



Master Service Agreement

4805 TOWNE CENTRE, SUITE 100, SAGINAW, MI 48604 TELEPHONE: 888-964-2227

MASTER SERVICE AGREEMENT APPROVED VENDOR AWARD CONTRACT NUMBER: 166AN-DSSA2015-0617

This Master Service Agreement (“Agreement”) is made by and between Earthcomm, Inc., (“Seller”) with principal offices located at 3424 Corwin Road, Williamston, MI 48895, and MiCTA with principal offices located at 4805 Towne Centre, Suite 100, Saginaw, Michigan 48604.

WHEREAS, MiCTA is an association made up of non-profit colleges, universities, K-12 school systems, federal, state and local government units, health care providers, libraries and other non-profit entities;

WHEREAS, this agreement is for the benefit of all MiCTA members, entities eligible to become MiCTA members and which do so, and all educational and governmental units which are members (collectively “Members”);

WHEREAS, Seller wishes to provide to Members products and/or services as proposed in Seller’s response to RFP # MT-DSSA 2015

WHEREAS, MiCTA desires to promote Seller’s products and/or services to Members as an independent authorized agent of Seller pursuant to the terms and conditions set forth herein;

WHEREAS, Seller is awarded Approved status, having met all requirements set by MiCTA, and prevailed in MiCTA’s comprehensive RFP process for MT-DSSA 2015, been judged by MiCTA to be a good **value** for Seller’s service and product areas (as identified at the Approved section of MiCTA’s web site) based on price, quality, service, etc. as identified during the RFP evaluation process;

NOW, THEREFORE, in consideration of the promises and mutual covenants contained herein and other good and valuable consideration, the adequacy and receipt of which is hereby acknowledged, the parties agree as follows:

1. MASTER SERVICE AGREEMENT:

1.1. Seller agrees to offer to Members meeting credit criteria, products and services as set forth in the Seller’s response to MT-DSSA 2015, attached as Attachment A at the pricing in Attachment B.

1.2. MiCTA hereby accepts Seller’s offer to provide to Members the products and services, as set forth in Seller’s response to the MT-DSSA 2015 set forth in Attachment A, subject to the terms and conditions of this Agreement and the terms and conditions of the Member Participation Agreement, which each MiCTA Member must sign with Seller.

2. MASTER SERVICE AGREEMENT TERM:

2.1. This Agreement is effective when executed by both parties (“Effective Date”) and continues for two (2) years. MiCTA reserves the option to extend this Agreement for up to three (3) additional one year terms, **subject to the 12-month Proof of Performance, which is described in detail in Attachment C.**

2.2. MiCTA reserves the right to extend the term of this Agreement for up to three (3) additional one-year terms providing the products, service and pricing meet or exceed MiCTA's standards, and Seller has met and continues to meet all the terms and conditions of this Agreement, specifically including without limitation the reporting and commission requirement incorporated in this Agreement from Attachment C.

3. EXCLUSIVE AGREEMENT:

3.1. Seller agrees that this Agreement is for the sole use of all Members. Seller shall not disclose the terms, negotiated pricing and/or benefits provided to Members pursuant to this Agreement to any non-Member.

3.2. Seller agrees that this Agreement supersedes all existing Master Service Agreements containing products and/or services within the scope of MT-DSSA 2015. Nonetheless, any Member Participation Agreements still in effect under a prior Master Service Agreement shall remain in effect and be performed according to their terms until their expiration. Any new Member Participation Agreements would then be under the terms of this Agreement

4. HIGHLY COMPETITIVE PRICING:

Seller hereby agrees to provide all Members with Highly Competitive Pricing throughout the term of this agreement. "Highly Competitive Pricing" means that Seller will offer all Members its most competitive pricing option that it has made available to similarly situated institutions and/or organizations in comparable markets. This provision extends to all products and services provided by Seller under this Agreement.

5. CREDIT CRITERIA

Seller is not obligated to provide service to a Member that does not satisfy Seller's credit criteria.

6. APPOINTMENT OF SALES REPRESENTATIVE:

MiCTA is hereby appointed an independent sales representative with limited authority to solicit, on behalf of Seller, Members as customers for Seller's products and/or service, subject to the terms of this Agreement.

