

STATE OF MICHIGAN
 DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET August 30, 2011
 PURCHASING OPERATIONS
 P.O. BOX 30026, LANSING, MI 48909
 OR
 530 W. ALLEGAN, LANSING, MI 48933

CHANGE NOTICE NO. 4
TO
CONTRACT NO. 071B7200130
 (Supersedes Contract No. 071B6200383)
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR Charter Communications 12405 Powerscourt Drive St. Louis, MO 63131 <p style="text-align: center;">Chris.hebert@chartercom.com</p>	TELEPHONE: 989-671-5285 (Office) 989-992-7680 (Cell) Chris Hebert <hr/> CONTRACTOR NUMBER/MAIL CODE <hr/> BUYER/CA (517) 335-0462 Christine Mitchell
CONTRACT COMPLIANCE INSPECTOR: Steven McMahon <p style="text-align: center;">Cable Services - Statewide</p>	
CONTRACT PERIOD: From: January 17, 2007 To: March 7, 2012	
TERMS <p style="text-align: center;">N/A</p>	SHIPMENT <p style="text-align: center;">N/A</p>
F.O.B. <p style="text-align: center;">N/A</p>	SHIPPED FROM <p style="text-align: center;">N/A</p>
ALTERNATE PAYMENT OPTIONS: <input checked="" type="checkbox"/> P-card <input checked="" type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other	
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;">N/A</p>	

THIS CONTRACT IS EXTENDED TO LOCAL UNITS OF GOVERNMENT.

NATURE OF CHANGE(S)

Effectively immediately, this Contract is hereby EXTENDED six months to March 7, 2012 to allow for completion of the competitive bidding process.

AUTHORITY/REASON(S):

Per vendor and agency agreement 8/18/2011.

ESTIMATED CONTRACT VALUE REMAINS: \$2,428,275.00

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

7/14/2011

CHANGE NOTICE NO. 3
TO
CONTRACT NO. 071B7200130
 (Supersedes Contract No. 071B6200383)
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR Charter Communications 12405 Powerscourt Drive St. Louis, MO 63131 <p style="text-align: center;">Chris.hebert@chartercom.com</p>	TELEPHONE: 989-671-5285 (Office) 989-992-7680 (Cell) Chris Hebert <hr/> CONTRACTOR NUMBER/MAIL CODE BUYER/CA (517) 335-0462 Christine Mitchell
CONTRACT COMPLIANCE INSPECTOR: Steven McMahon <p style="text-align: center;">Cable Services - Statewide</p>	
CONTRACT PERIOD: From: January 17, 2007 To: September 7, 2011	
TERMS <p style="text-align: center;">N/A</p>	SHIPMENT <p style="text-align: center;">N/A</p>
F.O.B. <p style="text-align: center;">N/A</p>	SHIPPED FROM <p style="text-align: center;">N/A</p>
ALTERNATE PAYMENT OPTIONS: <input checked="" type="checkbox"/> P-card <input checked="" type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other	
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;">N/A</p>	

NATURE OF CHANGE(S)

Effectively immediately, this Contract has been authorized for alternate payment types including P-Card and Direct Voucher.

Please note, both the vendor and the Buyer contact information have also been changed.

AUTHORITY/REASON(S):

Per vendor and agency agreement 7/12/2011.

ESTIMATED CONTRACT VALUE REMAINS: \$2,428,275.00

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

October 29, 2009

CHANGE NOTICE NO. 2
TO
CONTRACT NO. 071B7200130
 (Supersedes Contract No. 071B6200383)
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR Charter Communications 12405 Powerscourt Drive St. Louis, MO 63131 Mohammad.raza@chartercom.com	TELEPHONE: (517) 617-1447 Mohammad (Mo) Raza
	VENDOR NUMBER/MAIL CODE
	BUYER/CA (517) 335-4804 Doug Collier, CPPB
Contract Compliance Inspector: Steven McMahon Cable Services - Statewide	
CONTRACT PERIOD: From: January 17, 2007 To: September 7, 2010	
TERMS <p style="text-align: center;">N/A</p>	SHIPMENT <p style="text-align: center;">N/A</p>
F.O.B. <p style="text-align: center;">N/A</p>	SHIPPED FROM <p style="text-align: center;">N/A</p>
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;">N/A</p>	
MISCELLANEOUS INFORMATION:	

NATURE OF CHANGE(S)

Effectively immediately, this contract is hereby **EXTENDED** to **September 7, 2010** and will extend for an additional year to **September 7, 2011** after Ad Board approval in December. See attached New Discounted Rates and Increase Speed. Please note, the contract compliance inspector is now Steven McMahon.

AUTHORITY/REASON(S):

Per vendor and agency agreement and per the approval of the State Administrative Board on December 15, 2009.

ESTIMATED CONTRACT VALUE REMAINS: \$2,428,275.00

Article 1, Attachment C

Cable High-Speed Data Access Services Cost Models

Monthly pricing detail for Cable High-Speed Data Access Services recurring charges.
**All pricing in Attachment C includes managed to enclosed SLA services with /29
 (5 Static IPs with 1 reserved for Charter to monitor the device per SLA).**

Per month charge \$ 8to5 M-F	Region	Uplink 512KB	Uplink 768KB	Uplink 1.0 MB	Uplink 2.0 MB
Downlink 5.0 MB <i>(Used to be 1.5/256)</i>	All serviceable areas	\$70.00			
Downlink 7.0 MB <i>(Used to be 3/384)</i>	All serviceable areas		\$87.00		
Downlink 10.0 MB <i>(Used to be 5/512)</i>	All serviceable areas			\$160.00	
Downlink 8.0 MB <i>(Used to be 5/1)</i>	All serviceable areas				\$230.00

Per month charge \$ 8to5 M-Sa	Region	Uplink 512KB	Uplink 768KB	Uplink 1.0 MB	Uplink 2.0 MB
Downlink 5.0 MB <i>(Used to be 1.5/256)</i>	All serviceable areas	\$70.00			
Downlink 7.0 MB <i>(Used to be 3/384)</i>	All serviceable areas		\$87.00		
Downlink 10.0 MB <i>(Used to be 5/512)</i>	All serviceable areas			\$160.00	
Downlink 8.0 MB <i>(Used to be 5/1)</i>	All serviceable areas				\$230.00

Per month charge \$ 7a to7p M-Sa	Region	Uplink 512KB	Uplink 768KB	Uplink 1.0 MB	Uplink 2.0 MB
Downlink 5.0 MB <i>(Used to be 1.5/256)</i>	All serviceable areas	\$70.00			
Downlink 7.0 MB <i>(Used to be 3/384)</i>	All serviceable areas		\$87.00		
Downlink 10.0 MB <i>(Used to be 5/512)</i>	All serviceable areas			\$160.00	
Downlink 8.0 MB <i>(Used to be 5/1)</i>	All serviceable areas				\$230.00

Per month charge \$ 7x24 M-Su	Region	Uplink 512KB	Uplink 768KB	Uplink 1.0 MB	Uplink 2.0 MB
Downlink 5.0 MB <i>(Used to be 1.5/256)</i>	All serviceable areas	\$70.00			
Downlink 7.0 MB <i>(Used to be 3/384)</i>	All serviceable areas		\$87.00		
Downlink 10.0 MB <i>(Used to be 5/512)</i>	All serviceable areas			\$160.00	
Downlink 8.0 MB <i>(Used to be 5/1)</i>	All serviceable areas <i>(Requires add'l node cert.)</i>				\$230.00

Article 1, Attachment D

Contract Pricing For Cable High Speed Data Access

*Pricing includes managed to enclosed SLA services with /29
(5 Static IPs with 1 reserved for Charter to monitor the device per SLA).*

Region	County	City	Coverage Time	Downlink Speed	Uplink Speed	U= Unmanaged, M= Managed Services	Monthly Charge	One Time Charges
All serviceable locations	All serviceable locations	All serviceable locations	8 to 5 M-F	5mb	512kb	M	\$70.00	\$300.00
				7mb	768kb	M	\$87.00	\$300.00
				10mb	1mb	M	\$160.00	\$300.00
*	*	*		8mb	2mb	M	\$230.00	\$300.00
All serviceable locations	All serviceable locations	All serviceable locations	8 to 5 M-Sa	5mb	512kb	M	\$70.00	\$300.00
				7mb	768kb	M	\$87.00	\$300.00
				10mb	1mb	M	\$160.00	\$300.00
*	*	*		8mb	2mb	M	\$230.00	\$300.00
All serviceable locations	All serviceable locations	All serviceable locations	7A to 7P M-Sa	5mb	512kb	M	\$70.00	\$300.00
				7mb	768kb	M	\$87.00	\$300.00
				10mb	1mb	M	\$160.00	\$300.00
*	*	*		8mb	2mb	M	\$230.00	\$300.00
All serviceable locations	All serviceable locations	All serviceable locations	7x24 M-Su	5mb	512kb	M	\$70.00	\$300.00
				7mb	768kb	M	\$87.00	\$300.00
				10mb	1mb	M	\$160.00	\$300.00
*	*	*		8mb	2mb	M	\$230.00	\$300.00

**Locations require additional node certification.*

Charter Communications will absorb construction costs for non-standard installations according to the chart below. Any costs over and above what is covered by Charter Communications will be the responsibility of the State of Michigan and will be addressed on a case by case basis.

Down Link Speed	Uplink Speed	U= Unmanaged, M= Managed Services	Monthly Charge	One time charge	Construction Costs Covered by Charter Communications
5mb	512kb	M	\$70.00	\$300.00	ICB
7mb	768kb	M	\$87.00	\$300.00	ICB
10mb	1mb	M	\$160.00	\$300.00	ICB
8mb	2mb	M	\$230.00	\$300.00	ICB

Article 1, Attachment E

**Contract Pricing For Cable High Speed Data Access
with VPN**

Pricing includes managed to enclosed SLA services with /29 (5 Static IPs with 2 reserved for Charter to monitor the device per SLA) and a Model Fortinet-60B Unified Threat Management security device with VPN and Standard Installation.

Region	County	City	Coverage Time	Downlink Speed	Uplink Speed	U= Unmanaged, M= Managed Services	Monthly Charge	One Time Charges
All serviceable locations	All serviceable locations	All serviceable locations	8 to 5 M-F	5mb	512kb	M-VPN	\$150.00	\$400.00
				7mb	768kb	M-VPN	\$167.00	\$400.00
				10mb	1mb	M-VPN	\$240.00	\$400.00
*	*	*		8mb	2mb	M-VPN	\$310.00	\$400.00
All serviceable locations	All serviceable locations	All serviceable locations	8 to 5 M-Sa	5mb	512kb	M-VPN	\$150.00	\$400.00
				7mb	768kb	M-VPN	\$167.00	\$400.00
				10mb	1mb	M-VPN	\$240.00	\$400.00
*	*	*		8mb	2mb	M-VPN	\$310.00	\$400.00
All serviceable locations	All serviceable locations	All serviceable locations	7A to 7P M-Sa	5mb	512kb	M-VPN	\$150.00	\$400.00
				7mb	768kb	M-VPN	\$167.00	\$400.00
				10mb	1mb	M-VPN	\$240.00	\$400.00
*	*	*		8mb	2mb	M-VPN	\$310.00	\$400.00
All serviceable locations	All serviceable locations	All serviceable locations	7x24 M-Su	5mb	512kb	M-VPN	\$150.00	\$400.00
				7mb	768kb	M-VPN	\$167.00	\$400.00
				10mb	1mb	M-VPN	\$240.00	\$400.00
*	*	*		8mb	2mb	M-VPN	\$310.00	\$400.00

**Locations require additional node certification.*

Charter Communications will absorb construction costs for non-standard installations according to the chart below. Any costs over and above what is covered by Charter Communications will be the responsibility of the State of Michigan and will be addressed on a case by case basis.

Down Link Speed	Uplink Speed	U= Unmanaged, M= Managed Services	Monthly Charge	One time charge	Construction Costs Covered by Charter Communications
5mb	512kb	M-VPN	\$150.00	\$400.00	ICB
7mb	768kb	M-VPN	\$167.00	\$400.00	ICB
10mb	1mb	M-VPN	\$240.00	\$400.00	ICB
8mb	2mb	M-VPN	\$310.00	\$400.00	ICB

Article 1, Attachment F

Optical Delivery of Internet

Pricing includes managed to enclosed SLA services with /28 (13 Static IPs with 1 reserved for Charter to monitor the device per SLA).

Region	County	City	U= Unmanaged, M= Managed Services	Speed Tier	Monthly Cost	Standard Installation
All Serviceable	All Serviceable	All Serviceable	M	2Mbps/2Mbps	\$680.00	\$2,500.00
			M	3Mbps/3Mbps	\$840.00	\$2,500.00
			M	4Mbps/4Mbps	\$1,000.00	\$2,500.00
			M	5Mbps/5Mbps	\$1,200.00	\$2,500.00
			M	10Mbps/10Mbps	\$2,100.00	\$2,500.00
			M	20Mbps/20Mbps	\$3,000.00	\$2,500.00
			M	30Mbps/30Mbps	\$3,600.00	\$2,500.00
			M	45Mbps/45Mbps	\$4,300.00	\$2,500.00
			M	100Mbps/100Mbps	\$6,900.00	\$2,500.00

All Fiber Optic Internet delivery is a custom build. Each installation will be addressed on a Case by Case basis. The above pricing is a gauge to be used for budgetary reasons.
Actual costs may vary based on individual project information.

Speed Tier	U= Unmanaged, M= Managed Services	Monthly Charge	One time charge	Construction/Electronic Costs Covered by Charter Communications
2Mbps/2Mbps	M	\$680.00	\$2,500.00	ICB
3Mbps/3Mbps	M	\$840.00	\$2,500.00	ICB
4Mbps/4Mbps	M	\$1,000.00	\$2,500.00	ICB
5Mbps/5Mbps	M	\$1,200.00	\$2,500.00	ICB
6Mbps and Above	M	ICB	\$2,500.00	ICB

Article 1, Attachment G

**Optical Delivery of Managed Internet with Managed VPN
Pricing includes managed to enclosed SLA services with /28 (13 Static IPs with 2 reserved for Charter to monitor the device per SLA) and a Model Fortinet-60B Unified Threat Management security device with VPN and Standard Installation.**

Region	County	City	U= Unmanaged, M= Managed Services	Speed Tier	Monthly Cost	Standard Installation
All Serviceable	All Serviceable	All Serviceable	M-VPN	2Mbps/2Mbps	\$760.00	\$2,500.00
			M-VPN	3Mbps/3Mbps	\$920.00	\$2,500.00
			M-VPN	4Mbps/4Mbps	\$1,080.00	\$2,500.00
			M-VPN	5Mbps/5Mbps	\$1,280.00	\$2,500.00
			M-VPN	10Mbps/10Mbps	\$2,180.00	\$2,500.00
			M-VPN	20Mbps/20Mbps	\$3,080.00	\$2,500.00
			M-VPN	30Mbps/30Mbps	\$3,680.00	\$2,500.00
			M-VPN	45Mbps/45Mbps	\$4,380.00	\$2,500.00
			M-VPN	100Mbps/100Mbps	\$6,980.00	\$2,500.00

All Fiber Optic Internet delivery is a custom build. Each installation will be addressed on a Case by Case basis. The above pricing is a gauge to be used for budgetary reasons.
Actual costs may vary based on individual project information.

