-pocket expenses are not separately reimbursable by the State unless, on a case-by-case basis for unusual expenses, the State has agreed in advance and in writing to reimburse CONTRACTOR for such an expense at the State's current travel reimbursement rates. See [http://www.mi.gov/dmb/0,1607,7-150-9141\\_13132---,00.html](http://www.mi.gov/dmb/0,1607,7-150-9141_13132---,00.html) for current rates.

(d) Pro-ration

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

(e) Antitrust Assignment

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

(f) Final Payment

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

**2.093 State Funding Obligation**

The State's obligation under this Contract is payable only and solely from funds appropriated for the purpose of this Contract. CONTRACTOR acknowledges and agrees that all funds for payments after the end of the current fiscal year are subject to the availability of a legislative appropriation for the purpose of this Contract. Events of non-appropriation are addressed further in **Section 2.210** of this Contract.

**2.094 RESERVED - Holdback**

**2.095 Electronic Payment Availability**

Electronic transfer of funds is available to State Contractors. CONTRACTOR is required to register with the State electronically at <http://www.cpexpress.state.mi.us>. Public Act 533 of 2004, requires all payments be transitioned over to EFT by October, 2005.

**2.100 Contract Management**

**2.101 Contract Management Responsibility**

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

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

**2.102 Problem and Contract Management Procedures**

Problem Management and Contract Management procedures will be governed by the Contract and the applicable Statements of Work.

**2.103 Reports and Meetings**

(a) Reports.

Within thirty (30) days after the Effective Date, the parties shall determine an appropriate set of periodic reports to be issued by CONTRACTOR to the State. Such reports may include:

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

(b) Meetings.

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

**2.104 System Changes**

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

**2.105 Reserved**

**2.106 Change Requests**

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

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

If the State requests or directs the CONTRACTOR to perform any services or provide deliverables that are consistent with and similar to the Services/Deliverables being provided by the CONTRACTOR under the Contract, but which the CONTRACTOR reasonably and in good faith believes are not included within the

Statements of Work, then before performing such services or providing such deliverables, the CONTRACTOR shall notify the State in writing that it considers the services or deliverables to be an Additional Service/Deliverable for which the CONTRACTOR should receive additional compensation. If the CONTRACTOR does not so notify the State, the CONTRACTOR shall have no right to claim thereafter that it is entitled to additional compensation for performing that service or providing that deliverable. If the CONTRACTOR does so notify the State, then such a service or deliverable shall be governed by the Change Request procedure in this Section.

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

(a) Change Requests

(i) State Requests

If the State should require CONTRACTOR to perform New Work, Additional Services or make changes to the Services that would affect the Contract completion schedule or the amount of compensation due CONTRACTOR (a "Change"), the State shall submit a written request for CONTRACTOR to furnish a proposal for carrying out the requested Change (a "Change Request").

(ii) CONTRACTOR Recommendations

CONTRACTOR shall be entitled to propose a Change to the State, on its own initiative, should it be of the opinion that this would benefit the Contract.

(iii) Upon receipt of a Change Request or on its own initiative, CONTRACTOR shall examine the implications of the requested Change on the technical specifications, Contract schedule and price of the Deliverables and Services and shall submit to the State without undue delay a written proposal for carrying out the Change. Contractor's proposal will include any associated changes in the technical specifications, Contract schedule and price and method of pricing of the Services. If the Change is to be performed on a time and materials basis, the Amendment Labor Rates shall apply to the provision of such Services. If CONTRACTOR provides a written proposal and should CONTRACTOR be of the opinion that a requested Change is not to be recommended, it shall communicate its opinion to the State but shall nevertheless carry out the Change as specified in the written proposal if the State directs it to do so.

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

(v) No proposed Change shall be performed until the proposed Change has been specified in a duly executed Contract Change Notice issued by the Department of Management and Budget, Office of Purchasing Operations.

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

**2.107 Management Tools**

CONTRACTOR will use an automated tool for planning, monitoring and tracking the Contract's progress. In addition, CONTRACTOR shall use automated project management tools as reasonably necessary to perform the Services, which tools shall include the capability to produce through the end of the Contract: (i) staffing tables with names of personnel assigned to Contract tasks, (ii) project plans showing

tasks, subtasks, Deliverables and the resources required and allocated to each (including detailed plans for all Services to be performed within the next sixty (60) days, updated semi-monthly) and (iii) graphs showing critical events, dependencies and decision points during the course of the Contract. Any tool(s) used by CONTRACTOR for such purposes must produce information of a type and in a manner and format that will support reporting in compliance with the State's standard to the extent such information is described with reasonable detail in the Statements of Work and to the extent the related work is of sufficient project complexity and duration to warrant such reporting.

**2.110 Records and Inspections**

**2.111 Records and Inspections**

The CONTRACTOR agrees that the State may, upon 24-hour notice, perform an audit at Contractor's location(s) to determine if the CONTRACTOR is complying with the requirements of the Contract. The CONTRACTOR agrees to cooperate with the State during the audit and produce all records and documentation that verifies compliance with the Contract requirements.

**2.112 Errors**

(a) If the audit demonstrates any errors in the statements provided to the State, then the amount in error shall be reflected as a credit or debit on the next invoice and in subsequent invoices until the amount is paid or refunded in full. However, a credit or debit may not be carried for more than four (4) quarterly statements. If a balance remains after four (4) quarterly statements, then the remaining amount will be due as a payment or refund within forty-five (45) days of the last quarterly statement that the balance appeared on or termination of the contract, whichever is earlier.

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

**2.120 State Responsibilities**

**2.121 State Performance Obligations**

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

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

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

(d) Except as otherwise provided in **Section 2.220**, the State's failure to perform its responsibilities as set forth in this Contract shall not be deemed to be grounds for termination by CONTRACTOR. However, CONTRACTOR will not be liable for any default or delay in the performance of its obligations under this Contract to the extent such default or delay is caused by nonperformance of the State's obligations under this Contract, provided CONTRACTOR provides the State with reasonable written notice of such nonperformance and CONTRACTOR uses commercially reasonable efforts to perform notwithstanding the State's failure to perform. In addition, if the State's nonperformance of its responsibilities under this Contract materially increases the time required for Contractor's performance or Contractor's cost of performance, CONTRACTOR

shall be entitled to seek an equitable extension via the Change Request process described in **Section 2.106**.

