

STATE OF MICHIGAN
DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET February 22, 2011
PURCHASING OPERATIONS
P.O. BOX 30026, LANSING, MI 48909
OR
530 W. ALLEGAN, LANSING, MI 48933

CHANGE NOTICE NO. 1

TO
CONTRACT NO. 071B0200357

between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR Johnson Controls, Inc. 3007 Malmo Drive Arlington Heights, IL 60005-4727 Email: Stephen.J.Anderson@jci.com	TELEPHONE (608) 279-1105 Stephen J. Anderson CONTRACTOR NUMBER/MAIL CODE BUYER/CA (517) 373-0301 Sue Cieciva
Contract Compliance Inspector: Jerry Elmlad (517) 373-4471 Energy Performance Contract – Cotton Correctional Facility Department of Corrections	
CONTRACT PERIOD: <u>2 years + 5 months</u> From: September 30, 2010 To: March 1, 2013	
TERMS N/A	SHIPMENT N/A
F.O.B. N/A	SHIPPED FROM N/A
MINIMUM DELIVERY REQUIREMENTS N/A	

NATURE OF CHANGE (s):

The following lease agreement (31 pages) is hereby ADDED to this Contract under Schedule N – Financing Agreement.

In addition, the following Dual Obligee Rider (2 pages) is hereby ADDED to this Contract under Exhibit I – Performance Bond and Exhibit II – Labor and Material Payment Bond.

All other terms, conditions, specifications, and pricing remain the same.

AUTHORITY/REASON:

Per attached lease agreement dated February 16, 2011 and Dual Obligee Rider dated February 16, 2011.

TOTAL ESTIMATED CONTRACT VALUE (NOT TO EXCEED) REMAINS: \$1,287,164.00

LEASE WITH OPTION TO PURCHASE

This Lease With Option to Purchase ("Lease"), dated February 16, 2011 as of and entered into between PNC Equipment Finance, LLC authorized to do business in Michigan ("Lessor"), and the Michigan Department of Technology, Management and Budget, an agency of the State of Michigan ("Lessee").

1. **Lease.** Lessee agrees to lease from Lessor certain "Equipment" as described in the Equipment Schedule (Exhibit A), which, together, with a "Lease Payment Schedule" (Exhibit A-1) constitutes a "Schedule," subject to the terms and conditions of and for the purposes set forth in this Lease.

2. **Term.** This Lease will consist of an "Initial Term" and subsequent "Renewal Terms." The "Commencement Date" for this Lease is the date on which the Equipment is accepted by Lessee in the manner described in Section 12. The "Initial Term" is the period from the Commencement Date, until the end of the first fiscal period for which funds have been appropriated to make lease payments under this Lease. A "Renewal Term" is a subsequent period for which funds have been appropriated to make lease payments under this Lease. The "Lease Term" for this Lease is the Initial Term and all Renewal Terms from the Commencement Date until this Lease is terminated.

3. **Representations and Covenants of Lessee.** Lessee represents, covenants and warrants for the benefit of Lessor on the date hereof and as of the Commencement Date of this Lease as follows: (a) Lessee Michigan Department of Technology, Management and Budget is an agency of the State of Michigan, which is a department of state government duly organized and existing under the constitution and laws of the State of Michigan, with full power and authority under the constitution and laws of the state where the Lessee is located to enter into this Lease and to perform all of its obligations; (b) Lessee has complied with such public bidding requirements as may be applicable to this Lease and the acquisition by Lessee of the Equipment as provided in this Lease; (c) during the Lease Term, the Equipment will be used by Lessee solely and exclusively for the purpose of performing essential governmental functions of Lessee consistent with the permissible scope of Lessee's authority; (d) the equipment is and will remain personal property.

4. **Representations and Covenants of Lessor.** Lessor represents, covenants and warrants for the benefit of Lessee on the date hereof and as of the Commencement Date of this Lease as follows: (a) Lessor, at the request of the Lessee, will pay for the Equipment from and; (b) Pursuant to Section 22, Lessor will convey clear title for the Equipment to Lessee if and when Lessee exercises the purchase option.

5. **Tax Covenant.** It is the intention of Lessee and Lessor that the interest portion of the Lease Payments received by Lessor be and remain free from federal income taxation. Lessee covenants that it will not intentionally perform any act or enter into any agreement or use or permit the use of the Equipment or any portion thereof in a manner that shall have the effect of terminating the exemption from federal income taxation of the interest portion of the Lease Payments.