Speed Tier	U= Unmanaged, M= Managed Services	Monthly Charge	One time charge	Construction/Electronic costs Covered by Charter Communications
2Mbps/2Mbps	M-VPN	\$760.00	\$2,500.00	ICB
3Mbps/3Mbps	M-VPN	\$920.00	\$2,500.00	ICB
4Mbps/4Mbps	M-VPN	\$1,080.00	\$2,500.00	ICB
5Mbps/5Mbps	M-VPN	\$1,280.00	\$2,500.00	ICB
6Mbps and Above	M-VPN	ICB	\$2,500.00	ICB

Article 1, Attachment H

Cable TV Services Cost Model

Provide monthly pricing detail for Cable TV Services including all one-time and recurring charges. Cable TV Services pricing in addition to the basic Cable Service should be put in the spread sheet as add on pricing.

Region Number	County	City	Basic Cable	Expanded Cable	HDTV	Premium 1	Standard Installation*	Cable Converters
All Serviceable	All Serviceable	All Serviceable	\$22.00	\$48.00	\$27.00	N/A	\$100.00	Included on first outlet
								4.00 each additional outlet

Basic and Expanded Cable costs include first DCT (Digital Converter) for Parental Controls and each additional outlet will be billed \$4 for additional DCTs.

**Non-Standard installation will be addressed on a case by case basis*

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. 071B7200130
 (Supersedes Contract No. 071B6200383)
 between
THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF VENDOR <p style="text-align: center;">Charter Communications 12405 Powerscourt Drive St. Louis, MO 63131</p> <p style="text-align: right;">Lisa.kressin@chartercom.com</p>		TELEPHONE: Lisa Kressin (608) 826-1341 VENDOR NUMBER/MAIL CODE BUYER/CA (517) 335-4804 Doug Collier, CPPB
Contract Compliance Inspector: Jennifer Ryan <p style="text-align: center;">Cable Services - Statewide</p>		
CONTRACT PERIOD: From: January 17, 2007 To: September 7, 2009		
TERMS <p style="text-align: center;">N/A</p>	SHIPMENT <p style="text-align: center;">N/A</p>	
F.O.B. <p style="text-align: center;">N/A</p>	SHIPPED FROM <p style="text-align: center;">N/A</p>	
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;">N/A</p>		
MISCELLANEOUS INFORMATION: <p>The terms and conditions of this Contract are those of ITB #07116200216 this Contract Agreement and the vendor's quote dated June 13, 2006. In the event of any conflicts between the specifications, terms and conditions indicated by the State and those indicated by the vendor, those of the State take precedence.</p> <p>Estimated Contract Value: \$2,428,275.00</p>		

THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the [ITB No. 07116200216](#). 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.

<p>FOR THE VENDOR:</p> <p style="text-align: center;">Charter Communications</p> <hr/> <p style="text-align: center;">Firm Name</p> <hr/> <p style="text-align: center;">Authorized Agent Signature</p> <hr/> <p style="text-align: center;">Authorized Agent (Print or Type)</p> <hr/> <p style="text-align: center;">Date</p>	<p>FOR THE STATE:</p> <hr/> <p style="text-align: center;">Signature</p> <p style="text-align: center;">Greg Faremouth, Acting Director</p> <hr/> <p style="text-align: center;">Name/Title</p> <p style="text-align: center;">IT Division, Purchasing Operations</p> <hr/> <p style="text-align: center;">Division</p> <hr/> <p style="text-align: center;">Date</p>
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STATE OF MICHIGAN
 DEPARTMENT OF MANAGEMENT AND BUDGET
 PURCHASING OPERATIONS
 P.O. BOX 30026, LANSING, MI 48909
 OR
 530 W. ALLEGAN, LANSING, MI 48933

January 10, 2007

CHANGE NOTICE NO. 1
OF
CONTRACT NO. 071B6200383
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR Charter Communications 12405 Powerscourt Drive St. Louis, MO 63131 Email: Mohammad.raza@chartercom.com	TELEPHONE Mo Raza 517-617-1447
	VENDOR NUMBER/MAIL CODE
	BUYER/CA (517) 241-2005 Lisa Morrison
Contract Compliance Inspector: Jennifer Ryan	
Cable Services	
CONTRACT PERIOD: From: September 8, 2006 To: January 17, 2006	
TERMS N/A	SHIPMENT N/A
F.O.B. N/A	SHIPPED FROM N/A
MINIMUM DELIVERY REQUIREMENTS N/A	
MISCELLANEOUS INFORMATION:	

NATURE OF CHANGE(S):

Effective January 17, 2007 this Contract is hereby **CANCELLED** and **REPLACED** by Contract No. 071B7200130 due to vendor Federal ID and Mail Code change.

AUTHORITY/REASON:

Per vendor notification via email dated December 14, 2006 (Lisa Kressin), agency and DMB Purchasing Operations approval.

TOTAL REVISED ESTIMATED CONTRACT VALUE: \$0.00

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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 Information Technology (MDIT), with assistance of the Michigan Department of Management & Budget (MDMB), has issued this contract to provide:

1. Cable High-Speed Data Access Services for the State's operation of an IPSEC based encrypted virtual private network (VPN).
 - a. No direct public Internet access is needed or desired. All public Internet access will be carried back to Lansing via the State's VPN and provided by the State's selected service providers.
2. Cable Television Services.
3. In lieu of providing cable high-speed data access services, Vendors may propose to provide a managed VPN service.
4. As an option, Provide Customer Premises Equipment, together with installation and management services, for demarcation network interface devices required for delivery of services. The State considers a cable modem as a demarcation network interface device, but a phone, router or key system is not.

The requested services must be made available, if requested, to all State Agencies, MiDeal Partners, and State home office users. Any MiDeal participant will work directly with the Vendor for all service and billing related issues.

The objectives of this contract are to obtain affordable, reliable and secure services of the highest quality to enhance the State's telecommunications infrastructure.

The negotiated contract will have a maximum term of three (3) years, with two (2) one year extensions. Renewal of the contract will be at the sole discretion of the State and will be based upon the acceptable performance of the selected Vendor as determined by the State.

This will not be an exclusive contract. Where the State is unable to procure through this contract, or has an existing contract for purchase of the services or products, the State reserves the right to purchase services or products through other contracting vehicles.

1.002 BACKGROUND

MDIT was created on October 14, 2001, by Executive Order 2001-3, in part to improve the management of information technology investments. Among other enumerated items, MDIT is leading State efforts to re-engineer the State's information technology infrastructure, and to coordinate development of a unified executive branch technology plan, with the goal of achieving the use of common technology across the State.

The rapidly changing technology and the increasing availability of Cable Services have prompted the State to consider providing High-Speed Data Access Services to State Agencies through Cable Services. The State is seeking higher capacity data network services and Cable TV services that are affordable, reliable, and secure. The State's present data network has 1,100 sites [see Article 1, Attachment A].

Requirements for increased capacity circuits are being driven by the following:

- New Enterprise and Agency applications
- Michigan/1 infrastructure service improvements and efficiencies:
- a move to a consolidated and centralized e-mail service
- a move to Active Directory



- expansion of software distribution services
- remote management of PC's
- centralized file backup
- elimination of remote servers.

The State has been piloting cable-based VPN services. Due to the Internet connectivity component, there are concerns about the reliability and serviceability of cable-based solutions. The estimated number of sites that may take advantage of a VPN-based cable access data network alternative is estimated to be initially about one hundred.

There is also a desire for a statewide contract for Cable TV Services. State Agencies provide TV services at some locations as part of client services. The estimated number of potential sites for the Cable TV Services, given attractive pricing, is estimated to be about one hundred.

Project Specific Acronyms/Definitions

CPE	Customer Premises Equipment
Demarcation point	Where the carrier network or network equipment ends and the customer network begins
DOCSIS	Data Over Cable Service Interface Specification
DSL	Digital Subscriber Loop Services
IPSec	IP Security: an encryption standard
ISDN	Integrated Services Digital Network
LAN	Local Area Network
LATA	Local Access and Transport Area: geographic boundary established at the breakup of AT&T to define the boundaries between local exchange and inter-exchange carriers
Inter-LATA	All calls originated and terminated in different LATA's
Intra-LATA	All calls originated and terminated in the same LATA
MAN	Metropolitan Area Network
MPLS	MultiProtocol Label Switching
MiDeal Partners	The Extended Purchasing Partners for the State of Michigan
MTTR	Mean Time To Repair
Reliable	Minimum 99.75% uptime per site
Secure	Meeting or exceeding State of Michigan data network security standards
VPN	Virtual Private Network
WAN	Wide Area Network



1.1 Scope of Work and Deliverables

1.101 IN SCOPE

The Vendor will provide the following, including all labor, materials, transportation, equipment and activities for selling, providing, supporting and maintaining the services:

1. Cable High-Speed Access Services with high availability during State Agency business hours is required for some State Agencies. Other State Agencies may require 7x24x365 availability.
2. Cable TV Services.
3. Parental controls on Cable TV Services.
4. Services for furnishing, installing, interfacing, operating, monitoring the services.
5. Maintenance and support.
6. Documentation to include service operation and repair manuals updated at least annually.
7. Optionally a managed VPN service for some of the sites listed in Attachment A
8. Optionally providing Customer Premise Equipment (CPE) equipment, with price including delivery, installation, maintenance and support services.

1.102 OUT OF SCOPE

1. Cable High-Speed Data Access Services for the City of Lansing Capital Area complex served by State owned or procured fiber networks are out of scope.
2. Services that operate at speeds less than 512kb are out of scope.
3. ISDN services are out of scope.
4. DSL services are out of scope.
5. Pay-Per-View Television Service is out of scope.
6. Providing Internet Protocol (IP) addresses is out of scope.

Charter Communications will follow the IN SCOPE in this contract.

1.103 ENVIRONMENT

Overview of Existing State Operating Environments

Information regarding the State's information technology architecture and standards may be found at: <http://www.michigan.gov/dit/0,1607,7-139-34305---,00.html> .

The physical interface to the CPE router will be 100meg Ethernet full duplex. The IP interface is Copper RJ45 interface compliant with Institute of Electrical and Electronics Engineers, Inc. (IEEE) and Building Industry Consulting Services International, Inc. (BICSI) Specifications.

The State has a very complex network. The network has different perimeter entry points, and an internal network made up of a large WAN, a large MAN, and 3 hosting centers located in the Lansing metropolitan area. The following will describe the Network environment:

Vendor Extranet: This zone allows vendors to connect to the State network via either point-to-point WAN circuits, or Gateway-to-Gateway VPN over the Internet. The State currently allows vendors to place their network equipment on our premises, or they can terminate their connection at our demarcation at an AT&T facility. This zone is separated from the State network with a firewall. This access is application only; remote control access is not allowed.

Local Government Extranet: This zone allows local government entities access to applications on the State network. This is provided by the provisioning of separate WAN circuits on the State WAN cloud. This zone is separated from the State network with a firewall.



Lansing Metropolitan Area Network (LMAN): This is the State's high-speed backbone network utilized by State employees to access State resources and Internet resources. The backbone is made up of redundant fiber links capable of transporting 2GBPS of traffic. Several State buildings, as well as the State's 3 hosting centers, are also connected to the backbone through a distribution layer network.

Agency Internet DMZ: This zone is for public-facing server access to the Internet. This zone is firewall protected from the Internet, as well as from the LMAN. The state currently has Internet services provided by Merit and Sprint to provide redundancy.

State WAN: This is the remote office connectivity solution for the State. It is made up of a private network managed by AT&T. Connectivity of sites on the WAN varies from 512k-T1 frame relay circuits in a distributed star topology.

State Gateway-to-Gateway VPN: This is an IPSEC VPN service offered by the State to allow remote State offices that do not require the availability/reliability of a dedicated State WAN circuit.

Client to Gateway VPN: Since remote control access is not allowed over the vendor extranet, the State has developed this service as the approved method of access to manage State systems remotely. The service involves the use of the Internet, VPN-client software to provide the encryption over the Internet, and a 2- factor authentication method (SECURID).

State Data Communications Network is composed of the Intranet, a secured internal network, and an external unsecured network, which is connected to the Internet. This network is comprised of necessary routing and switching hardware, software, wiring networks, connecting hub hardware, network management systems and the State firewall.

Intranet is the secured, internal network inside the firewall. It includes the core Lansing Metropolitan Area Network (LMAN), a Wide Area Network (WAN) connecting out state locations, and agency local area networks, which are connected to either LMAN or WAN.

Unsecured network is an optical fiber network in greater Lansing, outside the firewall. It radiates from a switched Ethernet hub and is connected to the worldwide Internet.

Intranet servers conform to World Wide Web standards and are connected to the State Intranet, which is the secured internal network segment located inside the firewall system.

Internet servers conform to World Wide Web standards and are connected to the State unsecured network.

Charter Communications understands

1.104 WORK AND DELIVERABLE

Vendor shall provide Deliverables/Services and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth below:

I. Provide Cable High Speed Data Access Services with high availability during Agency business hours

A. State Standard Requirements



The Vendor is to comply with applicable State-developed standard requirements for information technology projects. Reference section 1.003 (State Standards).

Charter Communications understand and will comply.

B. Specific Technical and Business Requirements

1. Data traffic must be delivered to the State's VPN Gateway in the State's DMZ.

Charter Communications understand and will comply if Charter's VPN service is selected.

2. Services and equipment must be compliant with all telecommunications industry standards including, at a minimum, Federal Communications Commission (FCC), Michigan Public Services Commission (MPSC), IEEE, and BICSI.

Charter Communications understands, currently complies and will continue to comply.

3. High Capacity - The minimum downlink speed is 768kb and the minimum uplink speed is 256kb. The preferred minimum uplink is 512kb.

Charter Communications will comply with the following speed packages;

1.5 down/ 256 up

3.0 down/ 384 up

5.0 down/ 515 up

5.0 down/ 1.0 up

2.0 down/ 2.0 up

Adjustable speed tiers exceeding 100mbps synchronies.

4. Vendor must identify the DOCSIS standards for services. If the State follows the Vendor's identified standards and the requested functionality is not provided to the satisfaction of the State, this project will be considered incomplete.

Charter Communications currently runs DOCSIS 1.0

5. Vendor must provide any preferred or required cable modem specification (for example DOCSIS level) or manufacturer. If the State follows the Vendor's identified specifications and the requested functionality is not provided to the satisfaction of the State, this project will be considered incomplete.

- a. If different equipment is required for different speed and/or service, these requirements must be identified.