7. ACCEPTANCE OF INDEPENDENT SALES REPRESENTATIVE APPOINTMENT:

MiCTA hereby accepts the appointment by Seller as its authorized sales agent to solicit orders from Members as customers for Seller's products and/or services, subject to the terms and conditions of this Agreement.

8. RELATIONSHIP OF PARTIES:

8.1. MiCTA shall have no authority to bind Seller by contract or otherwise or to make representations as to the policies and procedures of Seller other than as specifically authorized by this Agreement.

8.2. Seller and MiCTA acknowledge and agree that the relationship arising from this Agreement does not constitute or create a general agency, joint venture, partnership,

employee relationship or franchise between them, and that MiCTA is an independent contractor with respect to the services provided under this Agreement.

8.3. MiCTA shall identify itself as an authorized representative of Seller only with respect to the products and/or services covered by this Agreement, and shall otherwise identify itself as an independent entity.

8.4. This Agreement is not intended to and does not create any third party beneficiaries, other than MiCTA members, to the rights and obligations as set forth herein, nor shall any third party beneficiaries be interred by operation or otherwise.

9. CONTRACT DOCUMENTS:

The documents that comprise this Agreement are this Agreement and any attachments or addenda, the MT-DSSA 2015, the Seller's response to such RFP and any attachments or addenda. Each Member that purchases service from Seller shall also have a Member Participation Agreement with Seller.

10. RESOLVING CONFLICTING LANGUAGE:

In the event of a conflict of language among any of the contract documents, the conflict shall be resolved by reference to the documents in the following order: first, this Agreement and attachments or addenda, second, the Seller's response to the RFP and any attachments or addenda, and third, the MT-DSSA 2015 and any attachment or addenda. Any contractual clarifications mutually agreed upon in writing subsequent to this Agreement will supersede the above listed documents.

11. GEOGRAPHICAL/ACCOUNT REPRESENTATIVE:

Seller agrees to designate an Account Representative to be responsible for the coordination of order processing, expediting, problem solving, etc. for any/all Members regardless of their physical location. In addition, the Account Representative is the responsible contact for reporting to MiCTA on a periodic basis, MiCTA total gross sales revenue, as provided in Attachment C.

Additionally:

11.1 Seller agrees to have the Account Representative in place within two (2) weeks of signing this Agreement.

11.2 Seller agrees to notify MiCTA of any personnel changes with the assigned Account Representative, and agrees to fill the position with a skilled and knowledgeable replacement prior to the position becoming vacant.

11.3 Seller agrees to replace the Account Representative on a reasonable and lawful basis if requested to do so by MiCTA.

12. MARKETING AND SALES AIDS:

12.1 MiCTA shall promote the Seller's services or equipment according to a mutually agreed upon marketing plan provided by the Seller.

12.2 Upon request, Seller shall provide to MiCTA promotional materials related to the Seller's products and/or services.

12.3 Seller shall provide MiCTA with an initial sales kit that includes a program description, sales literature, sales aids, and other forms to be used by MiCTA in its activities as provided by this Agreement.

12.4 Seller shall provide a link back to Seller's web site to be installed on the MiCTA web site.

13. LOGO AND NAMES:

The logos and names of both parties are protected and are registered. Each party is only authorized to use the other party's Marks, Service Marks, Logos, etc. on corporate mailings, web pages, promotions, etc. only in connection with the products and/or services covered by this Agreement with the written permission of the other party.

14. FORCE MAJEURE:

Neither Party hereto shall be deemed to be in default of any provision of the Contract for any failure in performance resulting from acts or events beyond the reasonable control of such Party. For purposes of the Contract, such acts shall include, but not be limited to, acts of God, civil or military authority, civil disturbance, war, strikes, fires, floods, other catastrophes, or other events beyond the Parties' reasonable control; provided however, that the provisions of this section shall not preclude either Party from canceling or terminating the Contract, or any order for any product or service included herein, as otherwise permitted hereunder, regardless of any Force Majeure.