**2.130 Security**

**2.131 Background Checks**

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

All CONTRACTOR personnel will also be expected to comply with the State’s security and acceptable use policies for State IT equipment and resources. See <http://www.michigan.gov/dit/service/0,1607,7-179-25781-73760--,00.html>. Furthermore, CONTRACTOR personnel will be expected to agree to the State’s security and acceptable use policies before the CONTRACTOR personnel will be accepted as a resource to perform work for the State. It is expected the CONTRACTOR will present these documents to the prospective employee before the CONTRACTOR presents the individual to the State as a proposed resource. CONTRACTOR staff will be expected to comply with all Physical Security procedures in place within the facilities where they are working.

**2.140 Reserved**

**2.150 Confidentiality**

**2.151 Freedom of Information**

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

**2.152 Confidentiality**

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

**2.153 Protection of Confidential Information**

The State and CONTRACTOR will each use at least the same degree of care to prevent disclosing to third parties the Confidential Information of the other as it employs to avoid unauthorized disclosure, publication or dissemination of its own confidential information of like character, but in no event less than reasonable care. Neither CONTRACTOR nor the State will (i) make any use of the Confidential Information of the other except as contemplated by this Contract, (ii) acquire any right in or assert any lien against the Confidential Information of the other, or (iii) if requested to do so, refuse for any reason to promptly return the other party's Confidential Information to the other party. Each party will limit disclosure of the other party’s Confidential Information to

employees and Subcontractors who must have access in order to fulfill the purposes of this Contract. Disclosure to, and use by, a Subcontractor is permissible where (A) use of a Subcontractor is authorized under this Contract, (B) such disclosure is necessary or otherwise naturally occurs in connection with work that is within such Subcontractor's scope of responsibility, and (C) CONTRACTOR obligates the Subcontractor in a written Contract to maintain the State's Confidential Information in confidence. At the State's request, any employee of CONTRACTOR and of any Subcontractor having access or continued access to the State's Confidential Information may be required to execute an acknowledgment that the employee has been advised of Contractor's and the Subcontractor's obligations under this Section and of the employee's obligation to CONTRACTOR or Subcontractor, as the case may be, to protect such Confidential Information from unauthorized use or disclosure.

**2.154 Exclusions**

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

**2.155 No Implied Rights**

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

**2.156 Remedies**

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

**2.157 Security Breach Notification**

In the event of a breach of this Section, CONTRACTOR shall take (i) prompt corrective action to cure any such deficiencies and (ii) any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations. CONTRACTOR and the State will cooperate to mitigate, to the extent practicable, the effects of any breach, intrusion, or unauthorized use or disclosure. CONTRACTOR shall report to the State in writing any use or disclosure of Confidential Information, whether suspected or actual, other than as provided for by the Contract within ten (10) days of becoming aware of such use or disclosure or such shorter time period as is reasonable under the circumstances.

**2.158 Survival**

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

**2.159 Destruction of Confidential Information**

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

**2.160 Proprietary Rights**

**2.161 Ownership**

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

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

**2.162 RESERVED - Source Code Escrow**

**2.163 Rights in Data**

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

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

**2.164 Ownership of Materials**

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

**2.165 Standard Software**

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

**2.166 Pre-existing Materials for Custom Software Deliverables**

Neither CONTRACTOR nor any of its Subcontractors shall incorporate any preexisting materials



(including Standard Software) into Custom Software Deliverables or use any pre-existing materials to produce Custom Software Deliverables if such pre-existing materials will be needed by the State in order to use the Custom Software Deliverables unless (i) such pre-existing materials and their owners are identified to the State in writing and (ii) such pre-existing materials are either readily commercially available products for which CONTRACTOR or its Subcontractor, as the case may be, has obtained a license (in form and substance approved by the State) in the name of the State, or are materials that CONTRACTOR or its Subcontractor, as the case may be, has the right to license to the State and has licensed to the State on terms and conditions approved by the State prior to using such pre-existing materials to perform the Services.

### **2.167 General Skills**

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

### **2.170 Warranties And Representations**

#### **2.171 Warranties and Representations**

The CONTRACTOR represents and warrants:

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

(b) The Contract Appendices, Attachments and Exhibits identify the equipment and software and services necessary for the Deliverable(s) to perform and Services to operate in compliance with the Contract's requirements and other standards of performance.

(c) It is the lawful owner or licensee of any Deliverable licensed or sold to the State by CONTRACTOR or developed by CONTRACTOR under this Contract, and CONTRACTOR has all of the rights necessary to convey to the State the ownership rights or licensed use, as applicable, of any and all Deliverables. None of the Deliverables provided by CONTRACTOR to the State under this Contract, nor their use by the State, will infringe the patent, copyright, trade secret, or other proprietary rights of any third party.

(d) If, under this Contract, CONTRACTOR procures any equipment, software or other Deliverable for the State (including equipment, software and other Deliverables manufactured, re-marketed or otherwise sold by CONTRACTOR under Contractor's name), then in addition to Contractor's other responsibilities with respect to such items in this Contract, CONTRACTOR shall assign or otherwise transfer to the State or its designees, or afford the State the benefits of, any manufacturer's warranty for the Deliverable.

(e) The contract signatory has the power and authority, including any necessary corporate authorizations, necessary to enter into this Contract, on behalf of CONTRACTOR.

(f) It is qualified and registered to transact business in all locations where required.

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



(h) Neither CONTRACTOR nor any Affiliates, nor any employee of either has accepted or shall accept anything of value based on an understanding that the actions of the CONTRACTOR or Affiliates or employee on behalf of the State would be influenced. CONTRACTOR shall not attempt to influence any State employee by the direct or indirect offer of anything of value.

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

(j) The prices proposed by CONTRACTOR were arrived at independently, without consultation, communication, or agreement with any other bidder for the purpose of restricting competition; the prices quoted were not knowingly disclosed by CONTRACTOR to any other bidder; and no attempt was made by CONTRACTOR to induce any other person to submit or not submit a proposal for the purpose of restricting competition.