Charter Communications uses Ambit Cable Modems on a DOCSIS 1.0 system. Charter Communications includes the modem in the service and does not charge the State for purchase or use of said modem. Modem remains the property of Charter Communications at all times.

6. Vendor will provide all design diagrams and provide the State with any updates or changes to the diagrams.

A simple diagram of a typical configuration is included in this document (Exhibit A). Design diagrams for connections requiring Fiber Optic delivery of speeds of 2.0/2.0 mbps or greater will be made available on an individual case basis.



7. Vendor will provide any IP address requirements for CPE equipment at the remote sites if required for new Vendor supplied equipment.

Charter Communications will supply a /30 with each modem device for Charter's use to monitor the modem and VPN device if selected. Additional IP blocks are available if requested for an addition fee.

8. Vendor will detail for each identified State site the:
 - a. Current data network capacity per location
 - b. Expansion capacity
 - c. Capacity limits
 - d. Cost of expansion
 - e. CPE equipment required for each speed and/or type of service

The speed tier packages included in this document will be available at any State site that is determined to have High Speed Data service availability.

9. For services provided, the technical details will meet or exceed those stated for local franchise services provided in FCC Part 76.

Charter Communications currently complies and will continue to comply with FCC Part 76.

10. Consistent throughput - Vendor must provide sufficient capacity in the provider's backbone network facilities and equipment to insure consistent throughput.
 - a. Vendor will monitor and provide usage statistics for monthly review by the State.

Charter Communications will monitor each modem device for the State and provide statistics upon request.

11. Availability – Service will be available monthly with an uptime of greater than 99.75%.
 - a. Vendor will monitor and provide for monthly reports on availability for review by the State.

Charter Communications will monitor each modem device for the State and provide Network availability statistics upon request.

12. Low and consistent latency is required with minimal packet loss.
 - a. Latency must be less than or equal to 150 milliseconds
 - b. Packet loss less than or equal to 0.4% per site.
 - c. Vendor will monitor and provide latency and packet loss reports monthly for review by the State.

Charter Communications will comply with the requirements stated above however currently does not actively monitor on a consistent basis.

13. Maintenance and Support
 - a. For normal Agency business operations, Vendor will provide a Mean Time to Repair (MTTR) of 4 hours or less during the normal business hours of a location.



Charter Communications will comply to a 4 hour MTTR from the time a trouble ticket is entered through Charter Business 24 hr Contact Center at 1-800-314-7195.

- b. For identified critical Agency business locations, for example, Michigan State Police posts will require MTTR of 4 hours on a 7x24x365 basis.

Charter Communications will comply to a 4 hour MTTR from the time a trouble ticket is entered through Charter Business 24 hr Contact Center at 1-800-314-7195.

- c. Vendor must provide service and support capabilities for the Upper and Lower peninsulas.

Charter Communications service locations in both the Upper and Lower Peninsulas of Michigan.

- d. A single point of contact must be available for the State trouble calls.

Charter Business 24hr Contact Center number 1-800-314-7195

- e. Vendor will provide a service center at an identified location with a toll-free telephone number to contact 7x24x365 for notification of problems and dispatch of qualified technician.

Charter Communications provides a toll free number to a 24/7 contact center which handles business only customers. Contact Center is staffed to support all issues regarding the State of Michigan. The Contact Center dispatches qualified local Technicians upon Tier two escalation as required.

- 1. Vendor must also accept problem reporting by email.

Charter Communications does not offer an e-mail notification of problem reporting because we offer a convenient toll free number to report any issues. It is our philosophy that we can better serve our customers by placing resources closer and more immediate available to our customers.

- f. Vendor will provide effective procedures for problem resolution, including those related to customer-owned equipment.

Charter Communications understands and will comply.

- 1. Vendor will provide an escalation procedure for outages that exceed 4 hours.

Charter Communications will supply an escalation list including names, titles and phone numbers.

- g. Vendor will perform maintenance on Cable High-Speed Data Access equipment during the least intrusive times as determined by site requirements and length and complexity of the maintenance. The Vendor will be required to inform DIT-Telecom through the State's Tier One Helpdesk (800- 968-2644) of any network maintenance that may effect service to a State site.

Charter Communications understands and will comply.



14. Option – Customer Premises Equipment – Vendor may provide rental, or purchase options for the cable modem. If different equipment is required for different speed and/or service, these requirements must be identified. If State ownership of the cable modem impacts service commitments or problem resolution, these impacts must be described.

Charter Communications supplies all CPEs necessary to deliver service to the State and will retain ownership of such to ensure service levels and requirements are met.

15. Order Process and Installation

- a. Vendor must provide and identify a single point of contact for new orders.

Charter Communications will supply a list of the Account Team assigned to the State at time of RFP acceptance. The Account Team will consist of one account manager supported by one major account coordinator, and one account coordinator for each of three Charter Key Market Areas across the state.

- b. Any services to be furnished under this Contract shall be ordered by issuance of written Purchase Orders/Blanket Purchase Order by State approved requestors.

Charter Communications will adopt this safe-guard into the ordering process developed for the State of Michigan.

- c. Orders will be placed through MDIT Telecommunications for their review, approval and coordination.

Charter Communications understands.

- d. Vendor must meet agreed upon order processing and installation times.

Charter Communications will institute a clear and simple order process. Charter will also install standard coax installations within 5 business days. Non-standard installations will be agreed upon on a case by case basis. Fiber based installations will be scheduled on a case by case basis with the typical installation timeframe of 60-90 days.

- e. Vendor must provide a system allowing the State to track the State's orders on-line or via phone.

Charter Communications does not have an on-line system to track orders. The account team coordinators are available during normal business hours to call and request updates.

- f. The State may cancel service by 30-day written notice to the Vendor via fax, email, or postal mail.

Charter Communications understands and will comply.

II. Cable Television Services

A. Specific Technical and Business Requirements

1. Vendor will provide basic Cable TV Services offerings.



Charter Communications will provide our Expanded Basic level of service to each site. Channel line-up may vary slightly from one area to another based on head-end channel availability. A copy of a typical channel line-up is attached to this document as Exhibit B.

2. Parental controls must be provided with the Cable TV Services.

Charter Communications will comply to this request by placing one Digital Converter Box (DCT) at each location. Additional DCTs for additional televisions will be available at \$4/mth each.

3. Pay-Per-View service must be blocked.

Charter Communications will comply to this request by placing one Digital Converter Box (DCT) at each location. Additional DCTs for additional televisions will be available at \$4/mth each.

4. Vendor must provide and install the drop wiring for each site necessary to provide services.
 - a. Wiring must be hung neatly in a State-approved location following State Standards.
 - b. Vendor must supply all ancillary parts, cable ends, installation tools, wire, wire hangers, screws etc. for a complete turn key distribution system.

Charter Communications understands and will comply.

5. Installation of all equipment shall meet current technical standards applicable to the cable industry and must be in accordance with the latest requirements of the National Electrical Code, EIA/TIA standards, state and local codes, ordinances and regulations of any other governing body-having jurisdiction.

Charter Communications understands and will comply.

6. Maintenance and Support – Vendor will provide maintenance and support for the Cable TV services
 - a. Vendor shall respond to a service request for assistance within twenty-four (24) normal business hours.

Charter Communications understands and will comply.

7. Order Process and installation
 - a. Vendor must provide and identify a single point of contact for new orders.

Charter Communications will supply a list of the Account Team assigned to the State at time of RFP acceptance. The Account Team will consist of one account manager supported by one major account coordinator, and one account coordinator for each of three Charter Key Market Areas across the state.

- b. Any services to be furnished under this Contract shall be ordered by issuance of written Purchase Orders/Blanket Purchase Order by State approved requestors.

Charter Communications will adopt this safe-guard into the ordering process developed for the State of Michigan.



- c. Vendor must meet agreed upon order processing and installation times. The installation process must be described by the Vendor, including site notification, dispatch location and timeframe of installation.

Charter Communications will institute a clear and simple order process. Charter will also install standard coax installations within 5 business days. Non-standard installations will be agreed upon on a case by case basis. All installation scheduling is completed by a member of the Account Team (account coordinator) located in the Key Market Area of the State location. The Account Coordinator will communicate with the designated contact person from the State location listed on the order form to coordinate a timely installation time. The Technicians doing the installation are located in the community where the requesting State location is located.

- d. Vendor must provide a system allowing the State to track the State's orders on-line or via phone.

Charter Communications does not have an on-line system to track orders. The account team coordinators are available during typical business hours to call and request updates.

- e. The State may cancel service by 30-day written notice to the Vendor via fax, email, or postal mail.

Charter Communications understands and will comply.

III. Optional Managed Virtual Private Network Service

A. Specific Technical and Business Requirements

1. Vendor's managed VPN services must follow general industry definitions and standards.

Charter Communications' Business Security package uses industry standards in its VPN service along with many other features available to the State at no further costs. Charter's Unified Threat Management security device with VPN is available to be used at all sites in the State of Michigan whether in Charter's coverage area or on another Network. Features include;

- ***Traffic Shaping and management to block or rate-limit bandwidth intensive applications.***
- ***ICSA-certified firewall to conduct deep inspection of all network traffic***
- ***Antivirus protection that prevents problems by scanning incoming and outgoing e-mail traffic***
- ***Intrusion Detection and Prevention to protect your network from threats that evade conventional antivirus products***
- ***User authentication/security***
- ***Ability for each department to manage policies/settings for their IP-address subnet(s)***
- ***Ability to generate activity logs, by subnet range***
- ***Web-based management/monitoring console***
- ***Proactive monitoring of your network by Charter Business***



2. Vendor will integrate all services with the State's current infrastructure.
 - a. The State presently manages the IPSec VPN services being used at the Cable pilot sites and provides the required remote site routers. Cisco VPN services are being used and managed by State personnel.

Charter Communications makes use of Fortinet hardware which is fully compatible with Cisco VPN product as well as many others.

- b. **Cable data access services will be provided as part of the managed VPN services.**

Charter Communications understands and will comply.

3. Vendor will provide all equipment and installation required for managed VPN services.

Charter Communications makes use of Fortinet hardware which is fully compatible with Cisco VPN products as well as many others.

- a. At some sites multiple (generally two) VPN connections will be required.
- b. Charter Communications may require multiple electronics to support two separate VPN connections.

4. Vendor will provide maintenance and support for managed VPN services.

Charter Communications Security is a fully managed and maintained service 24/7.

5. Pricing must be provided for basic cable data access services in addition to the optional manage VPN Services.

Charter Communications agrees, see attachments D and E.

IV. Services

A. Project Plan

Charter Communications understands & will comply

Within five (5) working days of the award of the Contract, the Vendor will work with the State to develop an agreed upon project plan of tasks and schedule, which may include:

1. The Vendor's project organizational structure.
2. The Vendor's staffing table with names and title of personnel assigned to the project. This must be in agreement with staffing of accepted proposal. Necessary substitutions due to change of employment status and other unforeseen circumstances may only be made with prior approval of the State.
3. The project breakdown showing sub-projects, activities and tasks, and resources required and allocated to each.
4. The Vendor agrees that the approved project plan shall become incorporated as part of the Contract and Scope of Services.
 - a. The project plan will serve as the State's measurement tool, outlining all tasks, their delivery dates, together with testing periods and implementation dates.



B. Invoice

Charter Communications understands & will comply

All invoices will be sent to the requesting State Agency as indicated on the Purchase Order (PO). State Agency will pay invoices at the site level. The State Agencies will execute POs through the Master Contract.

The invoice will include the following:

1. Vendor will submit an accurate, single, bill for each site where the Vendor is providing service with charges broken out by service type (i.e. Cable High-Speed Data Access Services and/or Cable TV Services).
2. The invoice must be inclusive of all services, whether provided by Vendor, another carrier or a subcontractor.
3. Vendor will prorate billing for services to the date of installation/disconnect.
4. The billing process, billing period, and sample billing report will need to be provided in the bid response. Describe the billing correction, adjustment, resolution process and timing for billing corrections.
5. A single point of contact must be provided for all billing inquiries. The contact must have knowledge of the State's services and processes.

The invoice will be a hierarchical invoice with multiple payments at the lowest level. The levels to be included in the hierarchy from lowest to highest are site, unit, section, division, bureau, department and state-wide. Security features must be in place allowing each subsequent lower level to receive or view only its associated charges. Invoice charges must be available in electronic format and when or where requested, in hard copy (paper). Invoice payments will be according to Michigan Public Act 279 of 1984 as may be amended unless otherwise agreed in writing. Disputes should be resolved at the requesting level but may be escalated to a higher level when required to resolve disputes regarding invoiced amounts.

In order to allow the State to manage the Master contract charges at the highest levels as well as at various operational units, the Vendor must present a hierarchical master invoice report by service type to the State. The individual to receive the hierarchical master invoice report and the address for sending the invoice report will be designated at the time of the contract award. A hierarchical invoice report is expected to provide complete details for all services at any requested level or individual service location. It will consist of a master invoice report at the highest level and individual user invoices at the lowest level.

Electronic presentations must allow for a minimum of 90 days of online history to be stored. The State must be able to download and manage charges in commonly accepted electronic format suitable for import to various applications such as comma separated values (.csv) files for use in MS Excel or MS Access. Charges must also be presented in a viewable and searchable online format.

Regulatory or surcharges of any nature must be presented separately in its own section of the invoice so as to be clearly distinct from any service and usage charges. Charges defined as regulatory must also clearly denote the legal mandate for requiring this charge to be passed to the State.

Section 4 of the General Sales Tax Act, MCL 205.54(5); MSA 7.524(5) and Michigan Sales and Use Tax Rule, 1979 AC, R205.79 provides that sales to the United State government, the State of Michigan, and their political subdivisions, departments and institutions are not taxable when ordered on a purchase order and paid by warrant on government funds. Therefore, in no instance will the



State accept the presentation of taxes or items cited as “tax recovery” mechanisms. Any such billed items will be treated as having been billed in error and will result in subsequent payments being reduced by said amounts and will be cause for said charges to be formally placed in dispute with the Vendor.

C. Location and Work Space

Charter Communications understands & will comply.

1. The Vendor will work out of their facility.
2. The State will not provide workspace for the Vendor except in the event required for services under the Contract.

D. Travel

Charter Communications understands & will comply.

1. No travel or expenses will be reimbursed, unless travel is required by the State and approved in advance by the State’s Project Manager.

E. Documentation

Charter Communications understands & will comply.

1. Vendor will provide service operation and repair manuals updated at least annually.

F. Maintenance and Support

Charter Communications understands & will comply.

1. The Vendor will provide support to address any problems with services and equipment, during the Agency specified business hours.
2. All maintenance will be performed by qualified personnel.
3. The Vendor will provide backup maintenance resources.
4. The Vendor will provide for escalation of maintenance issues to ensure critical issues are resolved.
5. The Vendor shall respond to the telephone requests for maintenance service, within four hours, for calls made at any time.