6. **IRS Reporting.** At Lessor's request, the parties shall cooperate to ensure compliance with IRS reporting requirements. Lessor shall prepare for the State's signature an IRS Form 8038G, or take such other action requested by other State agencies, including, but not limited to, the State Treasurer's Office. Lessor shall provide the State Purchasing Director of the Department of Management and Budget with a copy and filing date of any IRS Form 8038G filed with the IRS. However, the parties acknowledge that Lessor has the exclusive responsibility to file IRS Form 8038G and has exclusive liability for any penalties, costs, damages, or other consequences resulting from a failure to file.

7. **Lease of Equipment.** Upon the execution of this Lease, Lessor leases to Lessee, and Lessee leases from Lessor, the Equipment in accordance with the terms hereof. The Lease Term for this Lease may be continued, solely at the option of Lessee, at the end of the Initial Term or any Renewal Term, for the next succeeding Renewal Term up to the maximum Lease Term set forth in this Lease. At the end of the Initial Term and at the end of each Renewal Term, the Lease Term shall be automatically extended upon the successive appropriation by the Michigan State Legislature of amounts sufficient to pay Lease Payments and other amounts payable under this Lease during the next succeeding Fiscal Period, until all Lease Payments payable under this Lease have been paid in full, unless Lessee shall have terminated such Lease pursuant to Section 8 or Section 22. The Director of the Department of Technology, Management and Budget currently intends to use his/her best efforts in making recommendations to the State Budget Office for the necessary appropriations for this lease for inclusion in the Governor's Executive Budget in future fiscal years. The terms and conditions during any Renewal Term shall be the same as the terms and conditions during the Initial Term, except that the Lease Payments shall be as provided in the applicable Lease Payment Schedule.

8. **Nonappropriation.** Lessee is obligated only to pay such Lease Payments under this Lease as may be appropriated for the Lease of the Equipment. Should the State Legislature fail to appropriate funds to pay Lease Payments, or should an appropriation be adopted which specifically prohibits the use of funds for this Lease, Lessee agrees to deliver notice to Lessor of such nonappropriation within thirty (30) business days of a final legislative action terminating funding for this Lease. Failure to give Lessor such notice shall not create any obligation on the part of the Lessee to make Lease payments beyond the period for which funds have been appropriated. If this Lease is terminated in accordance with this Section, Lessee agrees to peaceably deliver the Equipment to Lessor at the location(s) specified by Lessor or to allow Lessor to peaceably obtain possession of the Equipment. The parties have agreed and determined that the principal amount to be paid to Lessor under this Lease is not in excess of the total fair market value of the Equipment. In making such determination, consideration has been given to the costs of the Equipment, the uses and purposes served by the Equipment and the benefit that will accrue to the parties by reason of this Lease and to the general public by reason of Lessee's use of the Equipment. Lessor understands that as of the date of execution of this Lease, Lessee has an appropriation for the Equipment for the current fiscal year, as defined in 1984 PA 431, MCL 18.1491.

9. **Lease Payments.** Lessee shall promptly pay "Lease Payments" as described in Exhibit A-1 to this Lease, exclusively from funds appropriated for lease of the Equipment. Pursuant to 1984 PA 279, MCL 17.51-17.57, Lessee shall pay Lessor a charge on any Lease Payment, which remains unpaid on the date such Lease Payment is due. Lease Payments consist of principal and interest portions. *Lessor and Lessee understand and intend that the obligation of Lessee to pay Lease Payments under this Lease shall constitute a current expense of the State of Michigan and shall not in any way be construed to be a debt or general obligation of the State of Michigan in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by Lessee, including, but not limited to, Const 1963, art*

9, §§12, 17, nor shall anything contained herein or in a Lease constitute a pledge of the general tax revenues, credit, funds or monies of the State.

10. **LEASE PAYMENTS TO BE UNCONDITIONAL.** EXCEPT AS PROVIDED IN SECTION 8, AND SUBJECT TO LESSEE'S ACCEPTANCE OF THE EQUIPMENT AS PROVIDED IN SECTION 12, THE OBLIGATIONS OF LESSEE TO MAKE LEASE PAYMENTS AND TO PERFORM AND OBSERVE THE OTHER COVENANTS AND AGREEMENTS CONTAINED IN THIS LEASE SHALL BE ABSOLUTE AND UNCONDITIONAL IN ALL EVENTS WITHOUT ABATEMENT, DIMINUTION, DEDUCTION, SET-OFF OR DEFENSE, FOR ANY REASON, INCLUDING, WITHOUT LIMITATION, ANY DEFECTS, MALFUNCTIONS, BREAKDOWNS OR INFIRMITIES IN THE EQUIPMENT OR ANY ACCIDENT, CONDEMNATION OR UNFORESEEN CIRCUMSTANCES.