(k) All financial statements, reports, and other information furnished by CONTRACTOR to the State as part of its response to the RFP or otherwise in connection with the award of this Contract fairly and accurately represent the business, properties, financial condition, and results of operations of CONTRACTOR as of the respective dates, or for the respective periods, covered by such financial statements, reports, other information. Since the respective dates or periods covered by such financial statements, reports, or other information, there have been no material adverse change in the business, properties, financial condition, or results of operations of USA MOBILITY.

(m) All written information furnished to the State by or behalf of USA MOBILITY in connection with this Contract, including its bid, is true, accurate, and complete, and contains no untrue statement of material fact or omits any material fact necessary to make such information not misleading.

(n) It is not in material default or breach of any other contract or agreement that it may have with the State or any of its departments, commissions, boards, or agencies. USA MOBILITY further represents and warrants that it has not been a party to any contract with the State or any of its departments that was terminated by the State or such department within the previous five (5) years for the reason that CONTRACTOR failed to perform or otherwise breached an obligation of such contract.

## **2.172 Software Warranties**

### **(a) Performance Warranty**

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

### **(b) No Surreptitious Code Warranty**

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

As used in this Contract, "Self-Help Code" means any back door, time bomb, drop dead device, or other software routine designed to disable a computer program automatically with the passage of time or under the



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

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

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

(c) Calendar Warranty

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

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

(d) Third-party Software Warranty

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

**2.173 Equipment Warranty (See Article 1, Warranties)**

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

The CONTRACTOR shall provide a toll-free telephone number to allow the State to report equipment failures and problems to be remedied by the CONTRACTOR.

The CONTRACTOR agrees that all warranty service it provides under this Contract shall be performed by original equipment manufacturer (OEM) trained, certified and authorized technicians.

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

**2.174 Physical Media Warranty**

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

**2.175 Standard Warranties**

(a) Warranty of Merchantability

Deliverables shall be merchantable. All Deliverables shall be of good quality within the description given by the State, shall be fit for their ordinary purpose, shall be adequately contained and packaged within the description given by the State, shall conform to the agreed upon specifications, and shall conform to the affirmations of fact made by the CONTRACTOR on the container or label.

(b) Warranty of fitness for a particular purpose

When CONTRACTOR has reason to know or knows any particular purpose for which the Deliverables are required, and when the State is relying on the Contractor’s skill or judgment to select or furnish suitable Deliverables, the CONTRACTOR warrants that the Deliverables are fit for such purpose.

(c) Warranty of title

CONTRACTOR shall convey good title in those Deliverables, whose transfer is right and lawful. All Deliverables provided by CONTRACTOR shall be delivered free from any security interest, lien, or encumbrance. Deliverables shall be delivered free of any rightful claim of any third person of ownership, interest, lien or encumbrance.

**2.176 Consequences For Breach**

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

**2.180 Insurance**

**2.181 Liability Insurance**

(a) Liability Insurance

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

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

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

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

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

See [http://www.mi.gov/cis/0,1607,7-154-10555\\_22535---,00.html](http://www.mi.gov/cis/0,1607,7-154-10555_22535---,00.html).

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

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

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

1. Commercial General Liability with the following minimum coverage:

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

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

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

The CONTRACTOR must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents as ADDITIONAL INSURED(S) on the vehicle liability certificate. The

CONTRACTOR also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company.

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

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

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

4. Employers liability insurance with the following minimum limits:

- \$100,000 each accident
- \$100,000 each employee by disease
- \$500,000 aggregate disease

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

6. Umbrella or Excess Liability Insurance in a minimum amount of ten million dollars (\$10,000,000.00), which shall apply, at a minimum, to the insurance required in Subsection 1 (Commercial General Liability) above.

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

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

(b) Subcontractors

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

(c) Certificates of Insurance and Other Requirements

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

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

**2.190 Indemnification**

**2.191 Indemnification**

(a) General Indemnification

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

(b) Code Indemnification

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

(c) Employee Indemnification

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

(d) Patent/Copyright Infringement Indemnification

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

service supplied by the CONTRACTOR or its subcontractors, or the operation of such equipment, software, commodity or service, or the use of any documentation provided with such equipment, software, commodity or service infringes any United States patent, copyright, trademark or trade secret of any person or entity, which is enforceable under the laws of the United States.

In addition, should the equipment, software, commodity, or service, or its operation, become or in the State's or Contractor's opinion be likely to become the subject of a claim of infringement, the CONTRACTOR shall at the Contractor's sole expense (i) procure for the State the right to continue using the equipment, software, commodity or service or, if such option is not reasonably available to the CONTRACTOR, (ii) replace or modify to the State's reasonable satisfaction the same with equipment, software, commodity or service of equivalent function and performance so that it becomes non-infringing, or, if such option is not reasonably available to CONTRACTOR, (iii) accept its return by the State with appropriate credits to the State against the Contractor's charges (including, to the extent Contractor's election under pursuant to this sentence renders unusable any equipment or software purchased by the State from contractor, a refund to the State of the un-depreciated portion of the purchase price actually paid for such equipment or software based upon a [five (5)] year useful life from the date of sale (a "Pro Rata Refund").

Notwithstanding the foregoing, the CONTRACTOR shall have no obligation to indemnify or defend the State for, or to pay any costs, damages or attorneys' fees related to, any claim based upon (i) equipment developed based on written specifications of the State; or (ii) use of the equipment in a configuration other than implemented or approved in writing by the CONTRACTOR, including, but not limited to, any modification of the equipment by the State; (iii) the combination, operation, or use of the equipment with equipment or software not supplied by the CONTRACTOR under this Contract use of any portion of such equipment, software, commodity or service, that is updateable software or firmware unless such software or firmware is the most current release made available to the State, if the most current release was furnished to the State specifically to avoid such infringement or misappropriation and if such infringement or misappropriation would have been avoided by use of the most current release, and (iv) use of such equipment, software, commodity or service, after Contractor gives the State reasonable notice of the infringement and the opportunity to discontinue use of the Service and receive a Pro Rata Refund with respect to any software or hardware purchased by the State from Contractor that is no longer useful as a result of such discontinuance.