G. Service Levels

Service Level	Service Credit for Non-Compliance
Point of Sale Data Services – end-to-end uptime based on SNMP monitoring, associated CPE uptime; full time proactive monitoring uptime with automated initiation of all repairs, shall always exceed 99.75% during agency business hours. <i>Charter Communications will monitor each modem device for the State and provide Network availability statistics upon request.</i>	Credit of 5% of the monthly pricing for first hour of sub par service level, with increase of 1% per hour for all subsequent hours/month of sub par service level.
Mean Time to Repair of 4 hours measured by the total number of outage minutes divided by the total number of outage occurrences measured and reported monthly. <i>Charter Communications will comply to a 4 hour MTTR from the time a trouble ticket is entered through Charter Business 24 hr Contact Center at 1-800-314-7195.</i>	If the objective is missed more than 3 times in a year, a credit of 1% of the annual cost of the contract will be made by Vendor.



<p>Installation date – The Vendor must meet the agreed upon installation date for a site. Exceptions are force majeure or causes beyond the reasonable control of the Vendor. Charter Communications will institute a clear and simple order process. Charter will also install standard coax installations within 5 business days. Non-standard installations will be agreed upon on a case by case basis. Fiber based installations will be scheduled on a case by case basis with the typical installation timeframe of 60-90 days.</p>	<p>If the installation date is not met, the Vendor will credit 100% of the installation charges for the site.</p>
<p>Latency and Packet Loss – Vendor must measure latency and packet loss monthly to meet the objectives of average latency not greater than 150 milliseconds and average packet loss not greater than 0.4% . Exceptions are force majeure and other circumstances beyond the control of the Vendor or scheduled service maintenance. Charter Communications will comply with the requirements stated above however currently does not actively monitor on a consistent basis.</p>	<p>For any month the objective is not met, the State will receive a credit equal to 1/30th of the monthly recurring charges for the services.</p>

1.2 Roles and Responsibilities

1.201 VENDOR STAFF, ROLES, AND RESPONSIBILITIES

Charter Communications understands & will comply

The Vendor will provide, 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 work. The Vendor will identify the functions to be performed by identified individuals, and identify the location of the office to which they report.

The Vendor must have a dedicated account team with experience in the industry. The Vendor will identify 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.

The Contract Administrator shall be identified as a Key Personnel subject to the State’s interview and approval.

The Vendor shall assign a project manager for the services. The Vendor's project manager responsibilities include, at a minimum:

- Manage all defined Vendor responsibilities in this Scope of Services.



- Manage Vendor's subcontractors, if any
- Develop the project plan and schedule, and update as needed
- Serve as the point person for all project issues
- Coordinate and oversee the day-to-day project activities of the project team
- Oversee installations and escalate network troubles to resolution
- Assess and report project feedback and status
- Escalate project issues, project risks, and other concerns
- Review all project deliverables and provide feedback
- Proactively propose/suggest options and alternatives for consideration
- Utilize change control procedures
- Prepare project documents and materials
- Manage and report on the project's budget

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

1.202 STATE STAFF, ROLES, AND RESPONSIBILITIES

Charter Communications receives this section for information

State Project Team

The State project team will consist of an Executive Subcommittee (ESC), project support, and a project manager from MDIT.

The ESC shall be available on an as needed basis. They will be solicited for a decision by the MDIT project manager when there is a need to:

- Resolve project issues in a timely manner
- Review project plan, status, and issues
- Resolve deviations from project plan
- Utilize change control procedures

The Project Manager will provide the following services:

- Provide State facilities, as needed
- Coordinate the State resources necessary for the project
- Facilitate coordination between various external Vendors
- Facilitate communication between different State departments/divisions
- Milestone acceptance sign-off
- Resolution of project issues
- Escalation of outstanding/high priority issues to the ESC
- Utilize change control procedures
- Conducting regular and ongoing review of the project to confirm that it meets original objectives and requirements
- Documentation and archiving of all important project decisions
- Arrange, schedule and facilitate State staff attendance at all project meetings

MDIT shall provide a Contract Consultant whose duties shall include but not be limited to: i) supporting the management of the Contract, ii) advising the MDIT project manager of Vendor's performance under the terms and conditions of the Contract, and iii) periodic verification of pricing and monthly reports submitted by Vendor.

The Department of Management & Budget, Purchasing Operations, will be the designated contract administrator.



1.203 OTHER ROLES AND RESPONSIBILITIES

1.3 Project Plan

1.301.1 PROJECT PLAN MANAGEMENT

Charter Communications understands & will comply

A. Orientation Meeting

- a. Within five (5) business days from execution of the Contract, the Vendor 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 the State and the Vendor.
- c. The State shall bear no cost for the time and travel of the Vendor for attendance at the meeting.

B. Performance Review Meetings

- a. MDIT will require the Vendor to attend periodic meetings to review the Vendor's performance under the Contract.
- b. The meetings will be held in Lansing, Michigan, at a date and time mutually acceptable to the State and the Vendor.
- c. The State shall bear no cost for the time and travel of the Vendor for attendance at the meeting.

1.302 REPORTS

Charter Communications understands & will comply

Vendor shall provide a:

1. Monthly Status Report that correlates to the invoiced amount.
 - a. The Status Report will briefly describe the project activity during the status period, the project activity next status period, and charges.
 - b. Each section will provide:
 - i. overall summarization of the project progress;
 - ii. deliverables achieved;
 - iii. deliverables remaining, progress, and expected delivery on each; and
 - iv. issues and concerns affecting specific deliverables and the project schedule or any other aspect of the project.)
2. Monthly report of all data access services provided
3. Monthly report of all trouble/problem and escalation/resolution

1.4 Project Management

1.401 ISSUE MANAGEMENT

Charter Communications understands & will comply as part of Charter Communications Trouble Ticket System.

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

The Vendor shall maintain 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 Vendor)
- Resources assigned responsibility for resolution
- Resolution date
- Resolution description

1.402 RISK MANAGEMENT

Charter Communication knows of no risk to either Charter Communication or the State of Michigan with services offered.

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.

Vendor must state in its proposal any risks identified and any potential risks to the provision of the requested services.

1.403 CHANGE MANAGEMENT

Charter Communications understands & will comply

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.

Requests for modification, whether in scope, pricing, time frames, or a combination of thereof, must be submitted through the Contract Compliance Inspector, (see Section 2.015), then forwarded to the Department of Management and Budget, Purchasing Operations, Buyer, (see section 2.014) for approval and processing, or denial. An amendment is not final until Vendor receives formal notification of a Contract Change Notice, issued by the DMB Office of Purchasing Operations. Vendors will not receive payment for products or services provided outside the scope or pricing of the Contract agreement, unless incorporated via a change notice issued by DMB Purchasing Operations, and the State makes no commitment for retroactive approval or payment of such products and/or services.

If a proposed contract change is approved by the Contract Compliance Inspector, the Contract Compliance Inspector 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. Vendors 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

Charter Communications understands & will comply

Upon installation, the Vendor and State will conduct tests to ensure that the equipment and services operate in substantial conformance with the requirements of this RFP for a period of 45 days after installation. All costs associated with testing must be included in Vendor's cost proposal.

1.502 FINAL ACCEPTANCE

Final acceptance is expressly conditioned upon completion of all delivery of equipment, completion of all tasks in the project plan as approved, delivery of services, and the certification by the State that the deliverables meet the defined requirements.

1.6 Compensation and Payment

1.601 COMPENSATION AND PAYMENT

A. Cable High-Speed Data Access Service.

Monthly pricing detail for Cable High-Speed Data Access Services must be provided in printed copy and in Excel spread sheet format. All one-time and recurring charges are to be identified. Equipment and managed service costs must be separately identified. Vendor must provide pricing for an unmanaged service. Any managed service proposals are optional. Please complete the tables in Article 1 Attachment C. These tables will be used for bid evaluation only. If the table uplink and downlink combinations are not available from the Vendor, then the highest speed available should be shown and priced.

The Vendor must provide a service area map (Modification of Attachment B) for any/all regions included in this bid. The Vendor must provide a completed table for each region that they will be bidding on for Cable High-Speed Data Access Services. The Michigan Region map graphic is available in electronic form upon request.

A contract pricing spreadsheet (see Article 1 Attachment D for template/example) must also be provided which shows Vendor pricing regionally by county and city for all Cable High-Speed Data Access Services. Please note: although this spreadsheet will not be used for evaluation, it will be used as contract pricing if the bid is awarded. The pricing in the contract pricing spreadsheet must match any cost model pricing provided. The Vendor must provide a service area map (Modification of Article 1 Attachment B) for any/all regions included in this bid.

If offered, additional pricing spreadsheets must be created showing higher speeds or other alternatives that the Vendor is proposing. A description and benefits of alternatives must accompany each additional spreadsheet to aid the State in evaluating the Vendor's alternatives. These alternative services must be provided regionally and pricing entered in this spread sheet by county and city. Pricing for these alternatives must be included in the contract pricing spreadsheet. The Vendor must provide a service area map (Modification of Article 1 Attachment B) for any/all regions included in this bid for alternative services if offered.

B. Cable TV Services

Monthly pricing detail for Cable TV Services must be provided in printed copy and in Excel spread sheet format. All one-time and recurring charges are to be identified. Cable TV Services pricing in addition to the basic Cable Service should be put in the spreadsheet as add on pricing. Please



complete the table in Article 1 Attachment E. This table will be used for bid evaluation only. The Vendor must provide a service area map (Modification of Attachment B) for any/all regions included in this bid. The Vendor must provide pricing for basic cable services for each region that they will be bidding on for Cable TV Services. Please provide prices for multiple connections for service, converters, installation, and programming.

A contract pricing spread sheet must be provided which shows pricing regionally by county and city the Vendor proposes for providing Cable TV Services (see Article 1 Attachment F for an example). Please note: although this spread sheet will not be used for evaluation, it will be used for contract pricing if the bid is awarded. The pricing in the additional spread sheet must match any cost model pricing provided.

C. Payment

Electronic Payment Availability

Public Act 533 of 2004 requires that payments under this contract be processed by electronic funds transfer (EFT). Vendor is required to register to receive payments by EFT at the Contract & Payment Express website (www.cpexpress.state.mi.us).

1.7 Additional Terms and Conditions Specific to this SOW

1.701 ADDITIONAL TERMS AND CONDITIONS SPECIFIC TO THIS SOW

1. The State has a goal of achieving higher participation by small, Michigan-based businesses in State-awarded contracts. Consideration may also be given to a Vendor with proactive practices for hiring and retaining underrepresented groups or who recruit to retain or increase the number of information technology professionals in Michigan. Additionally, pursuant to the recently signed Public Act 91 of 2005, the State affords an all-else-equal preference for businesses owned by qualified disabled veterans.



Article 1, Attachment A

This table is a list of county and city locations where State sites could use the services described in the Article 1 scope of work. Electronic copy is available upon request.

COUNTY	CITY	QTY	SVC	Out of Area
ALCONA	Harrisville	3	Yes	
ALGER	L'ANSE	2	Yes	
ALGER	Munising	5	Yes	
ALGER	Shingleton	1		Out of area
ALLEGAN	Allegan	5	Yes	
ALLEGAN	Fennville	1		Out of area
ALLEGAN	Holland	3	Yes	
ALLEGAN	PLAINWELL	1	Yes	
ALLEGAN	PULLMAN	1		Out of area
ALLEGAN	Wayland	1	Yes	
ALPENA	Alpena	11	Yes	
ANTRIM	BELLAIRE	5	Yes	
BARAGA	Baraga	4	Yes	
BARAGA	L'anse	5	Yes	
BARRY	Coldwater	2	Yes	
BARRY	Hastings	9		Out of area
BAY	Bay City	13	Yes	
BAY	Essexville	1	Yes	
BENZIE	BEULAH	4	Yes	
BENZIE	Honor	1	Yes	
BERRIEN	Benton Harbor	6		Out of area
BERRIEN	Bridgeman	1		Out of area
BERRIEN	New Buffalo	2		Out of area
BERRIEN	Niles	5		Out of area
BERRIEN	Sawyer	1		Out of area
BERRIEN	St. Joesph	5		Out of area
BERRIEN	Three Oaks	1		Out of area
BRANCH	Coldwater	7	Yes	
CALHOUN	Battle Creek	8		Out of area
CALHOUN	Marshall	4		Out of area
CALHOUN	Albion	2		Out of area
CALHOUN	BATTLE CREEK	2		Out of area
CASS	Cass City	1	Yes	
CASS	Cassapolis	5		Out of area
CASS	Dowagiac	2		Out of area
CHARLEVOIX	Charlevoix	3		Video only
CHEBOYGAN	CHEBOYGAN	6	Yes	
Chippewa	Sault St. Marie	8	Yes	
Chippewa	Kincheloe	3		Out of area
CLARE	Clare	2	Yes	
CLARE	Harrison	6	Yes	
CLINTON	DeWitt	1		Out of area
CLINTON	St. Johns	5	Yes	
CRAWFORD	Grayling	12	Yes	
DELTA	Escanaba	11	Yes	
DELTA	Gladstone	2	Yes	



DICKINSON	Iron Mountain	5	Yes	
DICKINSON	Kingsford	1		Out of area
EATON	Charlotte	6	Yes	
EATON	DIMONDALE	2		Out of area
EATON	Eaton Rapids	2		Out of area
EATON	LANSING*	4		Out of area
EMMET	Petoskey	9	Yes	
GENESEE	Burton	1		Out of area
GENESEE	DAVISON	2	Yes	
GENESEE	Fenton	2	Yes	
GENESEE	Flint	29	Yes	
GENESEE	Flint Township	1	Yes	
GENESEE	GRAND BLANC	1	Yes	
GENESEE	Mt. Morris	1	Yes	
GENESEE	Swartz Creek	1	Yes	
GLADWIN	Gladwin	1	Yes	
GLADWIN	Gaylord	1	Yes	
GLADWIN	Gladwin	5	Yes	
GOGEBIC	Bessemer	5	Yes	
GOGEBIC	Ironwood	1	Yes	
GOGEBIC	Marenisco	1		Out of area
GOGEBIC	Wakefield	1	Yes	
GRAND TRAVERSE	Acme	1	Yes	
GRAND TRAVERSE	Kingsley	1	Yes	
GRAND TRAVERSE	Suttons Bay	1	Yes	
GRAND TRAVERSE	Traverse City	13	Yes	
GRATIOT	Alma	1	Yes	
GRATIOT	Ithaca	4	Yes	
GRATIOT	St. Louis	1	Yes	
HILLSDALE	Hillsdale	6		Out of area
HILLSDALE	Jonesville	1		Out of area
HILLSDALE	OSSEO	1		Out of area
HOUGHTON	Calumet	2	Yes	
HOUGHTON	Hancock	2	Yes	
HOUGHTON	Houghton	3	Yes	
HOUGHTON	Laurium	1	Yes	
HOUGHTON	Painesdale	1	Yes	
HURON	Bad Axe	7		Out of area
INGHAM	Holt	1		Out of area
INGHAM	Lansing	39		Out of area
INGHAM	WILLIAMSTON	2		Out of area
INGHAM	EAST LANSING	1		Out of area
INGHAM	Mason	3		Out of area
IONIA	Ionia	14	Yes	
IOSCO	East Tawas	3	Yes	
IOSCO	Hale	1	Yes	
IOSCO	Tawas City	4	Yes	
IRON	Caspian	1		Out of area
IRON	Crystal Falls	4		Out of area
IRON	Iron River	3		Out of area
ISABELLA	Mt. Pleasant	10	Yes	