15. LIVING DOCUMENT:

The parties agree to treat this Agreement as a living document to allow for industry and technology advances, and to add products and services to Attachment A of this Agreement as mutually agreed in writing from time to time. Seller and MICTA will confer on a regular, periodic basis, at mutually agreeable times and locations, in order to conduct a review to evaluate the possible addition of new Seller product/service offerings to this Agreement. Should MICTA and Seller reach mutual agreement regarding pricing and/or discounts for any/all new products and/or services the parties will add them to this Agreement by written amendment.

16. MICTA PRICING AND PRICE ADJUSTMENTS:

16.1. Seller hereby authorizes the price structure, as designated in seller's response to MT-DSSA 2015, and as attached as Attachments A & B, to be offered to all Members.

16.2. MiCTA acknowledges that with a nationwide agreement, pricing may fluctuate regionally across the country.

17. PRICING REVIEW DATES:

Seller's approved vendor status will become effective upon execution of this Agreement by all parties. Seller's Contract price list(s) for products/services will be released to Members no later than one (1) week after contract execution. MiCTA reserves the right to review and renegotiate the pricing terms of the Agreement once during each twelve (12) month period of the Agreement.

18. INVOICE TERMS:

Seller will provide monthly invoices directly to Members for products and services provided under this Agreement and the Members Participation Agreement. Each invoice shall include a detailed breakdown of the products and services being provided.

Seller agrees to provide Members Net 30-Days invoice terms, unless otherwise agreed with the Member.

19. MEMBER'S EXISTING PARTICIPATION AGREEMENTS:

Members who have existing unexpired Member Participation Agreements for the same or similar products and services will be entitled to (1) continue under the existing Member Participation Agreement, or (2) immediately renew with Seller under the terms of this Agreement, or (3) Member and Seller may mutually agree to enter a new Member Participation Agreement under this Agreement.

20. CODES, PERMITS, FEES, LICENSES:

Seller shall be responsible for any/all permits required for installing the products or services under this Agreement, arranging for all necessary inspections, adhering to all state, federal and industry codes and adhering to the ADA Compliance of Telecommunications Equipment and Services as released by the Federal Communications Commission, September 9, 1999, effective March 1, 2000, when applicable. Seller shall also be responsible for those fees for codes, permits and licenses related to the products and services identified under this Agreement.

21. ORDINANCES AND REGULATIONS:

Seller shall comply with all the applicable statutes, ordinances, and regulations of federal, state, and local governments. Seller shall pay all taxes, insurance, and license fees pertaining to the business herein described.

22. COMPLIANCE WITH LAW:

Seller shall operate in full compliance with all laws, rules and regulations applicable to, and maintain in force all licenses and permits required for its performance under this Agreement.

23. GOVERNING LAW:

The laws of the State of Michigan shall govern this Agreement, including all matters relating to the validity, construction, performance and enforcement thereof. Any Member Participation Agreement entered into by Seller and individual Members will be governed by and construed in accordance with the laws of the state in which service is provided to a Member.

24. NO WAIVER:

No waiver of any of the provisions of this Agreement shall be binding unless it is in writing and signed by both parties. The failure of either party to insist on the strict enforcement of any provision of this Agreement shall not constitute a waiver of any provision and all terms shall remain in full force and effect.

25. SEVERABILITY:

No provision of this Agreement which may be deemed illegal, invalid or unenforceable will in any way invalidate any other provisions of this Agreement, all of which will remain in full force and effect.

26. BINDING EFFECT AND ASSIGNMENT:

This Agreement will be binding upon and inure to the benefit of the parties, their successors and assigns. Either Party may assign or otherwise transfer this Agreement, in part or in whole, or any of its interest herein without the prior written consent of the other Party. Such consent will not be unreasonably withheld. Seller may assign the agreement without MiCTA's consent to a wholly owned subsidiary so long as the services provided to Members are unaffected.

27. CANCELLATION/TERMINATION:

27.1. Either party may terminate this Agreement with cause for breach of any provision of this Agreement provided written notice of breach has been given and such breach has not been cured within thirty (30) days after delivery of such notice. See also Attachment C – Proof of Performance during first twelve (12) months of this Agreement.

27.2 Members shall be responsible for all sums due and owed the seller for products or services provided under this Agreement.