**2.192 Continuation of Indemnification Obligations**

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

**2.193 Indemnification Procedures**

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

(a) After receipt by the State of notice of the action or proceeding involving a claim in respect of which it will seek indemnification, the State shall promptly notify CONTRACTOR of such claim in writing and take or assist CONTRACTOR in taking, as the case may be, any reasonable action to avoid the imposition of a default judgment against CONTRACTOR. No failure to notify CONTRACTOR shall relieve CONTRACTOR of its indemnification obligations except to the extent that CONTRACTOR can demonstrate damages attributable to such failure. Within ten (10) days following receipt of written notice from the State relating to any claim, CONTRACTOR shall notify the State in writing whether CONTRACTOR agrees to assume control of the defense and settlement of that claim (a "Notice of Election"). After notifying CONTRACTOR of a claim and prior to the State receiving Contractor's Notice of Election, the State shall be entitled to take reasonable steps to defend against the claim, at Contractor's expense, and CONTRACTOR will be responsible for any reasonable costs incurred by the State in defending against the claim during such period.

(b) If CONTRACTOR delivers a Notice of Election relating to any claim: (i) the State shall be entitled to participate in the defense of such claim and to employ counsel at its own expense to assist in the handling of such claim and to monitor and advise the State about the status and progress of the defense; (ii) CONTRACTOR shall, at the request of the State, demonstrate to the reasonable satisfaction of the State,

Contractor's financial ability to carry out its defense and indemnity obligations under this Contract; (iii) CONTRACTOR shall periodically advise the State about the status and progress of the defense and shall obtain the prior written approval of the State before entering into any settlement of such claim or ceasing to defend against such claim and (iv) to the extent that any principles of Michigan governmental or public law may be involved or challenged, the State shall have the right, at its own expense, to control the defense of that portion of such claim involving the principles of Michigan governmental or public law. Notwithstanding the foregoing, the State may retain control of the defense and settlement of a claim by written notice to CONTRACTOR given within ten (10) days after the State's receipt of Contractor's information requested by the State pursuant to clause (ii) of this paragraph if the State determines that CONTRACTOR has failed to demonstrate to the reasonable satisfaction of the State Contractor's financial ability to carry out its defense and indemnity obligations under this Section. Any litigation activity on behalf of the State of Michigan, or any of its subdivisions pursuant to this Section, must be coordinated with the Department of Attorney General. In the event the insurer's attorney represents the State pursuant to this Section, the insurer's attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.

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

**2.200 Limits of Liability and Excusable Failure**

**2.201 Limits of Liability**

The Contractor's liability for damages to the State shall be limited to two times the value of the Contract. The foregoing limitation of liability shall not apply to claims for infringement of United States patent, copyright, trademarks or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the CONTRACTOR; to claims covered by other specific provisions of this Contract calling for liquidated damages; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on this Contract.

The State's liability for damages to the CONTRACTOR shall be limited to the value of the Contract.

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

**2.202 Excusable Failure**

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

In such event, the non-performing party will be excused from any further performance or observance of the obligation(s) so affected for as long as such circumstances prevail and such party continues to use its commercially reasonable efforts to recommence performance or observance whenever and to whatever extent possible without delay and provided further that such party promptly notifies the other party in writing of the inception of the excusable failure occurrence, and also of its abatement or cessation.

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

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

If any of the above-enumerated circumstances substantially prevent, hinder, or delay the State's performance of its obligation to pay undisputed amounts due for Services/provision of Deliverables for more than forty (90) Business Days, then at Contractor's option: (a) Contractor may discontinue the provision of Services and withhold Deliverables for so long as the failure to pay shall continue; or (b) the Contractor may terminate the Contract for which pertains to the undisputed (unpaid) service.

**2.203 Disaster Recovery**

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

**2.210 Termination/Cancellation by the State**

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

**2.211 Termination for Cause**

(a) In the event that CONTRACTOR breaches any of its material duties or obligations under this Contract (including a Chronic Failure to meet any particular SLA as defined in **Section 2.076**), which are either not capable of or subject to being cured, or are not cured within the time period specified in the written notice of breach provided by the State (such time period not to be less than thirty (30) days), or pose a serious and imminent threat to the health and safety of any person, or the imminent loss, damage or destruction of any real or tangible personal property, the State may, having provided written notice of termination to CONTRACTOR, terminate this Contract in whole or in part, for cause, as of the date specified in the notice of termination.

(b) In the event that this Contract is terminated for cause, in addition to any legal remedies otherwise available to the State by law or equity, CONTRACTOR shall be responsible for all costs incurred by the State in terminating this Contract, including but not limited to, State administrative costs, reasonable attorneys' fees and court costs, and any reasonable additional costs the State may incur to procure the Services/Deliverables required by this Contract from other sources. Re-procurement costs shall not be

considered by the parties to be consequential, indirect or incidental damages, and shall not be excluded by any other terms otherwise included in this Contract, provided such costs are not in excess of fifty percent (50%) more than the prices for such Service/Deliverables provided under this Contract.

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

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

**2.212 Termination for Convenience**

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

**2.213 Non-Appropriation**

(a) CONTRACTOR acknowledges that, if this Contract extends for several fiscal years, continuation of this Contract is subject to appropriation or availability of funds for this Contract. If funds to enable the State to effect continued payment under this Contract are not appropriated or otherwise made available, the State shall have the right to terminate this Contract and all affected Statements of Work, in whole or in part, at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of termination to CONTRACTOR. The State shall give CONTRACTOR at least thirty (30) days advance written notice of termination for non-appropriation or unavailability (or such time as is available if the State receives notice of the final decision less than thirty (30) days before the funding cutoff).