11. **Delivery and Installation.** Lessee shall order the Equipment, cause the Equipment to be delivered and installed at the location agreed upon by the parties and pay any and all delivery and installation costs in connection therewith.

12. **Performance and Reliability Evaluation; Acceptance.** The parties agree and acknowledge that the obligations under this Lease are conditioned, in part, upon the successful completion of a Performance and Reliability Evaluation (PARE), described in Contract No. 071B0200357 between Johnson Controls Inc. ("Vendor") and the State of Michigan. Upon successful completion of the PARE, Lessee shall confirm to Lessor its written acceptance of the Equipment by executing a "Certificate of Acceptance." A blank, unexecuted copy of a Certificate of Acceptance is attached hereto as Exhibit B. The PARE shall commence when the Equipment has been delivered and installed as provided in Section 11.

13. **Marking; Inspection.** Lessor shall have the right to mark or affix a nonpermanent label on the Equipment for purposes of identifying it at a later date. Lessor or its agents shall have the right, from time to time, with prior written notice, during reasonable business hours, and subject to the needs of Lessee, to enter into and upon the property of Lessee for the purpose of inspecting the existence, condition and proper maintenance of the Equipment.

14. **Use; Maintenance.** Lessee will not install, use, operate or maintain the Equipment improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated by this Lease. Lessee agrees that it will, at Lessee's own cost and expense, maintain, preserve and keep the Equipment in good repair and working order.

15. **Title to the Equipment.** During the Term of this Lease, title to the Equipment shall remain in Lessor. Title to the Equipment shall be conveyed to Lessee upon the occurrence of one of the following: (a) the exercise by Lessee of the purchase option under Section 22; or (b) the payment by Lessee of all sums required to be paid under this Lease as specified in the Lease Payment Schedule. Upon Lessee's exercise of the purchase option or Lessee's payment of all sums due under the Lease Payment Schedule, Lessor shall transfer free and clear title to Lessee.

16. **Financing Statements.** At Lessor's request, Lessee shall join Lessor in executing any necessary or appropriate Financing Statements indicating its obligation under this Lease.

17. **Taxes, Other Governmental Charges and Utility Charges.** The parties to this Lease contemplate that the Equipment will be used for governmental purposes of Lessee and that the Equipment will therefore be exempt from all property taxes. If the use, possession or acquisition of any Equipment is nevertheless determined to be subject to taxation, Lessee shall pay when due all taxes and governmental charges lawfully assessed or levied against or with respect to such Equipment. Lessee shall pay all utility and other charges incurred in the use and maintenance of the Equipment. Lessee shall pay such taxes or charges as the same may become due.

18. **Insurance.** Lessee is self-insured for all risk, physical damage, and public liability and will provide proof of such self-insurance in letterform together with a copy of the statute authorizing this form of insurance.

19. **Risk of Loss or Damage.** Lessee shall assume all risk of loss, theft, damage to, or destruction of the Equipment for any cause ("Loss or Damage") upon acceptance, as described in Section 11. In the event of Loss or Damage to the Equipment, Lessee shall promptly report the same to Lessor and concerned governmental agencies. Lessee shall not be relieved of its obligation to pay Lease Payments or to perform any other obligations under this Lease by reason of any Loss or Damage. In the event of any Loss or Damage, Lessee shall either: (a) promptly replace lost Equipment or promptly repair damaged Equipment and place it in good repair and working condition and continue to make all Lease Payments; or (b) within sixty (60) business days of notifying Lessor that the Equipment will not be repaired, pay Lessor the outstanding principal balance and any unpaid accrued interest as of the payoff date, as described in the Lease Payment Schedule. Lessee shall have the right to retain any residual insurance benefit, which remains after payment to Lessor of the outstanding principal balance and unpaid accrued interest.