JACKSON	Jackson	24		Out of area
JACKSON	Grass Lake	1		Out of area
KALAMAZOO	Kalamazoo	20	Yes	
KALAMAZOO	Oshtemo	2	Yes	
KALAMAZOO	Portage	2	Yes	
KALKASKA	Kalkaska	7	Yes	
KENT	Caledonia	1	Yes	
KENT	Grand Rapids	34		Out of area
KENT	Rockford	2	Yes	
KENT	Sparta	3	Yes	
KENT	Wyoming	1		Out of area
KEWEENAW	Allouez	1	Yes	
LAKE	Baldwin	7		Video only
LAPEER	Lapeer	7	Yes	
LAPEER	Flint	1	Yes	
LEELANAU	Leland	2	Yes	
LEELANAU	Suttons Bay	1	Yes	
LENAWEE	Adrian	15		Out of area
LENAWEE	Tecumseh	2		Out of area
LENAWEE	Adrian	1		Out of area
LIVINGSTON	Brighton	4	Yes	
LIVINGSTON	Hamburg	1	Yes	
LIVINGSTON	Howell	6		Out of area
LIVINGSTON	Pinckney	1	Yes	
LUCE	Newberry	8	Yes	
MACKINAC	Engadine	1		Out of area
MACKINAC	Mackinac Island	1		Video only
MACKINAC	St. Ignace	8	Yes	
MACOMB	Chesterfield*	1	Yes	
MACOMB	Clinton Twp	6	Yes	
MACOMB	EASTPOINTE	1		Out of area
MACOMB	MT. CLEMENS	10		Out of area
MACOMB	New Baltimore	1		Out of area
MACOMB	New Haven	2		Out of area
MACOMB	Richmond	1		Out of area
MACOMB	Romeo*	1		Out of area
MACOMB	Roseville	2		Out of area
MACOMB	Shelby Township	1		Out of area
MACOMB	St. Clair Shores	2		Out of area
MACOMB	Sterling Heights	8		Out of area
MACOMB	Warren	4		Out of area
MANISTEE	Eastlake	1	Yes	
MANISTEE	Manistee	6	Yes	
MARQUETTE	GWINN	2	Yes	
MARQUETTE	Ishpeming	3	Yes	
MARQUETTE	Marquette	12	Yes	
MARQUETTE	Negaunee	3	Yes	
MASON	Freesoil	1		Out of area
MASON	Ludington	8	Yes	
MECOSTA	Big Rapids	6	Yes	
MECOSTA	Paris	1	Yes	



MENOMINEE	Harris	1	Yes	
MENOMINEE	Menominee	7		Out of area
MENOMINEE	Stephenson	1	Yes	
MIDLAND	Midland	7	Yes	
MIDLAND	Sanford	1	Yes	
MISSAUKEE	Lake City	5	Yes	
MONROE	Milan	2	Yes	
MONROE	Monroe	8	Yes	
MONROE	Petersburg	1	Yes	
MONROE	Temperance	1	yes	
MONTCALM	Carson City	1		Video only
MONTCALM	Greenville	1	Yes	
MONTCALM	Howard City	1	Yes	
MONTCALM	Lakeview	1		Video only
MONTCALM	Stanton	6	Yes	
MONTMORENCY	Atlanta	7	Yes	
MONTMORENCY	Lewiston	1	Yes	
MUSKEGON	Muskegon	21		Out of area
MUSKEGON	Muskegon Heights	1		Out of area
MUSKEGON	Muskegon Township	1		Out of area
MUSKEGON	Whitehall	1	Yes	
NEWAYGO	Fremont	1		Out of area
NEWAYGO	Grant	1	Yes	
NEWAYGO	Newaygo	1	Yes	
NEWAYGO	White Cloud	5		Video only
OAKLAND	Auburn Hills	1		Out of area
OAKLAND	Bloomfield Hills	1		Out of area
OAKLAND	Clarkston	1		Out of area
OAKLAND	Farmington Hills	5		Out of area
OAKLAND	Southfield	3		Out of area
OAKLAND	Ferndale	1		Out of area
OAKLAND	Hazel Park	1		Out of area
OAKLAND	Holly	1		Out of area
OAKLAND	Madison Heights	2		Out of area
OAKLAND	Milford	1		Out of area
OAKLAND	Northville	3		Out of area
OAKLAND	NOVI	1		Out of area
OAKLAND	Oak Park	5		Out of area
OAKLAND	Pontiac	13		Out of area
OAKLAND	Rochester Hills	2		Out of area
OAKLAND	Royal Oak	1		Out of area
OAKLAND	Southfield	1		Out of area
OAKLAND	Troy	1		Out of area
OAKLAND	WALLED LAKE	1		Out of area
OAKLAND	Waterford	3		Out of area
OAKLAND	West Bloomfield	1		Out of area
OAKLAND	WHITE LAKE	1		Out of area
OCEANA	Hart	5	Yes	
OCEANA	Shelby	2	Yes	
OCEANA	Walkerville	1		Out of area
OGEMAW	West Branch	8	Yes	



ONTONOGON	Ontonagon	4	Yes	
OSCEOLA	Reed City	9	Yes	
OSCODA	Marion	1	Yes	
OSCODA	Mio	7	Yes	
OTSEGO	Gaylord	14	Yes	
OTSEGO	OSTEGO	1	Yes	
OTTAWA	BYRON CENTER	1		Out of area
OTTAWA	Grand Haven	5	Yes	
OTTAWA	Holland	3	Yes	
OTTAWA	Hudsonville	1	Yes	
OTTAWA	West Olive	1		Video only
PRESQUE ISLE	Rogers City	4	Yes	
ROSCOMMON	Houghton Lake	1	Yes	
ROSCOMMON	Prudenville	3	yes	
ROSCOMMON	Roscommon	4	Yes	
SAGINAW	Bridgeport	1	Yes	
SAGINAW	Buena Vista TWN	1	Yes	
SAGINAW	Frankenmuth	2	Yes	
SAGINAW	Freeland	1	Yes	
SAGINAW	Saginaw	22	Yes	
SAGINAW	St. Charles	2	Yes	
SANILAC	Croswell	1		Out of area
SANILAC	Marlette	1		Out of area
SANILAC	Sandusky	8		Out of area
SCHOOLCRAFT	Manistique	5	yes	
SHIAWASSEE	Corunna	5	Yes	
SHIAWASSEE	Morrice	1		Out of area
SHIAWASSEE	Owosso	3	Yes	
ST CLAIR	Algonac	1		Out of area
ST CLAIR	Marine City	1		Out of area
ST CLAIR	Port Huron	10		Out of area
ST CLAIR	Richmond	1		Out of area
ST JOSEPH	Centreville	4		Out of area
ST JOSEPH	Sturgis	1	Yes	
ST JOSEPH	Three Rivers	1		Out of area
ST JOSEPH	White Pigeon	1		Out of area
TUSCOLA	Caro	11	yes	
TUSCOLA	Cass City	1	Yes	
TUSCOLA	Vassar	1	Yes	
VANBUREN	Bangor	1	Yes	
VANBUREN	Hartford	2	Yes	
VANBUREN	Paw Paw	11		Out of area
VANBUREN	South Haven	3		Out of area
WASHTENAW	Ann Arbor	12		Out of area
WASHTENAW	Chelsea	1	Yes	
WASHTENAW	Ypsilanti	5		Out of area
WAYNE	Allen Park	3		Out of area
WAYNE	Detroit	89		Out of area
WAYNE	Belleville	1		Out of area
WAYNE	Brewery Park	1		Out of area
WAYNE	GARDEN CITY	1		Out of area

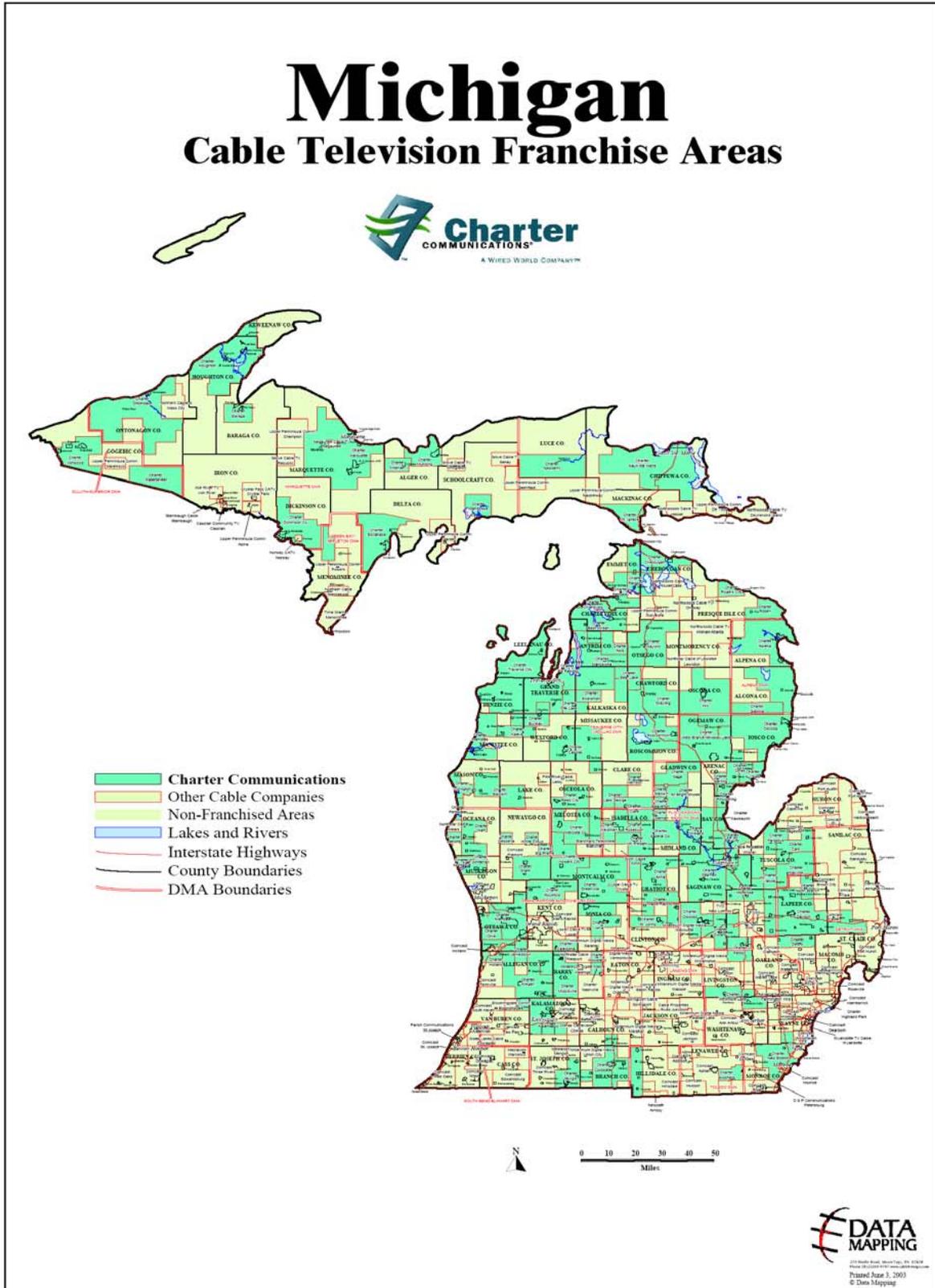


WAYNE	Dearborn	5		Out of area
WAYNE	Dearborn Heights	1		Out of area
WAYNE	Canton	2		Out of area
WAYNE	Harper Woods*	1		Out of area
WAYNE	Inkster*	1		Out of area
WAYNE	Lincoln Park*	1		Out of area
WAYNE	Livonia	1		Out of area
WAYNE	Taylor	1		Out of area
WAYNE	Trenton*	1		Out of area
WAYNE	Plymouth	1		Out of area
WAYNE	Wyandotte*	1		Out of area
WEXFORD	Cadillac	10	yes	



Article 1, Attachment B

This Michigan Graphic shows county boundaries for the State of Michigan.





Article 1, Attachment C

Cable High-Speed Data Access Services Cost Models

Monthly pricing detail for Cable High-Speed Data Access Services recurring charges.

All pricing in Attachment C includes managed to enclosed SLA services with /29 (5 Static IPs with 1 reserved for Charter to monitor the device per SLA).

Per month charge \$ 8to5 M-Sa	Region	Uplink 256KB	Uplink 384KB	Uplink 512 K	Uplink . 1.0MB
Downlink 768 KB		\$	\$	\$	\$
Downlink 1.5 MB	ALL serviceable areas	\$80.00	\$	\$	\$
Downlink 3.0 MB	ALL serviceable areas	\$	\$100.00	\$	\$
Downlink 5.0 MB	ALL serviceable areas	\$	\$	\$180.00	\$270.00

Per month charge \$ 7a to7p M-Sa	Region	Uplink 256KB	Uplink 512 KB	Uplink 1.0 MB	Uplink 1.5 MB See Article 1, Attachment F
Downlink 768 KB		\$	\$	\$	\$
Downlink 1.5 MB	ALL serviceable areas	\$80.00	\$	\$	\$
Downlink 3.0 MB		\$	\$	\$	\$
Downlink 5.0 MB	ALL serviceable areas	\$	\$180.00	\$270.00	\$

Per month charge \$ 8to5 M-F	Region	Uplink 256KB	Uplink 384 KB	Uplink 512 MB	Uplink 1.0 MB
Downlink 768 KB		\$	\$	\$	\$
Downlink 1.5 MB	ALL serviceable areas	\$80.00	\$	\$	\$
Downlink 3.0 MB	ALL serviceable areas	\$	\$100.00	\$	\$
Downlink 5.0 MB	ALL serviceable areas	\$	\$	\$180.00	\$270.00

Per month charge \$ 7x24 M-Su	Region	Uplink 256KB	Uplink 512 KB	Uplink 1.0 MB	Uplink 1.5 MB See Article 1, Attachment F
Downlink 768 KB		\$	\$	\$	\$
Downlink 1.5 MB	ALL serviceable areas	\$80.00	\$	\$	\$
Downlink 3.0 MB		\$	\$	\$	\$
Downlink 5.0 MB	ALL serviceable areas	\$	\$180.00	\$270.00	\$



Article 1, Attachment D

Contract Pricing For Cable High Speed Data Access

Pricing includes managed to enclosed SLA services with /29 (5 Static IPs with 1 reserved for Charter to monitor the device per SLA).