28. SURVIVORSHIP OF PROVISIONS:

All Seller's products purchased, and seller's services performed pursuant to this Agreement shall be bound by all of the Terms and Conditions set forth herein notwithstanding the expiration of the term of this Agreement, including without limitation, the following sections for so long as the products and services remain in use: (i) Governing Law, (ii) Assignment, and (iii) MiCTA Commission and Audit Functions, as defined in this Agreement.

29. NOTICES:

30.1 Notices to be given pursuant to this Agreement will be in writing and will be deemed to have been duly and properly given on the earlier of:

30.1.1 Date such notice has been received; or

30.1.2 Five (5) days after deposit of such notice in the United States Mail, postage prepaid, to be delivered by certified mail, return receipt requested, addressed to Seller at:

Earthcomm, Inc.
3424 Corwin Rd.
Williamston, MI 48895

or at such addresses as seller may designate, in writing, from time to time, or to MiCTA addressed as follows:

MiCTA
Tim von Hoff
4805 Towne Centre
Suite 100
Saginaw, Michigan 48604

or at such address as MiCTA may designate, in writing, from time to time.

30. HEADINGS:

The section number and/or captions appearing in this Agreement are inserted only as a matter of convenience and are in no way intended to define, limit, construe or describe the scope or intent of such sections of this Agreement, or in any way affect this Agreement.

31. IMPLEMENTATION DATES:

Seller's Approved status, as applicable, will become effective upon execution of this Agreement by all parties. MICTA and Seller shall exercise all reasonable efforts, consistent with Article 12 of this Agreement, Marketing Support and Sales Aids, to make Seller's price list(s) for products/services, as set forth in Attachments A and B to this Agreement, available to Members as soon as practicable after the Effective Date of this Agreement


32. ENTIRE AGREEMENT:

This Agreement supersedes and replaces all prior and contemporaneous agreements, understandings and representations, whether oral or written, between the parties and relating to the subject matter hereof, constitutes the entire understanding of the parties with respect to the subject matter of this Agreement. This Agreement may not be modified, changed, altered, or amended except by an express written agreement signed by duly authorized representatives of the parties hereto.

33. CONTRACT EXECUTION:

In Witness Whereof, in consideration of the mutual covenants set forth above and for other goods and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, the parties have entered into the above Agreement and have caused their duly authorized representatives to execute this Agreement.

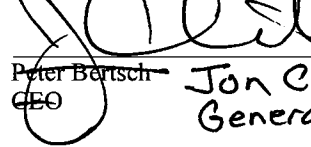
FOR: MICTA



James M. Hudson
President

Date: 7/8/2015

FOR: Earthcomm, Inc.



~~Peter Bertsch~~
CEO

Jon Chick
General Counsel / Corp Sec'y

Date: 7/8/2015

**MASTER SERVICE AGREEMENT
CONTRACT NUMBER: 166AN-DSSA2015-0617**

ATTACHMENT A – SELLERS MICTA PROGRAM OFFERING

Earthcomm, Inc. has responded to the Technical Requirements of the MT-DSSA 2015 RFP as instructed. Earthcomm, Inc. has bid on the following services, as referenced in the response.

- Section 7 – DAS Services
- Section 8 – Distributed Antennae Equipment
- Section 9 – Small Cell
- Section 10.1 – Professional Services
- Section 10.2 – Power Backup and Emergency Power Systems
- Section 10.3 – Extended Warranty and Maintenance Services

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ATTACHMENT B – SELLERS MICTA PROGRAM PRICING

Attached pricing document or insert entire pricing here.