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

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

**2.214 Criminal Conviction**

The State may terminate this Contract immediately and without further liability or penalty in the event

CONTRACTOR, an officer of CONTRACTOR, or an owner of a 25% or greater share of CONTRACTOR is convicted of a criminal offense incident to the application for, or performance of, a State, public or private Contract or subcontract; convicted of a criminal offense, including any of the following: embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, attempting to influence a public employee to breach the ethical conduct standards for State of Michigan employees; convicted under State or federal antitrust statutes; or convicted of any other criminal offense which in the sole discretion of the State reflects upon Contractor’s business integrity.

**2.215 Approvals Rescinded**

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

**2.216 Rights and Obligations Upon Termination**

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

(b) In the event the State terminates this Contract prior to its expiration for its own convenience, the State shall pay CONTRACTOR for all charges due for Services provided prior to the date of termination and, if applicable, as a separate item of payment pursuant to this Contract, for Work In Process, on a percentage of completion basis at the level of completion determined by the State. All completed or partially completed Deliverables prepared by CONTRACTOR pursuant to this Contract shall, at the option of the State, become the State’s property, and CONTRACTOR shall be entitled to receive equitable fair compensation for such Deliverables. Regardless of the basis for the termination, the State shall not be obligated to pay, or otherwise compensate, CONTRACTOR for any lost expected future profits, costs or expenses incurred with respect to Services not actually performed for the State.

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

**2.217 Reservation of Rights**

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

**2.218 CONTRACTOR Transition Responsibilities**

In the event this contract is terminated, for convenience or cause, dissolved, voided, rescinded, nullified, expires or is otherwise rendered unenforceable, the CONTRACTOR agrees to comply with direction provided by the State to assist in the orderly transition of equipment, services, software, leases, etc. to the

State or a third party designated by the State. In the event of termination or the expiration of this Contract, the CONTRACTOR agrees to make all reasonable efforts to effect an orderly transition of services within a reasonable period of time that in no event will exceed ninety (90) days. These efforts shall include, but are not limited to, the following:

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

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

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

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

**2.219 State Transition Responsibilities**

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

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

**2.220 Termination by CONTRACTOR**

**2.221 Termination by CONTRACTOR**

If the State materially breaches its obligation to pay CONTRACTOR undisputed amounts due and owing under this Contract in accordance with **Section 2.090**, or if the State breaches its other obligations under this Contract to an extent that makes it impossible or commercially impractical for CONTRACTOR to perform the Services, and if the State does not cure the breach within the time period specified in a written notice of breach provided to the State by CONTRACTOR (such time period not to be less than thirty (30) days), then CONTRACTOR may terminate this Contract, in whole or in part based on Statement of Work for cause, as of the date specified in the notice of termination; provided, however, that CONTRACTOR must discharge its obligations under **Section 2.250** before any such termination.

**2.230 Stop Work**

**2.231 Stop Work Orders**

The State may, at any time, by written stop work order to CONTRACTOR, require that CONTRACTOR stop all, or any part, of the work called for by the Contract for a period of up to ninety (90) calendar days after the stop work order is delivered to CONTRACTOR, and for any further period to which the parties may agree. The stop work order shall be specifically identified as such and shall indicate that it is issued under this **Section 2.230**. Upon receipt of the stop work order, CONTRACTOR shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the stop work order during the period of work stoppage. Within the period of the stop work order, the State shall either: (a) cancel the stop work order; or (b) terminate the work covered by the stop work order as provided in **Section 2.210**.

**2.232 Cancellation or Expiration of Stop Work Order**

If a stop work order issued under this **Section 2.230** is canceled or the period of the stop work order or any extension thereof expires, CONTRACTOR shall resume work. The parties shall agree upon an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract shall be modified, in writing, accordingly, if: (a) the stop work order results in an increase in the time required for, or in Contractor's costs properly allocable to, the performance of any part of the Contract; and (b) CONTRACTOR asserts its right to an equitable adjustment within thirty (30) calendar days after the end of the period of work stoppage; provided that, if the State decides the facts justify the action, the State may receive and act upon a CONTRACTOR proposal submitted at any time before final payment under the Contract. Any adjustment will conform to the requirements of **Section 2.106**.

**2.233 Allowance of CONTRACTOR Costs**

If the stop work order is not canceled and the work covered by the stop work order is terminated for reasons other than material breach, such termination shall be deemed to be a termination for convenience under **Section 2.212**, and the State shall allow reasonable costs resulting from the stop work order in arriving at the termination settlement. For the avoidance of doubt, the State shall not be liable to CONTRACTOR for loss of profits because of a stop work order issued under this **Section 2.230**.

**2.240 Reserved**

**2.250 Dispute Resolution**

**2.251 In General**

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

**2.252 Informal Dispute Resolution**

(a) All operational disputes between the parties shall be resolved under the Contract Management procedures developed pursuant to **Section 2.100**. If the parties are unable to resolve any disputes after compliance with such processes, the parties shall meet with the Director of Purchasing Operations, DMB, or designee, for the purpose of attempting to resolve such dispute without the need for formal legal proceedings, as follows:

- (i) The representatives of CONTRACTOR and the State shall meet as often as the parties

reasonably deem necessary in order to gather and furnish to each other all information with respect to the matter in issue which the parties believe to be appropriate and germane in connection with its resolution. The representatives shall discuss the problem and negotiate in good faith in an effort to resolve the dispute without the necessity of any formal proceeding.

(ii) During the course of negotiations, all reasonable requests made by one party to another for non-privileged information reasonably related to the Contract will be honored in order that each of the parties may be fully advised of the other's position.

(iii) The specific format for the discussions will be left to the discretion of the designated State and CONTRACTOR representatives, but may include the preparation of agreed upon statements of fact or written statements of position.

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

(b) This **Section 2.250** will not be construed to prevent either party from instituting, and a party is authorized to institute, formal proceedings earlier to avoid the expiration of any applicable limitations period, to preserve a superior position with respect to other creditors, or pursuant to **Section 2.253**.

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

**2.253 Injunctive Relief**

The only circumstance in which disputes between the State and CONTRACTOR will not be subject to the provisions of **Section 2.252** is where a party makes a good faith determination that a breach of the terms of the Contract by the other party is such that the damages to such party resulting from the breach will be so immediate, so large or severe and so incapable of adequate redress after the fact that a temporary restraining order or other immediate injunctive relief is the only adequate remedy.