Region	County	City	Coverage Time	Downlink Speed	Uplink Speed	U= Unmanaged, M= Managed Services	Monthly Charge	One Time Charges
All serviceable locations	All serviceable locations	All serviceable locations	8 to 5 M-F	1.5mb	256kb	M	80.00	300.00
				3.0mb	384kb	M	100.00	300.00
				5.0mb	512kb	M	180.00	300.00
				5.0mb	1.0mb	M	270.00	300.00
All serviceable locations	All serviceable locations	All serviceable locations	8 to 5 M-Sa	1.5mb	256kb	M	80.00	300.00
				3.0mb	384kb	M	100.00	300.00
				5.0mb	512kb	M	180.00	300.00
				5.0mb	1.0mb	M	270.00	300.00
All serviceable locations	All serviceable locations	All serviceable locations	7A to 7P M- Sa	1.5mb	256kb	M	80.00	300.00
				3.0mb	384kb	M	100.00	300.00
				5.0mb	512kb	M	180.00	300.00
				5.0mb	1.0mb	M	270.00	300.00
All serviceable locations	All serviceable locations	All serviceable locations	7x24 M-Su	1.5mb	256kb	M	80.00	300.00
				3.0mb	384kb	M	100.00	300.00
				5.0mb	512kb	M	180.00	300.00
				5.0mb	1.0mb	M	270.00	300.00

Charter Communications will absorb construction costs for non-standard installations according to the chart below. Any costs over and above what is covered by Charter Communications will be the responsibility of the State of Michigan and will be addressed on a case by case basis.

Down Link Speed	Uplink Speed	U= Unmanaged, M= Managed Services	Monthly Charge	One time charge	Construction costs Covered by Charter Communications
1.5mb	256kb	M	80.00	300.00	1400.00
3.0mb	384kb	M	100.00	300.00	1600.00
5.0mb	512kb	M	180.00	300.00	2700.00
5.0mb	1.0mb	M	270.00	300.00	4000.00



Article 1, Attachment E

**Contract Pricing For Cable High Speed Data Access
with VPN**

Pricing includes managed to enclosed SLA services with /29 (5 Static IPs with 2 reserved for Charter to monitor the device per SLA).and a Model Fortinet-60 Unified Threat Management security device with VPN and Standard Installation.

Region	County	City	Coverage Time	Downlink Speed	Uplink Speed	U= Unmanaged, M= Managed Services	Monthly Charge	One Time Charges
All serviceable locations	All serviceable locations	All serviceable locations	8 to 5 M-F	1.5mb	256kb	M-VPN	180.00	400.00
				3.0mb	384kb	M-VPN	200.00	400.00
				5.0mb	512kb	M-VPN	280.00	400.00
				5.0mb	1.0mb	M-VPN	370.00	400.00
All serviceable locations	All serviceable locations	All serviceable locations	8 to 5 M-Sa	1.5mb	256kb	M-VPN	180.00	400.00
				3.0mb	384kb	M-VPN	200.00	400.00
				5.0mb	512kb	M-VPN	280.00	400.00
				5.0mb	1.0mb	M-VPN	370.00	400.00
All serviceable locations	All serviceable locations	All serviceable locations	7A to 7P M- Sa	1.5mb	256kb	M-VPN	180.00	400.00
				3.0mb	384kb	M-VPN	200.00	400.00
				5.0mb	512kb	M-VPN	280.00	400.00
				5.0mb	1.0mb	M-VPN	370.00	400.00
All serviceable locations	All serviceable locations	All serviceable locations	7x24 M-Su	1.5mb	256kb	M-VPN	180.00	400.00
				3.0mb	384kb	M-VPN	200.00	400.00
				5.0mb	512kb	M-VPN	280.00	400.00
				5.0mb	1.0mb	M-VPN	370.00	400.00

Charter Communications will absorb construction costs for non-standard installations according to the chart below. Any costs over and above what is covered by Charter Communications will be the responsibility of the State of Michigan and will be addressed on a case by case basis.

Down Link Speed	Uplink Speed	U= Unmanaged, M= Managed Services	Monthly Charge	One time charge	Construction costs Covered by Charter Communications
1.5mb	256kb	M-VPN	180.00	400.00	2700.00
3.0mb	384kb	M-VPN	200.00	400.00	3000.00
5.0mb	512kb	M-VPN	280.00	400.00	4000.00
5.0mb	1.0mb	M-VPN	370.00	400.00	5500.00



Article 1, Attachment F
Optical Delivery of Internet

Pricing includes managed to enclosed SLA services with /28 (13 Static IPs with 1 reserved for Charter to monitor the device per SLA).

Region	County	City	U= Unmanaged, M= Managed Services	Speed Tier	Monthly Cost	Standar d Installati on
All Serviceable	All Serviceable	All Serviceable	M	2Mbps/2Mbps	800.00	2500.00
			M	3Mbps/3Mbps	1000.00	2500.00
			M	4Mbps/4Mbps	1200.00	2500.00
			M	5Mbps/5Mbps	1400.00	2500.00
			M	6Mbps/6Mbps	1600.00	2500.00
			M	7Mbps/7Mbps	1800.00	2500.00
			M	8Mbps/8Mbps	2000.00	2500.00
			M	9Mbps/9Mbps	2200.00	2500.00
			M	10Mbps/10Mbps	2400.00	2500.00
			M	20Mbps/20Mbps	3500.00	2500.00
			M	30Mbps/30Mbps	4400.00	2500.00
			M	45Mbps/45Mbps	5200.00	2500.00
			M	100Mbps/100Mbps	8000.00	2500.00

All Fiber Optic Internet delivery is a custom build. Each installation will be addressed on a Case by Case basis. The above pricing is a gauge to be used for budgetary reasons. Actual costs may vary based on individual project information.

Speed Tier	U= Unmanaged, M= Managed Services	Monthly Charge	One time charge	Construction/Electronic costs Covered by Charter Communications
2Mbps/2Mbps	M	800.00	2500.00	7500.00
3Mbps/3Mbps	M	1000.00	2500.00	10000.00
4Mbps/4Mbps	M	1200.00	2500.00	12000.00
5Mbps/5Mbps	M	1400.00	2500.00	14000.00
6Mbps and Above	M		2500.00	ICB



Article 1, Attachment G

Optical Delivery of Managed Internet with Managed VPN

Pricing includes managed to enclosed SLA services with /28 (13 Static IPs with 2 reserved for Charter to monitor the device per SLA).and a Model Fortinet-60 Unified Threat Management security device with VPN and Standard Installation.

Region	County	City	U= Unmanaged, M= Managed Services	Speed Tier	Monthly Cost	Standard Installation
All Serviceable	All Serviceable	All Serviceable	M-VPN	2Mbps/2Mbps	900.00	2500.00
			M-VPN	3Mbps/3Mbps	1100.00	2500.00
			M-VPN	4Mbps/4Mbps	1300.00	2500.00
			M-VPN	5Mbps/5Mbps	1500.00	2500.00
			M-VPN	6Mbps/6Mbps	1700.00	2500.00
			M-VPN	7Mbps/7Mbps	1900.00	2500.00
			M-VPN	8Mbps/8Mbps	2100.00	2500.00
			M-VPN	9Mbps/9Mbps	2300.00	2500.00
			M-VPN	10Mbps/10Mbps	2500.00	2500.00
			M-VPN	20Mbps/20Mbps	3600.00	2500.00
			M-VPN	30Mbps/30Mbps	4500.00	2500.00
			M-VPN	45Mbps/45Mbps	5300.00	2500.00
			M-VPN	100Mbps/100Mbps	8100.00	2500.00

All Fiber Optic Internet delivery is a custom build. Each installation will be addressed on a Case by Case basis. The above pricing is a gauge to be used for budgetary reasons. Actual costs may vary based on individual project information.

Speed Tier	U= Unmanaged, M= Managed Services	Monthly Charge	One time charge	Construction/Electronic costs Covered by Charter Communications
2Mbps/2Mbps	M-VPN	800.00	2500.00	7500.00
3Mbps/3Mbps	M-VPN	1000.00	2500.00	10000.00
4Mbps/4Mbps	M-VPN	1200.00	2500.00	12000.00
5Mbps/5Mbps	M-VPN	1400.00	2500.00	14000.00
6Mbps and Above	M-VPN		2500.00	ICB



Article 1, Attachment H

Cable TV Services Cost Model

Provide monthly pricing detail for Cable TV Services including all one-time and recurring charges. Cable TV Services pricing in addition to the basic Cable Service should be put in the spread sheet as add on pricing.

Region Number	County	City	Basic Cable	Expanded Cable	HDTV	Premium 1	Standard Installation*	Cable Converters
All Serviceable	All Serviceable	All Serviceable	25.00	54.00	30.00	N/A	100.00	included on first outlet
								4.00 each additional outlet

Basic and Expanded Cable costs include first DCT (Digital Converter) for Parental Controls and each additional outlet will be billed \$4 for additional DCTs.

*Non-Standard installation will be addressed on a case by case basis.



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 Vendor 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 Attachment B**, 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 Vendor 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 Vendor delegates performance of a portion of the t does not include independent Vendors engaged by Vendor 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 and Exhibits

All Attachments 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 Vendor 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. Vendor 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). Vendor 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 Vendor 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 Vendor'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 Vendor and/or its Subcontractors 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 ("OAS") and Department of Information Technology (collectively, including all other relevant State of Michigan departments and agencies, the "State"). OAS is the sole point of contact in the State with regard to all procurement and contractual matters relating to the Contract. **OAS 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, CPPB](#)
Purchasing Operations
Department of Management and Budget
Mason Bldg, 2nd Floor
PO Box 30026
Lansing, MI 48909
Email collierd@michigan.gov
Phone (517) 335-4804

2.015 Contract Compliance Inspector

Upon receipt at OAS of the properly executed Contract, it is anticipated that the Director of DMB Purchasing Operations, in consultation with (insert the end using agency), 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:



Jennifer Ryan
Department of Information Technology
Constitution Hall, Atrium - South Tower
525 W. Allegan
Lansing, MI 48913
Email ryanj3@michigan.gov
Phone (517) 241-9673

2.016 Project Manager

The following individual will oversee the project:

Name: Jim Bowen
Department of Information Technology
Address: 608 W. Allegan
City: Lansing
State & Zip MI 48909
Email bowenj@michigan.gov
Phone: (517) 241-9076

2.020 Contract Objectives/Scope/Background

2.021 Background

See Section 1.002

2.022 Purpose

See Section 1.001

2.023 Objectives and Scope

See Section 1.101 and 1.102

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 Vendor or payment under this Contract, until Vendor 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 three (3) 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 two (2) 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 Vendor Personnel

2.041 Vendor Personnel

- (a) Personnel Qualifications. All persons assigned by Vendor to the performance of Services under this Contract shall be employees of Vendor 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. Vendor shall include a similar provision in any subcontract entered into with a Subcontractor. For the purposes of this Contract, independent Vendors engaged by Vendor solely in a staff augmentation role shall be treated by the State as if they were employees of Vendor for this Contract only; however, the State understands that the relationship between Vendor and Subcontractor is an independent Vendor relationship.
- (b) Key Personnel
 - (i) In discharging its obligations under this Contract, Vendor 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, Vendor 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) Vendor shall not remove any Key Personnel from their assigned roles or the Contract without the prior written consent of the State. If the Vendor 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 Vendor, 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 Vendor personnel policies or Collective Bargaining Agreement(s) as long as the State receives prior written notice before shadowing occurs and Vendor provides thirty (30) days of shadowing unless parties agree to a different time period. The Vendor 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, Vendor 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 Vendor 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 Vendor 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 Vendor 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, Vendor 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, Vendor 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 Vendor 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 Vendor 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 Vendor. This includes secretarial, clerical and Contract administration support staff necessary for Vendor to perform its obligations hereunder.
 - (ii) Vendor shall provide sufficient personnel resources for the completion of Contract tasks indicated in Vendor's project plan approved by the State. If the level of personnel resources is insufficient to complete any Vendor Contract tasks in accordance with the Contract time schedule as demonstrated by Vendor's failure to meet mutually agreed to time schedules, Vendor 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 Vendor'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 Vendor 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 Vendor, Vendor 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, Vendor will submit to the State its proposals for reducing the turnover rate to an acceptable level. In any event, notwithstanding the turnover of personnel, Vendor remains obligated to perform the Services without degradation and in accordance with the State-approved Contract schedule.

- (g) **Location.** All staff assigned by Vendor to work on the Contract will perform their duties either primarily at Vendor'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 Vendor personnel may be assigned office space to be shared with State personnel.

2.042 Vendor Identification

Vendor employees shall be clearly identifiable while on State property by wearing a State-issued badge, as required. Vendor 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

Vendor agrees to cause its personnel and the personnel of any Subcontractors to cooperate with the State and its agents and other Vendors including the State's Quality Assurance personnel, and, as reasonably requested by the State, to provide to the State's agents and other Vendors with reasonable access to Vendor'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 Vendor receives reasonable prior written notice of such request. The State acknowledges that Vendor's time schedule for the Contract is very specific and agrees not to unnecessarily or unreasonably interfere with, delay or otherwise impeded Vendor's performance under this Contract with such requests for access.

2.044 Subcontracting by Vendor

- (a) Vendor shall have full responsibility for the successful performance and completion of all of the Services and Deliverables. The State will consider Vendor 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) Vendor 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 Vendor 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 Vendor 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 Vendor for the performance of the Services, Vendor shall require the Subcontractor, to the extent of the Services to be performed by the Subcontractor, to be bound to Vendor by the terms of this Contract and to assume toward Vendor all of the obligations and responsibilities that Vendor, by this Contract, assumes toward the State. The State reserves the right to receive copies of and review all subcontracts, although Vendor 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 Vendor, and Vendor shall remain responsible for the performance of its Subcontractors to the same extent as if Vendor had not subcontracted such performance. Vendor shall make all payments to Subcontractors or suppliers of Vendor. Except as otherwise agreed in writing by the State and Vendor, the State will not be obligated to direct payments for the Services other than to Vendor. The State's written approval of any Subcontractor engaged by Vendor to perform any obligation under this Contract shall not relieve Vendor of any obligations or performance required under this Contract. Attached as **Exhibit E** 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, Vendor 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 Vendor 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 Vendor Responsibility for Personnel

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

2.050 State Standards

2.051 Existing Technology Standards

The Vendor 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.



State Telecommunications and Network Management standards available at <http://www.michigan.gov/dit/0,1607,7-139-34305---,00.html>.

Industry standards;
Institute of Electrical and Electronics Engineers, Inc. (IEEE).
Building Industry Consulting Services International, Inc. (BICSI) Specifications.
Project specific standards (see attached if applicable)

Any proposed solutions that vary from these standards must be thoroughly explained and documented, including specific variance, potential cost savings, and specific project benefits of the variance.