Earthcom cost
sheet.pdf

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ATTACHMENT C – REPORTING AND COMMISSIONS DUE MiCTA

C.1 Commission/Restrictions:

Upon acceptance of an order by Seller, Seller agrees to pay MiCTA a commission fee of not less than 2% of the Eligible Net Revenue (as defined below) generated from any MiCTA account. For purposes of this Agreement:

- C.1.1. *MiCTA Account* shall mean a Member that purchases Seller's products or services under this Agreement and the Member Participation Agreement with Seller.
- C.1.2. *Eligible Net Revenue* means all revenue received from MiCTA Members, but shall not include: (i) any revenues received by Seller for goods and services that are not within the scope of MT-DSSA 2015; (ii) any pass-through access/egress (or related) charges imposed by third parties; (iii) any non-recurring charges imposed on or by Seller's tariffs; (iv) any pass-through directory assistance charges; (v) any taxes or surcharges; and (vi) any promotional or other credits granted by Seller.
- C.1.3. The only commissions, fees or compensation due MiCTA under this Agreement shall be those commissions payable on all MiCTA Accounts pursuant to Member Participation Agreements for products and services within the scope of MT-DSSA 2015.
- C.1.4. Commissions are to be paid monthly beginning sixty (60) days after the billing date starting with the first full month's billing by Seller of a Member, and commission payments shall be made at the end of the appropriate calendar month. Notwithstanding anything else, Seller is only required to pay commissions on the actual "Eligible Net Revenues" received from a Member.
- C.1.5. Notwithstanding the above, in the event that commissions due MiCTA total less than \$50.00 for any given payment period, Seller shall have the right to withhold payment of such commissions until the total reaches \$50.00, and then Seller shall pay to MiCTA such aggregated commissions in the next payment period.
- C.1.6. Seller shall be responsible for payment of all pending MiCTA commissions due from sales revenues generated by this Agreement up through the actual date of termination.
- C.1.7. MiCTA does not guarantee a minimum sales volume or estimated sales volume for this Agreement.
- C.1.8. MiCTA is solely responsible for the payment of any taxes or assessments in connection with its receipt of commission payments hereunder.

C.2 REQUIRED SALES/COMMISSION REPORTS:

Seller is required to notify MiCTA of all sales and/or service commitments with MiCTA Members. The report must minimally, for each Member taking service, include the customer name, contact name/number, city, state, estimated volume, estimated commission, estimated cost savings, and estimated delivery date. A sample report is available upon request. MiCTA may provide Seller with a reporting portal on MiCTA's website and require such reporting to be made electronically on the website. Reports must be submitted by the 60th day following month-end close. **Reports are due even if no sales are made during the period, so that the Seller certifies that no sales were made to MiCTA Members.**

Reports should be sent to:

MiCTA
Attn: Commission Report
4805 Towne Centre
Suite 100
Saginaw, MI 48604

Sales/Commission Reporting Process:

- C.2.1 Reports must include a list of **all** purchases by MiCTA Members from the Seller.
- C.2.2 Seller will be required to submit an Annual Report of all MiCTA Member purchases within 30-days of the Seller's fiscal year close.
- C.2.3 Any failure to file reports of Member sales, or no sales as the case may be, is a breach of this Agreement.
- C.2.4 MiCTA reserves the right to perform an independent audit, by MiCTA designated auditors, of the MiCTA commissions paid by seller, on an annual basis. Seller shall bear the costs of the audit should the results of the audit identify a material amount of unpaid commissions. In the absence of a material underpayment, MiCTA will be solely responsible for the cost of any such audit.
- C.2.5 Seller agrees to comply with a MiCTA request for audit within thirty (30) working days of receiving the written request.
- C.2.6 Seller agrees to pay all commissions due on all unreported Eligible Net Revenue with MiCTA Accounts revealed during an audit, plus 20% of such unpaid fees as a penalty.
- C.2.7 MiCTA will repay any over-paid commissions disclosed during an audit and such repayment may be an offset against future commissions.

C.3 Proof of Performance – First Twelve (12) Months

C.3.1 Notwithstanding any other provision of this Master Service Agreement, Seller agrees that during the first twelve (12) months of this agreement Seller will demonstrate significant efforts to make sales to MiCTA Members, implement a plan to market Seller's products or services to the MiCTA Members, promptly file the required sales reports pursuant to C.2, even if no sales were made during the period, and pay all commissions due pursuant to C.1. If no sales are made within 12 months from the date of signing the MSA, MiCTA has the right to and will terminate the MSA, unless the vendor can demonstrate to MiCTA's satisfaction that significant efforts have been made to market the vendor's MiCTA approved products and services to MiCTA members.