**2.254 Continued Performance**

Each party agrees to continue performing its obligations under the Contract while a dispute is being resolved except to the extent the issue in dispute precludes performance (dispute over payment shall not be deemed to preclude performance) and without limiting either party's right to terminate the Contract as provided in **Section 2.210** and **2.220**, as the case may be.

**2.260 Federal and State Contract Requirements**

**2.261 Nondiscrimination**

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

**2.262 Unfair Labor Practices**

Pursuant to 1980 PA 278, MCL 423.231, *et seq.*, the State shall not award a Contract or subcontract to an employer whose name appears in the current register of employers failing to correct an unfair labor practice compiled pursuant to section 2 of the Act. This information is compiled by the United States National Labor Relations Board. A CONTRACTOR of the State, in relation to the Contract, shall not enter into a contract with a Subcontractor, manufacturer, or supplier whose name appears in this register. Pursuant to section 4 of 1980 PA 278, MCL 423.324, the State may void any Contract if, subsequent to award of the Contract, the name of

CONTRACTOR as an employer or the name of the Subcontractor, manufacturer or supplier of CONTRACTOR appears in the register.

**2.263 Workplace Safety and Discriminatory Harassment**

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

**2.270 Litigation**

**2.271 Disclosure of Litigation**

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

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

- (i) the ability of CONTRACTOR (or a Subcontractor hereunder) to continue to perform this Contract in accordance with its terms and conditions, or
- (ii) whether CONTRACTOR (or a Subcontractor hereunder) in performing Services for the State is engaged in conduct which is similar in nature to conduct alleged in such Proceeding, which conduct would constitute a breach of this Contract or a violation of Michigan law, regulations or public policy, then CONTRACTOR shall be required to provide the State all reasonable assurances requested by the State to demonstrate that:

(A) CONTRACTOR and/or its Subcontractors hereunder will be able to continue to perform this Contract and any Statements of Work in accordance with its terms and conditions, and

(B) CONTRACTOR and/or its Subcontractors hereunder have not and will not engage in conduct in performing the Services which is similar in nature to the conduct alleged in such Proceeding.

(c) CONTRACTOR shall make the following notifications in writing:

(1) Within thirty (30) days of CONTRACTOR becoming aware that a change in its ownership or officers has occurred, or is certain to occur, or a change that could result in changes in the valuation of its capitalized assets in the accounting records, CONTRACTOR shall notify the Office of Purchasing Operations.

(2) CONTRACTOR shall also notify the Office of Purchasing Operations within thirty (30) days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership or officers.

(3) CONTRACTOR shall also notify Purchasing Operations within thirty (30) days whenever

changes to company affiliations occur.

**2.272 Governing Law**

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

**2.273 Compliance with Laws**

CONTRACTOR shall comply with all applicable state, federal, and local laws and ordinances (“Applicable Laws”) in providing the Services/Deliverables.

**2.274 Jurisdiction**

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

**2.280 Environmental Provision**

**2.281 Environmental Provision**

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

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

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

(c) Once the Hazardous Material has been removed or rendered harmless by the State, the affected Work shall be resumed as directed in writing by the State. Any determination by the Michigan Department of Community Health and/or the Michigan Department of Environmental Quality (whichever is applicable) that the Hazardous Material has either been removed or rendered harmless shall be binding upon the State and CONTRACTOR for the purposes of resuming the Work. If any such incident with Hazardous Material results in delay not reasonable anticipatable under the circumstances and which is attributable to the

State, the applicable SLAs for the affected Work will not be counted in **Section 2.076** for a time as mutually agreed by the parties.

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

**2.290 General**

**2.291 Amendments**

The Contract may not be modified, amended, extended, or augmented, except by a writing executed by the parties.

**2.292 Assignment**

(a) Neither party shall have the right to assign the Contract, or to assign or delegate any of its duties or obligations under the Contract, to any other party (whether by operation of law or otherwise), without the prior written consent of the other party; provided, however, that the State may assign the Contract to any other State agency, department, division or department without the prior consent of CONTRACTOR and CONTRACTOR may assign the Contract to an affiliate so long as such affiliate is adequately capitalized and can provide adequate assurances that such affiliate can perform the Contract. Any purported assignment in violation of this Section shall be null and void. It is the policy of the State of Michigan to withhold consent from proposed assignments, subcontracts, or notations when such transfer of responsibility would operate to decrease the State's likelihood of receiving performance on the Contract or the State's ability to recover damages.

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

**2.293 Entire Contract; Order of Precedence**

(a) The Contract, including any Statements of Work and Exhibits, to the extent not contrary to the Contract, each of which is incorporated for all purposes, constitutes the entire agreement between the parties with respect to the subject matter and supersedes all prior agreements, whether written or oral, with respect to such subject matter and as additional terms and conditions on the purchase order shall apply as limited by **Section 2.061**.

(b) In the event of any inconsistency between the terms of the Contract and a Statement of Work, the terms of the Statement of Work will take precedence (as to that Statement of Work only); provided, however, that a Statement of Work may not modify or amend the terms of **Sections 2.110 through 2.220** of the Contract, which may be modified or amended only by a formal Contract amendment.

**2.294 Headings**

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

**2.295 Relationship of the Parties (Independent CONTRACTOR Relationship)**

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

during the performance of the Contract.