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 Vendor shall use the State's PPM to manage this Contract. If the Vendor requires training on the PMM, those costs shall be the responsibility of the Vendor, 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, Vendor 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.

Vendors 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 Vendor has access to the State computer system, Vendor must comply with the State's Acceptable Use Policy, see <http://www.michigan.gov/ditservice/0,1607,7-179-25781-73760---,00.html>. All Vendor 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 Vendor'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 Vendor. DIT may also designate, in writing, some services as non-delegated and require DIT review and approval before agency acquisition. DIT will use Vendor provided management reports and periodic random agency audits to monitor and administer contract usage for delegated services.

2.062 Software

Exhibit J lists the items of software the State is required to purchase for execution the Contract. The list in **Exhibit J** 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 Vendor at no additional charge (except where agreed upon and specified in a Statement of Work or Contract Change Notice). **Exhibit J** also identifies certain items of software to be provided by the State.

2.063 Hardware

Exhibit F lists the items of hardware the State is required to purchase for execution the Contract. The list in **Exhibit F** 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 Vendor at no additional charge (except where agreed upon and specified in a Contract Change Notice). **Exhibit F** 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 Vendor shall be new where Vendor 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 Vendor 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 Vendor 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 Vendor to execute the Contract and perform the Services/provide the Deliverables, and Vendor 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) Vendor 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)**, Vendor 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 Vendor believes that a delay in performance by the State has caused or will cause Vendor to be unable to perform its obligations in accordance with specified Contract time periods, Vendor 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. Vendor 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 Vendor shall file for protection under the bankruptcy laws, or if an involuntary petition shall be filed against Vendor and not removed within thirty (30) days, or if the Vendor 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 Vendor and/or its affiliates are unable to provide reasonable assurances that Vendor 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. Vendor 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 Vendor's obligations hereunder, and any work which Vendor 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 Time is of the Essence

The Vendor agrees that time is of the essence in the performance of the Vendor's obligations under this Contract.

2.76 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 Vendor 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 Vendor 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 Vendor 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 Vendor 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 Vendor 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. Vendor 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 Vendor 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 Vendor 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 Vendor 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, Vendor 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, Vendor 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 Vendor 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 Vendor. 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 Vendor agree that the Deliverable/Service is ready for use and, where applicable, certification by Vendor 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 Vendor to rectify them post-approval. In any case, Vendor will be responsible for working diligently to correct within a reasonable time at Vendor'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), Vendor is unable to correct all deficiencies preventing Final Acceptance of a Deliverable/Service, the State may: (i) demand that Vendor cure the failure and give Vendor additional time to cure the failure at the sole expense of Vendor; or (ii) keep the Contract in force and do, either itself or through other parties, whatever Vendor has failed to do, in which event Vendor 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 Vendor provided Vendor 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 Vendor 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 Vendor in writing by the end of the State Review Period either stating that the Deliverable is approved in the form delivered by Vendor 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 Vendor a notice of deficiencies, Vendor 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. Vendor's correction efforts will be made at no additional charge. Upon receipt of a corrected Deliverable from Vendor, 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 Vendor in writing by the end of the State Review Period either stating that the Service is approved in the form delivered by Vendor 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 Vendor a notice of deficiencies, Vendor 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. Vendor's correction efforts will be made at no additional charge. Upon implementation of a corrected Service from Vendor, 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 Vendor in writing by the end of the State Review Period either stating that the Deliverable is approved in the form delivered by Vendor 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 Vendor a notice of deficiencies, Vendor 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. Vendor's correction efforts will be made at no additional charge. Upon receipt of a corrected Deliverable from Vendor, 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. To the extent the parties agree that certain specific Services will be provided on a time and materials basis, such Services shall be provided at the Amendment Labor Rates (**Article 1, Attachment C**). The State may make progress payments to the Vendor when requested as work progresses, but not more frequently than monthly, in amounts approved by the Contract Administrator, after negotiation. Vendor 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 Vendor's charges under such Statement of Work commensurate with the reduction in scope, using the rates in **Article 1, Attachment C** Unless specifically identified in an applicable Statement of Work.



- (c) Services/Deliverables Covered
For all Services/Deliverables to be provided by Vendor (and its Subcontractors, 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 will be at the rates specified in **Article 1, Attachment C**.

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 Vendor 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. The charges for Services billed on a time and materials basis shall be determined based on the actual number of hours of Services performed, at the applicable Labor Rates specified in **Article 1, Attachment C**. 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 Vendor’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 Vendor, if requested.
- (c) Out-of-Pocket Expenses
Vendor acknowledges that the out-of-pocket expenses that Vendor 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 Vendor’s fixed price for each Statement of Work. Accordingly, Vendor’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 Vendor 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 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 Vendor 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 Vendor, toward fulfillment of this Contract.

- (f) **Final Payment**
The making of final payment by the State to Vendor 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. Vendor's acceptance of final payment by the State under this Contract shall constitute a waiver of all claims by Vendor 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. Vendor 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 Holdback

RESERVED

2.095 Electronic Payment Availability

Electronic transfer of funds is available to State Vendors. Vendor 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) Vendor 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. Vendor's duties will include monitoring and reporting the State's performance of its participation and support responsibilities (as well as Vendor's own responsibilities) and providing timely notice to the State in Vendor's reasonable opinion if the State's failure to perform its responsibilities in accordance with **Article 1, Attachment E** (Project Plan) is likely to delay the timely achievement of any Contract tasks.
- (b) The Services/Deliverables will be provided by the Vendor either directly or through its affiliates, subsidiaries, subcontractors or resellers. Regardless of the entity providing the Service/Deliverable, the Vendor 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 Vendor to the State. Such reports may include:

- (i) separately address Vendor's performance in each area of the Services;
- (ii) for each area of the Services, assess the degree to which Vendor 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 Vendor 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 Vendor (including its augmented personnel and Subcontractors) in performing the Project versus hours budgeted by Vendor.
- (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 Vendor. Vendor shall prepare and circulate an agenda sufficiently in advance of each such meeting to give participants an opportunity to prepare for the meeting. Vendor shall incorporate into such agenda items that the State desires to discuss. At the State's request, Vendor shall prepare and circulate minutes promptly after a meeting.

2.104 System Changes

Vendor is not responsible for and not authorized to make changes to any State systems without written authorization from the State. Any changes Vendor 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 Vendor 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 Vendor 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 Vendor to perform any Services/Deliverables that are outside the scope of the Vendor's responsibilities under the Contract ("New Work"), the Vendor must notify the State promptly, and before commencing performance of the requested activities, that it believes the requested activities are New Work. If the Vendor fails to notify the State before commencing performance of the requested activities, any such activities performed before notice is given by the Vendor shall be conclusively considered to be in-scope Services/Deliverables, not New Work.

If the State requests or directs the Vendor to perform any services or provide deliverables that are consistent with and similar to the Services/Deliverables being provided by the Vendor under the Contract, but which the Vendor reasonably and in good faith believes are not included within the Statements of Work, then before performing such services or providing such deliverables, the Vendor shall notify the State in writing that it considers the services or deliverables to be an Additional Service/Deliverable for which the Vendor should receive additional compensation. If the Vendor does not so notify the State, the Vendor shall have no right to claim thereafter that it is entitled to additional compensation for performing that service or providing that deliverable. If the Vendor 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 Vendor 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 Vendor (a "Change"), the State shall submit a written request for Vendor to furnish a proposal for carrying out the requested Change (a "Change Request").
 - (ii) Vendor Recommendations

Vendor 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, Vendor 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. Vendor'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 Vendor provides a written proposal and should Vendor 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 Vendor written notice within a reasonable time, the State shall be entitled to accept a Vendor proposal for Change, to reject it or to reach another agreement with Vendor. 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 Vendor to perform any activities that Vendor believes constitute a Change, Vendor must notify the State that it believes the requested activities are a Change prior to commencing the performance of the requested activities. If Vendor fails to so notify the State prior to commencing performance of the requested activities, such activities shall be considered to be performed gratuitously by Vendor, and Vendor shall not have any right thereafter to assert any claim for additional compensation or time for the performance of such activities. If Vendor commences performance of gratuitous services outside the scope of this Contract and subsequently elects to stop performing such out-of-scope services, Vendor 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

Vendor will use an automated tool for planning, monitoring and tracking the Contract's progress. In addition, Vendor 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 Vendor 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

2.111a Records and Inspections

- (a) Inspection of Work Performed. The State's authorized representatives shall at all reasonable times and with ten (10) days prior written request, have the right to enter Vendor's premises, or any other places, where the Services are being performed, and shall have access, upon reasonable request, to interim drafts of Deliverables or work-in-progress. Upon ten (10) Days prior written notice and at all reasonable times, the State's representatives shall be allowed to inspect, monitor, or otherwise evaluate the work being performed and to the extent that such access will not reasonably interfere or jeopardize the safety or operation of the systems or facilities. Vendor must provide all reasonable facilities and assistance for the State's representatives.
- (b) Examination of Records. Vendor agrees that the State, including its duly authorized representatives, until the expiration of seven (7) years following the creation of the material (collectively, the "Audit Period"), shall, upon twenty (20) days prior written notice, have access to and the right to examine and copy any of Vendor's books, records, documents and papers pertinent to establishing Vendor's compliance with the Contract and with applicable laws and rules, including the State's procurement rules, regulations and procedures, and actual performance of the Contract for the purpose of conducting an audit, examination, excerpt and/or transcription but the State shall not have access to any information deemed confidential to Vendor to the extent such access would require such confidential information to become publicly available. This provision also applies to the books, records, accounts, documents and papers, in print or electronic form, of any parent, affiliated or subsidiary organization of Vendor, or any Subcontractor of Vendor performing services in connection with the Contract.



- (c) Retention of Records. Vendor shall maintain at least until the end of the Audit Period all pertinent financial and accounting records (including time sheets and payroll records, and information pertaining to the Contract and to the Services, equipment, and commodities provided under the Contract) pertaining to the Contract in accordance with generally accepted accounting principles and other procedures specified in this Section. Financial and accounting records shall be made available, upon request, to the State at any time during the Audit Period. If an audit, litigation, or other action involving Vendor's records is initiated before the end of the Audit Period, the records must be retained until all issues arising out of the audit, litigation, or other action are resolved or until the end of the Audit Period, whichever is later.
- (d) Audit Resolution. If necessary, the Vendor and the State shall meet to review each audit report promptly after issuance. The Vendor will respond to each audit report in writing within thirty (30) days from receipt of such report, unless a shorter response time is specified in such report. The Vendor and the State shall develop, agree upon and monitor an action plan to promptly address and resolve any deficiencies, concerns, and/or recommendations in such audit report.

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 Vendor 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 Vendor's performance of the Services/Deliverables, the State shall provide to Vendor 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 Vendor's personnel whom the parties agree will perform the Services/Deliverables at State facilities (collectively, the "State Facilities"). Vendor 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 Vendor in the course of providing the Services. Vendor 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 Vendor's use, or to which Vendor otherwise gains access in the course of performing the Services, for any purpose other than providing the Services to the State.
- (c) Return. Vendor 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 Vendor. However, Vendor 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 Vendor provides the State with reasonable



written notice of such nonperformance and Vendor 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 Vendor's performance or Vendor's cost of performance, Vendor 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 Vendor 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 Vendor 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 Vendor 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 Vendor 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/ditservice/0,1607,7-179-25781-73760--,00.html>. Furthermore, Vendor personnel will be expected to agree to the State's security and acceptable use policies before the Vendor personnel will be accepted as a resource to perform work for the State. It is expected the Vendor will present these documents to the prospective employee before the Vendor presents the individual to the State as a proposed resource. Vendor 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 Vendor 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

Vendor 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 Vendor shall mean all non-public proprietary information of Vendor (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 Vendor 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 Vendor 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 Vendor 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 Vendor 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) Vendor obligates the Subcontractor in a written Contract to maintain the State's Confidential Information in confidence. At the State's request, any employee of Vendor 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 Vendor's and the Subcontractor's obligations under this Section and of the employee's obligation to Vendor 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 Vendor 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, Vendor 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. Vendor and the State will cooperate to mitigate, to the extent practicable, the effects of any breach, intrusion, or unauthorized use or disclosure. Vendor 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, Vendor shall certify to the State that Vendor has destroyed all State Confidential Information.

2.160 Proprietary Rights

2.161 License

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

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

The State may copy each item of Software to multiple hard drives or networks unless otherwise agreed by the parties.

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

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

2.162 Source Code Escrow

RESERVED



2.163 Rights in Data

- (a) The State will be and remain the owner of all data made available by the State to Vendor or its agents, Subcontractors or representatives pursuant to the Contract. Vendor 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 Vendor, nor will any employee of Vendor other than those on a strictly need to know basis have access to the State's data. Vendor will not possess or assert any lien or other right against the State's data. Without limiting the generality of this Section, Vendor 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. Vendor 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 Vendor for any purpose. The State will not possess or assert any lien or other right against the Vendor'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 Vendor will continue to own their respective proprietary technologies developed before entering into the Contract. Any hardware bought through the Vendor by the State, and paid for by the State, will be owned by the State. Any software licensed through the Vendor 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 J**.

2.166 Pre-existing Materials for Custom Software Deliverables

Neither Vendor 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 Vendor 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 Vendor 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 Vendor 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 Vendor or developed by Vendor under this Contract, and Vendor 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 Vendor 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, Vendor procures any equipment, software or other Deliverable for the State (including equipment, software and other Deliverables manufactured, re-marketed or otherwise sold by Vendor under Vendor's name), then in addition to Vendor's other responsibilities with respect to such items in this Contract, Vendor 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 s, necessary to enter into this Contract, on behalf of Vendor.
- (f) It is qualified and registered to transact business in all locations where required.
- (g) Neither the Vendor 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 Vendor'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. Vendor shall notify the State within two (2) days of any such interest that may be incompatible with the interests of the State.
- (h) Neither Vendor 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 Vendor or Affiliates or employee on behalf of the State would be influenced. Vendor shall not attempt to influence any State employee by the direct or indirect offer of anything of value.
- (i) Neither Vendor 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 Vendor 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 Vendor 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 Vendor to any other bidder; and no attempt was made by Vendor 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 Vendor 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 Vendor 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 Vendor.
- (m) All written information furnished to the State by or behalf of Vendor 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. Vendor 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 Vendor failed to perform or otherwise breached an obligation of such contract.

2.172 Software Warranties

(a) Performance Warranty

The Vendor 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, Vendor will promptly correct the affected Deliverable(s) at no charge to the State.

(b) No Surreptitious Code Warranty

The Vendor 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, Vendor 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 Vendor represents and warrants that all software for which the Vendor 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 Vendor 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 Vendor shall provide in writing the name and use of any Third-party Software, including information regarding the Vendor's authorization to include and utilize such software. The notice shall include a copy of any ownership agreement or license that authorizes the Vendor to use the Third-party Software.