20. **DISCLAIMER OF WARRANTIES.** LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE OR FITNESS FOR USE OF THE EQUIPMENT, OR WARRANTY WITH RESPECT THERETO WHETHER EXPRESS OR IMPLIED, AND LESSEE ACCEPTS SUCH EQUIPMENT AS IS. IN NO EVENT SHALL LESSOR BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGE IN CONNECTION WITH OR ARISING OUT OF THIS LEASE OR THE EXISTENCE, FURNISHING, FUNCTIONING OR LESSEE'S USE OF ANY ITEM, PRODUCT OR SERVICE PROVIDED FOR IN THIS LEASE.

21. **Vendor's Warranties.** Upon execution of this Lease, Lessor irrevocably appoints Lessee as its agent and attorney-in-fact during this Lease, so long as Lessee shall not be in default under this Lease, to assert from time to time whatever claims and rights, including, but not limited to, warranties, relating to the Equipment that Lessor may have against Vendors. The term "Vendors" means any supplier or manufacturer of the Equipment, as well as agents or representatives of those suppliers or manufacturers. Lessee's sole remedy for the breach of such warranty, indemnification or representation shall be against Vendors of the Equipment, and not against Lessor. Any such matter shall not have any effect whatsoever on the rights and obligations of Lessor with respect to this Lease, including the right to receive full and timely payments under this Lease. Lessee acknowledges that Lessor makes, and has made, no representations regarding the existence or availability of warranties made by Vendors.

22. **Purchase Option.** Lessee reserves the unilateral right to exercise a purchase option for the Equipment. Lessee may exercise this right by paying to Lessor a "Concluding Payment", based on the payment terms specified in the Lease Payment Schedule. The Concluding Payment for a given date shall be defined as the sum of the outstanding principal balance as of that date, plus any unpaid accrued interest as of that date, plus any prepayment premium, plus one dollar (\$1.00). Upon receiving payment of the Concluding Payment, Lessor shall transfer any and all of its rights, title, and interest to the Equipment and covenant to Lessee that the Equipment is free of any liens or encumbrances.

23. **Assignment.** Lessor's right, title and interest in and to this Lease, including Lease Payments and any other amounts payable by Lessee thereunder and all proceeds therefrom, may only be assigned and reassigned to one or more assignees or subassignees by Lessor with the written consent of Lessee, which shall not be unreasonably withheld. Assignments may include without limitation assignment of all of Lessor's security interest in and to the Equipment listed in this Lease and all rights in, to and under the Lease related to such Equipment. Notwithstanding

the above, Lessee hereby agrees that Lessor may, without the consent of Lessee, but with notice to Lessee, sell, dispose of, or assign this Lease through a pool, trust, limited partnership, or other similar entity, whereby one or more interests are created in this Lease, or in the Equipment listed in or the Lease Payments under a Lease. In accordance with Section 149(a) of the Internal Revenue Code of 1986, as amended, Lessor shall keep a record of all such assignments and provide written notice to Lessee. Lessor agrees to continue servicing the Lease or arrange for a servicer with equal standards of high quality. Lessor also agrees remittance will remain with a single servicer.

None of Lessee's right, title and interest in, to and under any Lease or any portion of the Equipment listed in each Lease may be assigned, subleased, or encumbered by Lessee for any reason without obtaining prior written consent of Lessor.

24. Lessee Default. Any of the following events shall constitute an "Event of Default" under this Lease: (a) failure by Lessee to pay any Lease Payment due under the Lease Payment Schedule or other payment required to be paid under this Lease at the time specified therein; (b) failure by Lessee to observe and perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in subparagraph (a) above, for a period of thirty (30) business days after written notice specifying such failure and requesting that it be remedied is given to Lessee by Lessor; or (c) any representation or warranty made by Lessee in or pursuant to this Lease proves to be false in any material respect when made and such breach of representation and warranty is not cured within ten (10) business days of Lessee's receipt of written notice of such breach.

25. Lessor Default. Any of the following events shall constitute an "Event of Default" under this Lease: (a) failure by Lessor to, at the request of the Lessee, promptly forward payment to the Vendor for the Equipment after receipt of fully executed documents including a Certificate of Acceptance, pursuant to Section 12; (b) failure by Lessor to observe and perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in subparagraph (a) above, for a period of thirty (30) business days after written notice specifying such failure and requesting that it be remedied is given to Lessor by Lessee; (c) failure to convey clear title; or (d) any representation or warranty made by Lessor in or pursuant to this Lease proves to be false in any material respect when made and such breach of representation and warranty is not cured within ten (10) business days of Lessor's receipt of written notice of such breach.