**2.296 Notices**

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

**Doug Collier**

Office of Purchasing Operations  
Department of Management and Budget  
Mason Bldg, 2nd Floor  
PO Box 30026  
Lansing, MI 48909  
Phone: 517-335-4804  
E-mail: collierd1@michigan.gov

with copies to:

**Michael Breen**

Department of Information Technology  
Constitution Hall, 1st Floor N Tower  
Lansing, MI 48909  
E-mail: breenm@michigan.gov  
(517) 241-7720

and

**Steve McMahan**

Michigan Dept. of Information Technology – Telecommunications  
608 W. Allegan  
Lansing, MI 48913  
Phone: 517-373-6353  
E-mail: mcmahons@michigan.gov

**CONTRACTOR(s):**

<b>Name:</b>	<u>Barbara A. Williams</u>
<b>Address:</b>	<u>1851-B R.W. Berends SW</u>
<b>City, State, Zip</b>	<u>Wyoming, MI 49519</u>
<b>Phone:</b>	<u>(616) 257-9468</u>
<b>Fax:</b>	<u>(616) 257-9932</u>
<b>E-Mail</b>	<u>Barbara.Williams@usamobility.com</u>

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

**2.297 Media Releases and Contract Distribution**

(a) Media Releases

Neither CONTRACTOR nor the State will make any news releases, public announcements or public disclosures, nor will they have any conversations with representatives of the news media, pertaining to the Contract, the Services or the Contract without the prior written approval of the other party, and then only in



accordance with explicit written instructions provided by that party. In addition, neither CONTRACTOR nor the State will use the name, trademarks or other proprietary identifying symbol of the other party or its affiliates without such party's prior written consent. Prior written consent of the CONTRACTOR must be obtained from authorized representatives.

(b) **Contract Distribution**

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

**2.298 Reformation and Severability**

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

**2.299 Consents and Approvals**

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

**2.300 No Waiver of Default**

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

**2.301 Survival**

Any provisions of the Contract that impose continuing obligations on the parties including the parties' respective warranty, indemnity and confidentiality obligations, shall survive the expiration or termination of the Contract for any reason. Specific references to survival in the Contract are solely for identification purposes and not meant to limit or prevent the survival of any other section.

**2.302 Covenant of Good Faith**

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

**2.303 Permits**

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

**2.304 Website Incorporation**

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

**2.305 Taxes**

Vendors are expected to collect and pay all applicable federal, state, and local employment taxes, including the taxes defined in Section 3.022 for all persons involved in the resulting Contract.

The State may refuse to award a contract to any Vendor who has failed to pay any applicable State taxes. The State may refuse to accept Vendor's bid, if Vendor has any outstanding debt with the State. Prior to any



award, the State will verify whether Vendor has any outstanding debt with the State.

### **2.306 Prevailing Wage**

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

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

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

### **2.307 Call Center Disclosure**

**CONTRACTOR and/or all subcontractors if any, involved in the performance of this Contract providing call or contact center services to the State must disclose the location of its call or contact center services to inbound callers. Failure to disclose this information shall be a material breach of this Contract.**

### **2.308 Future Bidding Preclusion**

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

### **2.310 Reserved**

### **2.320 Extended Purchasing**

### **2.321 MiDEAL**

Public Act 431 of 1984 permits DMB to provide purchasing services to any city, village, county, township, school district, intermediate school district, non-profit hospital, institution of higher education, community, or junior college. A current listing of approved program members is available at: <http://www.michigan.gov/doingbusiness/0,1607,7-146-6586-16656--,00.html>. Unless otherwise stated, it is the responsibility of the CONTRACTOR to ensure that the non-state agency is an authorized purchaser before extending the Contract pricing.

The CONTRACTOR will supply Contract Services and equipment at the established State of Michigan contract prices and terms to the extent applicable and where available. Inasmuch as these are non-state agencies, all invoices will be submitted to and payment remitted by the local unit of government on a direct and individual basis.

To the extent that authorized local units of government purchase quantities of Services and/or equipment under this Contract, the quantities of Services and/or equipment purchased will be included in determining the appropriate rate wherever tiered pricing based on quantity is provided. Additional E- Rate Discounts funding available through Universal Service Funds Program for all Michigan Schools and Libraries See <http://www.org/sl/> # 571590000625733

**2.322 State Employee Purchases**

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

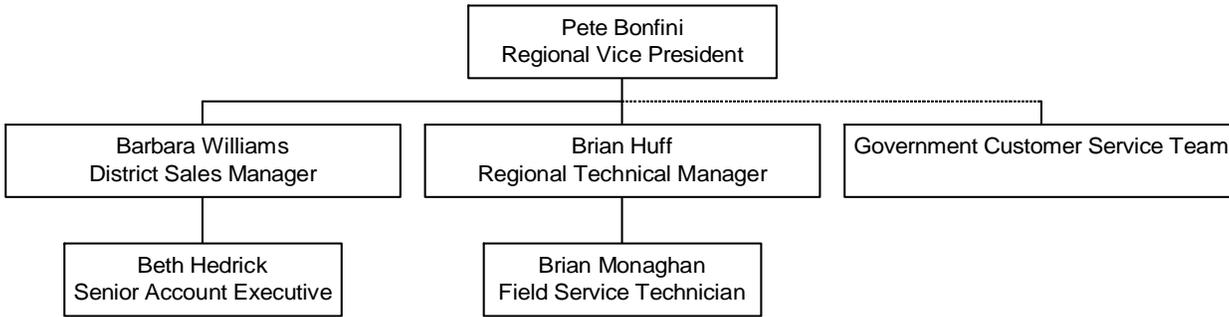
The CONTRACTOR will supply Contract Services and Deliverables at the established State of Michigan contract prices and terms to the extent applicable and where available. Inasmuch as these are non-state agencies, all invoices will be submitted to and payment remitted by the State employee on a direct and individual basis.

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

**2.330 Federal Grant Requirements**

**2.331 RESERVED - Federal Grant Requirements**

**Exhibit A  
Organizational Chart, including Key Personnel**



**BARBARA A. WILLIAMS**  
**USA Mobility**  
**District Manager**  
[Barbara.Williams@usamobility.com](mailto:Barbara.Williams@usamobility.com)

**Bethany A. Hedrick**  
**USA Mobility**  
**Sr. Account Manager**  
[beth.hedrick@usamobility.com](mailto:beth.hedrick@usamobility.com)

**Engineering Staff:**

**Brian Huff - Regional Technical Manager**

**Brian Monaghan - Senior Technician**

## Exhibit B Approved Hardware

### Equipment Options

#### One Way Numeric Options

Sun Telecom ST800

DavisComms BR502

Sun Telecom AN1000

UCC Eagle Ranger

Daviscomms BR501

#### Sun Telecom ST800 (Numeric Messaging)



- *21 message slots*
- *Easy to read light display*
- *Shows time of day and date*
- *Retains messages when off*
- *Low battery alert*
- *3 melody Alerts, 4 tone alerts, vibrate and silent options*
- *Time-stamps incoming messages*



ST800.pdf

#### DavisComms BR502 (Numeric Messaging)



- *18 message slots*
- *Easy to read backlight display*
- *Shows time of day and date*
- *Unread message reminder alert*
- *Graphical battery level indicator*
- *11 Alerts plus alarm*
- *Time-stamps incoming messages*



BR502.pdf

One Way Numeric Options continued...