2.173 Equipment

To the extent Vendor is responsible under this Contract for maintaining equipment/system(s), Vendor 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 Vendor represents and warrants that the equipment/system(s) shall be in good operating condition and shall operate and perform to the requirements and other standards of performance contained in this Contract, when installed, at the time of Final Acceptance by the State, and for a period of one (1) year commencing upon the first day following Final Acceptance.

Within three (3) business days of notification from the State, the Vendor shall adjust, repair or replace all equipment that is defective or not performing in compliance with the Contract. The Vendor shall assume all costs for replacing parts or units and their installation including transportation and delivery fees, if any.

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



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

The Vendor shall act as the sole point of contact for warranty service. The Vendor 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.

All warranty work shall be performed on the State of Michigan worksite(s).

2.174 Physical Media Warranty

- (a) Vendor represents and warrants that each licensed copy of the Software provided by the Vendor 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 Vendor breaches this warranty, then the State shall be entitled to replacement of the non-compliant copy by Vendor, at Vendor's expense (including shipping and handling).

2.175 DISCLAIMER

THE FOREGOING EXPRESS WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES AND EACH PARTY EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

2.176 Consequences for Breach

In addition to any remedies available in law, if the Vendor 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 Vendor 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 Vendor's performance of services under the terms of this Contract, whether such services are performed by the Vendor, 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 Vendor waives all rights against the State of Michigan, its departments, divisions, agencies, offices, officers, employees and agents for recovery of damages to the extent these damages are covered by the insurance policies the Vendor is required to maintain pursuant to this Contract.



All insurance coverages 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 Vendor 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.

Where specific limits are shown, they are the minimum acceptable limits. If Vendor'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 Vendor 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 coverages 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 Vendor 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 Vendor 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 Vendor 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 Vendor must have vehicle liability insurance on any auto including owned, hired and non-owned vehicles used in Vendor's business for bodily injury and property damage as required by law.



The Vendor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents as ADDITIONAL INSUREDS on the vehicle liability certificate. The Vendor 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 Vendor'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, Vendor 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 Vendor 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 Vendor 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 Vendor for any reason under this Contract, and the equipment, software and other contents of such office space, including without limitation, those contents used by Vendor 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 Vendor. 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 Vendor subcontract with other insurance provisions, Vendor shall require all of its Subcontractors under this Contract to purchase and maintain the insurance coverage as described in this Section for the Vendor in connection with the performance of work by those Subcontractors. Alternatively, Vendor may include any Subcontractors under Vendor'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 Vendor's liability or responsibility.
- (c) **Certificates of Insurance and Other Requirements**
Vendor 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 Vendor 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.

Vendor 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 Vendor under this Contract to any indemnified party or other persons. Vendor shall be responsible for all deductibles with regard to such insurance. If Vendor 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 Vendor 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 Vendor, or Vendor 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 Vendor 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 Vendor in the performance of this Contract and that are attributable to the negligence or tortious acts of the Vendor 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 Vendor shall indemnify, defend and hold harmless the State from any claim, loss, or expense arising from Vendor'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 Vendor 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 Vendor 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 Vendor 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 Vendor or its subcontractors, or the operation of such equipment, software, commodity or service, or the use or reproduction of any documentation provided with such equipment, software, commodity or service infringes any United States 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 Vendor's opinion be likely to become the subject of a claim of infringement, the Vendor shall at the Vendor'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 Vendor, (ii) replace or modify to the State's 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 Vendor, (iii) accept its return by the State with appropriate credits to the State against the Vendor's charges and reimburse the State for any losses or costs incurred as a consequence of the State ceasing its use and returning it.

Notwithstanding the foregoing, the Vendor 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 Vendor, including, but not limited to, any modification of the equipment by the State; or (iii) the combination, operation, or use of the equipment with equipment or software not supplied by the Vendor under this Contract.

2.192 Continuation of Indemnification Obligations

The Vendor'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 Vendor of such claim in writing and take or assist Vendor in taking, as the case may be, any reasonable action to avoid the imposition of a default judgment against Vendor. No failure to notify Vendor shall relieve Vendor of its indemnification obligations except to the extent that Vendor can demonstrate damages attributable to such failure. Within ten (10) days following receipt of written notice from the State relating to any claim, Vendor shall notify the State in writing whether Vendor



agrees to assume control of the defense and settlement of that claim (a "Notice of Election"). After notifying Vendor of a claim and prior to the State receiving Vendor's Notice of Election, the State shall be entitled to defend against the claim, at Vendor's expense, and Vendor will be responsible for any reasonable costs incurred by the State in defending against the claim during such period.

- (b) If Vendor 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) Vendor shall, at the request of the State, demonstrate to the reasonable satisfaction of the State, Vendor's financial ability to carry out its defense and indemnity obligations under this Contract; (iii) Vendor 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 Vendor given within ten (10) days after the State's receipt of Vendor's information requested by the State pursuant to clause (ii) of this paragraph if the State determines that Vendor has failed to demonstrate to the reasonable satisfaction of the State Vendor'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 Vendor 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 Vendor. If it is determined that the claim was one against which Vendor was required to indemnify the State, upon request of the State, Vendor 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 Vendor's liability for damages to the State shall be limited to two times the value of the Contract or \$200,000 (for low risk contracts – Select a higher amount for moderate to high risk contracts) which ever is higher. The foregoing limitation of liability shall not apply to claims for infringement of United States patent, copyright, trademarks or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Vendor; 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 Vendor shall be limited to the value of the Contract.

Neither the Vendor 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 Vendor; 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 Vendor'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 Vendor as of a date specified by the State in a written notice of termination to Vendor, except to the extent that the State shall pay for Services/Deliverables provided through the date of termination.

Vendor 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 Vendor which are caused by acts or omissions of its Subcontractors will not relieve Vendor of its obligations under the Contract except to the extent that a Subcontractor is itself subject to an Excusable Failure condition described above and Vendor cannot reasonably circumvent the effect of the Subcontractor's default or delay in performance through the use of alternate sources, workaround plans or other means.

2.203 Disaster Recovery

Vendor 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, Vendor 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 Vendor 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 Vendor, 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, Vendor 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 Vendor 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 Vendor 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) Vendor 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 Vendor. The State shall give Vendor 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 Vendor for the agreed-to level of the Services or production of Deliverables to be provided by Vendor are not appropriated or otherwise made available, the State may, upon thirty (30) days written notice to Vendor, 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 Vendor pursuant to this Section, the State shall pay Vendor 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 Vendor 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 Vendor, an officer of Vendor, or an owner of a 25% or greater share of Vendor 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 Vendor'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 Vendor 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, Vendor 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 Vendor's possession, (c) return all materials and property provided directly or indirectly to Vendor by any entity, agent or employee of the State, (d) in the event that the Vendor maintains title in Deliverables that is intended to be transferred to the State at the termination of the Contract, Vendor 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 Vendor 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 Vendor 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 Vendor 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 Vendor pursuant to this Contract shall, at the option of the State, become the State's property, and Vendor 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, Vendor 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 Vendor Transition Responsibilities

In the event this contract is terminated, for convenience or cause, dissolved, voided, rescinded, nullified, expires or is otherwise rendered unenforceable, the Vendor 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 Vendor 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 Vendor 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 Vendor 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 Vendor's subcontractors or vendors, as necessary to meet its needs, Vendor agrees to reasonably, and with good-faith, work with the



- State to use the Services of Vendor's subcontractors or vendors. Vendor will notify all of Vendor's subcontractors of procedures to be followed during transition.
- (b) Information - The Vendor 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 Vendor will provide the State with asset management data generated from the inception of this Contract through the date on which this Vendor is terminated in a comma-delineated format unless otherwise requested by the State. The Vendor will deliver to the State any remaining owed reports and documentation still in Vendor's possession subject to appropriate payment by the State.
 - (d) Software. - The Vendor shall reasonably assist the State in the acquisition of any Vendor software required to perform the Services/use the Deliverables under this Contract. This shall include any documentation being used by the Vendor to perform the Services under this Contract. If the State transfers any software licenses to the Vendor, those licenses shall, upon expiration of the Contract, transfer back to the State at their current revision level. Upon notification by the State, Vendor 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 Vendor 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 by **Exhibit D**. The Vendor will prepare an accurate accounting from which the State and Vendor 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 Vendor agree:

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

2.220 Termination by Vendor

2.221 Termination by Vendor

If the State materially breaches its obligation to pay Vendor 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 Vendor 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 Vendor (such time period not to be less than thirty (30) days), then Vendor 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 Vendor 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 Vendor, require that Vendor 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 Vendor, 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, Vendor 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, Vendor 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 Vendor's costs properly allocable to, the performance of any part of the Contract; and (b) Vendor 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 Vendor 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 Vendor 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 Vendor 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 Vendor arising out of or relating to the Contract or any Statement of Work shall be resolved as follows. For all Vendor claims seeking an increase in the amounts payable to Vendor under the Contract, or the time for Vendor's performance, Vendor shall submit a letter executed by Vendor'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 Vendor or the time for Vendor's performance for which Vendor believes the State is liable and covers all costs of every type to which Vendor is entitled from the occurrence of the claimed event, and (c) the supporting data provided with such an affidavit are current and complete to Vendor'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 Vendor 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 Vendor 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 Vendor 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 Vendor 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, Vendor 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. Vendor 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 Vendor 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 Vendor as an employer or the name of the Subcontractor, manufacturer or supplier of Vendor appears in the register.



2.263 Workplace Safety and Discriminatory Harassment

In performing Services for the State, the Vendor 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 Vendor shall comply with Civil Service regulations and any applicable agency rules provided to the Vendor. 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. Vendor must disclose any material criminal litigation, investigations or proceedings involving the Vendor (and each Subcontractor) or any of its officers or directors or any litigation, investigations or proceedings under the Sarbanes-Oxley Act. In addition, each Vendor (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 Vendor (or, to the extent Vendor 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 Vendor or any Subcontractor hereunder; or (ii) a claim or written allegation of fraud against Vendor or, to the extent Vendor 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 Vendor'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 Vendor (or a Subcontractor hereunder) to continue to perform this Contract in accordance with its terms and conditions, or
 - (ii) whether Vendor (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 Vendor shall be required to provide the State all reasonable assurances requested by the State to demonstrate that:
 - (A) Vendor 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) Vendor 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) Vendor shall make the following notifications in writing:
- (1) Within thirty (30) days of Vendor 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, Vendor shall notify the Office of Purchasing Operations.
- (d) Vendor 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.



- (e) Vendor 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

Vendor 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, Vendor 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. Vendor 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 Vendor 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 Vendor’s Work. Prior to the commencement of Work, the State shall advise Vendor 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 Vendor encounters material reasonably believed to be a Hazardous Material and which may present a substantial danger, the Vendor 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 Vendor, or does not result in whole or in part from any violation by the Vendor 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 Vendor 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 Vendor, or results in whole or in part from any violation by the Vendor 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 Vendor, the Vendor 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 Vendor 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 Vendor and Vendor 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 novations 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) Vendor 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, Vendor 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 Vendor Relationship)

The relationship between the State and Vendor is that of client and independent Vendor. No agent, employee, or servant of Vendor or any of its Subcontractors shall be or shall be deemed to be an employee, agent or servant of the State for any reason. Vendor 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.

State:
State of Michigan
Office of Purchasing Operations
Attention: Lisa Morrison
PO Box 30026
530 West Allegan
Lansing, Michigan 48909

with a copy to:
State of Michigan
Department of Information Technology
Attention: Jennifer Ryan
116 West Allegan
Hollister Building
Lansing, Michigan 48909

Contractor(s):
Charter Communications
c/o Charter Business
1433 Fulton Street
Grand Haven, MI. 49417

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

- (b) Binding Commitments
Representatives of Vendor identified in **Exhibit I** shall have the authority to make binding commitments on Vendor's behalf within the bounds set forth in such table. Vendor may change such representatives from time to time upon written notice.



2.297 Media Releases and Contract Distribution

(a) Media Releases

Neither Vendor 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 Vendor 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 Vendor 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

Vendor 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 Vendor's website, even if the Vendor'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 Vendor, its subcontractors, their subcontractors, and all persons involved with the performance of this Contract in privity of contract with the Vendor 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 Vendor shall include all general Vendors, prime Vendors, project managers, trade Vendors, and all of their Vendors or subcontractors and persons in privity of contract with them.

The Vendor, its subcontractors, their subcontractors, and all persons involved with the performance of this contract in privity of contract with the Vendor 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 Vendor, 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

Vendor and/or all subcontractors 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

Vendor 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 Vendor, or as a Vendor 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 Vendor to ensure that the non-state agency is an authorized purchaser before extending the Contract pricing.

The Vendor 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.

2.322 State Employee Purchases

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

The Vendor 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 Federal Grant Requirements

The following links contain certifications and terms which may be required for some purchases paid via Federal funds. They are included here to be utilized as required.

Lobbying Certifications are usually for agreements over \$100,000. The debarment certification is required for all agreements. The last link is where you can go and search for debarred or suspended Vendors.

http://straylight.law.cornell.edu/uscode/html/uscode31/usc_sec_31_00001352----000-.html

http://www.archives.gov/federal_register/codification/executive_order/12549.html

http://www.archives.gov/federal_register/executive_orders/pdf/12869.pdf

<http://www.epls.gov/epl/servlet/EPLSearchMain/1>



Cable Services Clarifications
07116200216

1. Because of the State's Budget Deficit and to obtain the Administrative Board's approval, Purchasing Operations has to ask vendors for a 10% decrease to their proposed rates. Would you be willing to reduce your rates by 10% both on commercial and residential?

Charter Business response – We have already taken in to consideration our standard discount for government business in our RFP response. Upon review of our overall costs, we are able to further reduce our charges by an additional 3%.

2. Would you consider waiving the installation costs with a 1 year contract? 2 year contract? 3 year contract?

Charter Business Response - The RFP response was developed at 36 month agreement pricing. We would agree to decrease the installation fee at the 36 month agreement price by \$100 for standard installation only.

3. The State's ITB states it wants a 4 hour MTTR. If a trouble ticket isn't resolved within 24 hours, what is an acceptable service credit for noncompliance?

Charter Business Response – Please refer to section 1.104 of article 1 section IV Services item G service levels. The RFP requirements stated MTTR service level outage of more than 3 times a year would require a credit of 1% of the annual cost of the contract.

4. Would you waive disconnect charges if there were 3 outages within 30 business days due to failure of vendors CPE (exceptions are force majeure and other circumstances beyond the control of the vendor or scheduled service maintenance)?

Charter Business Response – Please refer to section 2.211 of article 2. Yes, disconnect charges would be waived if there were 3 outages within 30 business days due to failure of vendor CPE.

5. The State would like to have monitoring capabilities. Is this a possibility?

Charter Business Response – Charter will be monitoring all of our services that we provide to the State. We will need further clarification as to monitoring capabilities the State is requesting.

6. Do you accept the State's Terms and Conditions? With modifications?

Charter Business Response – We accept the Terms and Conditions with modifications in our original RFP response.