26. Lessor's Remedies on Default by Lessee. Whenever Lessee defaults, and the default is not cured within the period specified in Section 24, Lessor shall have the right, at its sole option without any further demand, to take one of the following remedial steps: (a) by written notice to Lessee, declare all Lease Payments payable to the end of the period for which an appropriation has been made, to be immediately due and payable; (b) take whatever action at law or in equity may appear necessary or desirable to enforce its rights under this Lease or as a secured party in any or all of the Equipment including peaceably obtaining possession of the Equipment

27. Lessee's Remedies on Default by Lessor. Whenever Lessor defaults and the default is not cured within the period specified in Section 25, Lessee shall have the right, at its sole option without any further demand, to take one of the following remedial steps: (a) procure comparable equipment from other sources; (b) take whatever action at law or in equity may appear necessary or desirable to enforce its rights under this Lease.

28. No Remedy Exclusive. No remedy herein conferred upon or reserved to Lessor or Lessee is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease now or hereafter existing at law or in equity.

29. **Notices.** All notices or other communications under this Lease shall be sufficiently given and shall be deemed given when delivered or mailed by registered mail, postage prepaid, to the parties hereto at the addresses listed below (or at such other address as either party hereto shall designate in writing to the other for notices to such party), or to any assignee at its address as it appears on the registration books maintained by Lessee.

30. **Indemnification.** Lessor does hereby agree to indemnify, defend, and hold Lessee harmless from and against any and all claims, losses, costs, attorneys' fees, and expenses arising out of or related to the breach of Lessor's representations under this Lease.

31. **Miscellaneous Provisions.** This Lease constitutes the complete and exclusive agreement and understanding of the parties as it relates to this transaction. This Lease supersedes all proposals, or other prior agreements, and all other communications, oral or written, between the parties relating to this Lease and the Equipment described herein. This Lease shall inure to the benefit of and shall be binding upon Lessor and Lessee and their respective successors and assigns. References herein to "Lessor" shall be deemed to include each of its assignees and subsequent assignees from and after the effective date of each assignment as permitted by Section 23. In the event any provision of this Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision thereof. This Lease may be amended by mutual written consent of Lessor and Lessee. This Lease may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. The captions or headings in this Lease are for convenience only and in no way define, limit or describe the scope or intent of this Lease.

32. **Governing Law.** This Lease shall be governed by and construed in accordance with the laws of the State of Michigan.

33. **Statutory Obligations.** This Lease may be cancelled by Lessee provided Lessor is notified in writing at least thirty (30) business days prior to the effective date of cancellation and any of the following occur: (a) Lessor or any subcontractor, manufacturer, or supplier of Lessor appears in the register compiled by the Michigan Department of Labor pursuant to 1980 PA 278, as amended, MCL 423.321 et seq. (Employers Engaging in Unfair Labor Practices Act); (b) Lessor or any subcontractor, manufacturer, or supplier of Lessor is found liable for discrimination, pursuant to 1976 PA 453, as amended, MCL 37.2101 et seq (Elliott-Larsen Civil Rights Act) or 1976 PA 220, as amended, MCL 37.1101 et seq (Persons With Disabilities Civil Rights Act).

34. **Nondiscrimination.** Lessor shall comply with the Elliott-Larsen Civil Rights Act, 1976 PA 453, as amended, MCL 37.2101 et seq. and the Persons With Disabilities Civil Rights Act, 1976 PA 220, as amended, MCL 37.1101 et seq. (Persons With Disabilities Civil Rights Act), and all other federal, state and local fair employment practices and equal opportunity laws, and covenants that it shall not discriminate against any employee or applicant for employment, to be employed in the performance of this contract, 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 his or her race, religion, color, national origin, age, sex, height, weight, marital status, or physical or mental disability that is unrelated to the individual's ability to perform the duties of a particular job or position. Lessor agrees to include in every subcontract entered into for the performance of this contract this covenant not to discriminate in employment. A breach of this covenant is a material breach of this Lease.