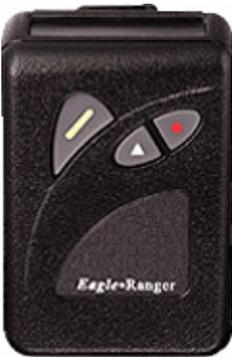
**Sun Telecom AN1000 (Numeric Messaging)**



- 30 message slots
- Shows 1 line of 12 digits, plus 1 line of icons
- Shows time of day and date
- Unread message reminder alert
- Graphical battery level indicator
- 16 user selectable alerts, including vibrate, chirp, vibrate/chirp, and silent/no alert options
- Time-stamps incoming messages



**UCC Eagle Ranger (Numeric Messaging)**



- 20 numeric message capacity
- Easy to read backlight display
- Shows time of day and date
- Choice of 3 alarm settings
- Graphical battery level indicator
- Allows user to choose from 19 alerts PLUS 'vibrate' and 'silent/no alert' options
- Time-stamps incoming messages



**Daviscomms BR501 (Numeric Messaging)**



- 20 numeric message capacity
- Unread message reminder alert
- Shows time of day and date
- Choice of 3 alarm settings
- Graphical battery level indicator
- 12 alerts PLUS 'vibrate' and 'silent/no alert' options
- Time-stamps incoming messages



## One-way Alphanumeric Options

DavisComms BR800 Series

Unication Alpha Elite

Sun Telecom Titan III

### DavisComms BR800 (Word Messaging)



- *Intuitive 6 button design*
- *30 personal message slots*
- *Shows time of day and date*
- *4 line, 80 character display with 2 line zoom capabilities*
- *Graphical battery level indicator*
- *5 musical alerts, vibration or vibration plus alert*
- *3 speed scrolling of message*



BR800.pdf

### Unication Alpha Elite (Word Messaging)



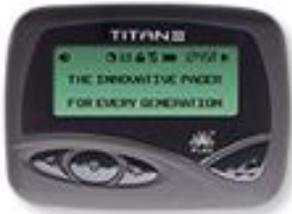
- *Intuitive 6 button design*
- *Stores up to 30,000 total characters*
- *Shows time of day and date*
- *4 line, 80 character display with 2 line zoom capabilities*
- *Graphical battery level indicator*
- *8 musical alerts, vibration or vibration plus alert*
- *Saves messages when off or charging the battery*



Alpha Elite.pdf

One-way Alphanumeric Option continued...

**Sun Telecom Titan III (Word Messaging)**



- *4 Line Display, with 20 characters per line, with user selectable option to view:*
  - *2 line display with 16 characters*
  - *2 line display with 20 characters*
- *20 message slots (6400 characters)*
- *Hold up to 15 group addresses with message history per address*
- *Shows time of day and date*
- *Graphical battery level indicator*
- *Offers 7 melodies, 1 beep, 1 chirp, PLUS vibrate and sleep (no alert) options y*
- *Saves messages when off or replacing the battery*



**Exhibit C  
Pricing**

**SCOPE OF SERVICES AND PRICING**

**LEASED OPTION:**

Service Type	Usage	Lease Price
Numeric - Statewide	Unlimited	\$2.25 including protection
Alphanumeric - Statewide	Unlimited	\$4.50 including protection
Nationwide Numeric	Unlimited	\$9.95 including protection
Nationwide Alphanumeric	Unlimited	\$14.95 including protection
Nationwide 2way	Unlimited	\$19.95 including protection

**LEASED FLAT RATE DEDUCTIBLES FOR LOST/EQUIPMENT NOT RETURNED**

Equipment Model	Deductible
Numeric	\$15.00
Alphanumeric	\$30.00
2way	\$45.00

**CUSTOMER OWNED OPTION:**

Service Type	Usage	Customer Owned Price
Numeric - Statewide	Unlimited	\$1.95
Alphanumeric - Statewide	Unlimited	\$3.75
Nationwide Numeric	Unlimited	\$7.95
Nationwide Alphanumeric	Unlimited	\$10.95
Nationwide 2way	Unlimited	\$16.95

**BUYOUT OF EXISTING EQUIPMENT (ALL UNITS THEN OWNED BY CUSTOMER)**

Equipment Model	Buyout Cost
Numeric	\$5.00
Alphanumeric	\$10.00
2way	\$35.00

**COST TO PURCHASE EQUIPMENT GOING FORWARD**

Equipment Model	New Equipment Cost
Numeric	\$39.00
Alphanumeric	\$69.00
2way	\$149.00

**ANCILLARY SERVICES (LEASED AND/OR CUSTOMER OWNED)**

Feature/Options	Price
Personal 800#	\$3.00
Additional Phone #	\$0.00
Additional States (MI, OH, IN)	\$0.00
Additional States (MI, IN, IL)	\$0.00
Group Capcode	\$3.75
MultiMessenger Group Leader (WME Group)	\$8.00 (up to 100 followers)
Message Carbon Copy (MCC)	\$1.00
MyAlias (Vanity – john.doe@usamobility.net)	\$1.50
Voicemail	MP1 – \$6.00 MP2 - \$4.00 MP4 - \$2.00

**\*\*\*NO CHARGE FOR GROUND SHIPPING ON ALL ORDERS/REPLACEMENTS\*\*\***

Spare Equipment Type	Price
Numeric	\$1.00*
Alphanumeric	\$2.00*
2way	\$4.00

***\*\*Each individual account will receive 5% of total numeric and alpha units at no charge\*\****

***\*\*\*All 2way spares are billed at \$4.00 each/month\*\*\****