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

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

36. The Lease contemplates that the parties will enter into an escrow agreement with U.S. Bank National Association, as escrow agent "Escrow Agent", in which Lessor will deposit an amount equal to the anticipated aggregate acquisition cost of the Equipment ("Purchase Price"), being \$612,164.00 with Escrow Agent to be held in escrow and applied on the express terms of the Escrow Agreement. The deposit, together with all interest ("Escrow Fund") is to be applied to pay the Vendor its invoice cost (a portion of which may, if required, be paid prior to final acceptance of the Equipment by Lessee); and, if applicable, to reimburse Lessee for progress payments already made by it to the Vendor of the Equipment.

Lessor and Lessee have caused this Lease to be executed in their names by their duly authorized representatives as of the date first above written.

Lessor: PNC EQUIPMENT FINANCE, LLC

Name: Sandra Thomas DATE 2-16-11
(Signature)

Name: Sandra Thomas
Assistant Vice President
(Print)

Title: _____

Fed. I.D. 22-1146430

Lessee: MICHIGAN DEPARTMENT OF CORRECTIONS, AN AGENCY
OF THE STATE OF MICHIGAN

Name: S. L. Wickman DATE 2/14/11
(Signature)

Name: Barry L. Wickman
(Print)

Title: Administrative Officer
Michigan Department of Corrections

Lessee: MICHIGAN DEPARTMENT OF TECHNOLOGY,
MANAGEMENT AND BUDGET AN AGENCY OF THE STATE
OF MICHIGAN

Name: Natalie Spaniol DATE 2/14/11
(Signature)

Name: Natalie Spaniol
(Print)

Title: Acting Purchasing Director
Michigan Department of Technology, Management and Budget

Exhibit A

SCHEDULE OF PROPERTY NO. 1

RE: LEASE WITH OPTION TO PURCHASE AGREEMENT entered into as of February 16, 2011, ("Lease"), between PNC Equipment Finance, LLC ("Lessor") and State of Michigan, Department of Technology, Management and Budget and State of Michigan Department of Corrections ("Lessee"). All terms used and not otherwise defined herein have the meaning ascribed to them in the Lease.

One hundred percent of the financing costs will be used to acquire assets that will be capitalized.

The following items of Equipment are hereby included under this Schedule to the Lease.

DESCRIPTION OF EQUIPMENT		
Qty	Model	Description
Energy Performance Contract Equipment as Described in Contract No. 071B0200357		
Amount Financed \$612,164.00		
Total Cost \$666,909.80		

Lessee hereby represents warrants and covenants that its representations, warranties and covenants set forth in the Lease are true and correct as though made on the Commencement Date of Installment Payments under this Schedule. The terms and provisions of the Lease are hereby incorporated into this Schedule by reference and made a part hereof.

Dated Date:

Lessee: State of Michigan, Department of
Technology, Management and Budget

By: Natalie Spanio

Name: Natalie Spanio
(PRINT)

Title: Acting Purchasing Director

Date: 2/14/11

Lessee: State of Michigan, Department of
Corrections

By: B. L. Wickman

Name: Barry L. Wickman
(PRINT)

Title: Administrative Officer

Date: 2/14/11

Lessor: PNC EQUIPMENT FINANCE, LLC

By: Sandra Thomas

Name: Sandra Thomas
Assistant Vice President

Title: _____

Date: 2-16-11



Section 4.4. Billing Information Procedure

Payments due to ESCO under Section 4.4 shall be in accordance with Schedule N - Payment Schedule.

Section 4.5. Payment - Refer to Section 2.044 Invoicing and Payment - In General

Section 4.6. Effective Date of Payment Obligation

Notwithstanding the above provisions in Section 4, DTMB and Agency will not begin any payments to ESCO under this Contract until all Equipment Installation is completed by ESCO in accordance with the provisions of Section 6 - Construction and Equipment Installation; Approval and Schedule H - Systems Start-Up and Commissioning of Equipment; Operating Parameters of Installed Equipment, and accepted by Agency as evidenced by the signed Certificate of Acceptance as set forth in Exhibit II (II) - Certificate of Acceptance - Installed Equipment, and until the Equipment is fully and properly functioning.

ARTICLE 6. FISCAL FUNDING - Refer to Section 2.154 Termination for Non-Appropriation

ARTICLE 8. CONSTRUCTION SCHEDULE AND EQUIPMENT INSTALLATION; APPROVAL

Section 6.1. Construction Schedule; Equipment

Construction and equipment installation must proceed in accordance with the construction schedule approved by DTMB and Agency and attached as Schedule G - Construction and Equipment Installation Schedule.

All equipment/installation work associated with this Contract, such as construction contracts for installation of energy saving equipment, must comply with all applicable federal, state and local Laws including health and safety regulations, environmental protection, permits and licensing.

Section 6.2. Systems Startup and Equipment Commissioning

The ESCO must conduct a thorough and systematic performance test of each element and total system of the installed Equipment in accordance with the procedures specified in Schedule H - Systems Start-Up and Commissioning of Equipment; Operating Parameters of Installed Equipment and prior to acceptance of the project by DTMB and Agency as specified in Exhibit II (II) - Certificate of Acceptance - Installed Equipment. Testing must be designed to determine if the Equipment is functioning in accordance with both its published specifications and the Schedules to this Contract, and to determine if modified building systems, subsystems or components are functioning properly within the new integrated environment. The ESCO must provide notice to DTMB and Agency of the scheduled test(s) and DTMB and Agency and/or its designees have the right to be present at all the tests conducted by ESCO and/or manufacturers of the Equipment. The ESCO is responsible for correcting and/or adjusting all deficiencies in systems and Equipment operations that may be observed during system commissioning procedures as specified in Schedule H - Systems Start-Up and Commissioning of Equipment; Operating Parameters of Installed Equipment. The Contractor is responsible for correcting and/or adjusting all deficiencies in Equipment operation that may be observed during system testing procedures. Prior to DTMB and Agency acceptance ESCO must also provide DTMB and Agency with reasonably satisfactory documentary evidence that the Equipment installed is the Equipment specified in Schedule A - Equipment to be Installed by ESCO.

**SCHEDULE G. CONSTRUCTION AND INSTALLATION SCHEDULE**

ID	Task Name	Duration	Start	Finish
1	State of Michigan DOC Cotton	93 days	Fri 10/1/10	Tue 2/8/11
2	Contract	93 days	Fri 10/1/10	Tue 2/8/11
3	Contract Signed	1 day	Fri 10/1/10	Fri 10/1/10
4	Lighting	78 days	Mon 10/11/10	Wed 1/26/11
5	Materials	15 days	Mon 10/11/10	Fri 10/29/10
6	Installation	73 days	Mon 10/18/10	Wed 1/26/11
7	Water Retrofits	78 days	Mon 10/4/10	Wed 1/19/11
8	Materials	15 days	Mon 10/4/10	Fri 10/22/10
9	Installation	63 days	Mon 10/25/10	Wed 1/19/11
10	Building Envelope	30 days	Mon 10/11/10	Fri 11/19/10
11	Materials	10 days	Mon 10/11/10	Fri 10/22/10
12	Installation	20 days	Mon 10/25/10	Fri 11/19/10
13	Boiler Efficiency (Geffen)	21 days	Fri 10/8/10	Fri 11/5/10
14	Materials	16 days	Fri 10/8/10	Fri 10/29/10
15	Installation	5 days	Mon 11/1/10	Fri 11/5/10
16	Commission	12 days	Mon 1/24/11	Tue 2/8/11
17	Verify	10 days	Mon 1/24/11	Fri 2/4/11
18	Turn over	2 days	Mon 2/7/11- Tue 2/8/11	

Deadline

Page 1

Project: Cotton Schedule

Date: Wed 8/18/10

Note-This project schedule is listed on page 41 of the Proposal.

SCHEDULE H. SYSTEMS START-UP AND COMMISSIONING OF EQUIPMENT; OPERATING PARAMETERS OF INSTALLED EQUIPMENT

Equipment start up procedures will be addressed prior to the Certificate of Substantial completion and will be conducted by the Johnson Controls Team and will include subcontractors. Agency personnel will be invited to the start up procedures and will be asked to attend in conjunction with the training listed in Section M of this document.

During the Initial Measurement and Verification of the savings for this project, the Johnson Controls personnel will invite Agency representatives to participate in the post installation measurements of the Energy Conservation Measures for this project as part of the commissioning process.

Client and contractor attendance will be documented by a sign-in sheet.

SCHEDULE I. STANDARDS OF COMFORT

The expected outcome of the project will be enhanced comfort due to better lighting levels and building envelope improvements at Building 100 to minimize air leakage. Current conditions will be maintained. It is understood that this energy savings project is not impacting the temperature control of hot water and has no impact on the air handling systems or the operating schedule of furnaces or air handling equipment.

Johnson Controls inc.

11/18/10

G. Robert Cotton Correctional Facility
Water Retrofits

Description	Manufacturer	Qty.	Model	Total Cost
Floor Mount Toilet	Kohler	66	4350	\$29,074
Floor Mount Rear Discharge Toilet	Kohler	127	4306	99,258
Toilet Seat	Oisonite	193	10CC/SS	6,769
Toilet Valve	Sloan	194	111 Regal	62,027
ICON Toilet and Lay Valve & Controls	ICON	213	VLV-LAV-4812-006	372,451
Lavatory 0.6 GPM aerator	Niagara	316	N2180	8,083
Urinal Valve	Sloan	54	8180	17,285
1.6 GPM Dishsprayer	Niagara	4	N2180	512
Showerhead Rebuild kit	Symmons	82	general	8,739
Flange Repair	general	50	general	8,995
Total				\$612,164

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



BILL SCHUETTE
ATTORNEY GENERAL

P.O. Box 30754
LANSING, MICHIGAN 48909

February 11, 2011

Natalie Spaniolo, Acting Director
Purchasing Operations
Business Services Administration
Department of Technology, Management, and Budget
2nd Floor – Stevens T. Mason Building
P.O. Box 30026
Lansing, MI 48909

Dear Ms. Spaniolo:

Re: Opinion of Counsel: Lease with Option to Purchase dated February 16, 2011 between PNCEF, LLC dba PNC Equipment Finance, as Lessor, and State of Michigan, Department of Technology, Management and Budget, as Lessee, Energy Conservation Measures Equipment Contract No. 071B0200357 with Johnson Controls, Inc.
Agency: Department of Corrections for the Cotton Correctional Facility

In my capacity as an Assistant Attorney General, I have examined the referenced Lease with Option To Purchase (Lease), dated February 16, 2011, Lease Addendum, Escrow Agreement, and Exhibits between PNCEF, LLC dba PNC Equipment Finance (Lessor) and the State of Michigan, Department of Technology, Management and Budget (Lessee), including a completed copy of the Lease's Equipment Schedule, between Lessor and Lessee (Equipment Schedule). This opinion is based on, and limited to the review of, the documents described above for this lease transaction and assumes that the Lease and its exhibits will be properly executed by the Parties.

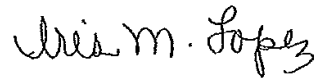
Based on the above, I am of the following opinion:

- (1) Lessee is one of the principal state departments of the State of Michigan.
- (2) Lessee has the requisite power and authority to: lease; acquire the Equipment with an option to purchase; execute and deliver the Lease, and perform its obligations under the Lease.

Natalie Spaniolo
Page 2
February 11, 2011

- (3) The Lease has been duly authorized, executed, and delivered by and on behalf of Lessee; the Lease is a valid and binding obligation of Lessee; and enforceable in accordance with its terms.
- (4) To the best of my knowledge, the authorization, execution, and delivery of the Lease and all other proceedings of Lessee relating to the Lease transaction have been performed in accordance with open meetings, public bidding and all other applicable state or federal laws.
- (5) The person signing the Lease for the State of Michigan is a duly authorized representative of Lessee pursuant to 1984 PA 431.

Sincerely,



Iris M. Lopez
Assistant Attorney General
State Operations Division
Tel: (517) 373-1162

IML/dab
Enc.

c: Brenda Sprunger, DTMB ✓

2011-0003421-A/PNC Equipment Finance Lease w/option to purchase/2-11-11 AG Opinion It

Payment Schedule – Exhibit A-1

Payment Schedule
Lease With Option To Purchase Agreement dated as of February 16, 2011

	Date	Payment	Interest	Principal	Balance	Termination Value
Loan	2/16/2011				612,184.00	
1	5/16/2011	33,345.49	5,080.96	28,264.53	583,899.47	595,577.46
2	8/16/2011	33,345.49	4,846.37	28,499.12	555,400.35	566,508.36
3	11/16/2011	33,345.49	4,609.82	28,735.67	526,664.68	537,197.97
4	2/16/2012	33,345.49	4,371.32	28,974.17	497,690.51	507,644.32
5	5/16/2012	33,345.49	4,130.83	29,214.66	468,475.85	477,845.37
6	8/16/2012	33,345.49	3,888.35	29,457.14	439,018.71	447,799.08
7	11/16/2012	33,345.49	3,643.86	29,701.63	409,317.08	417,503.42
8	2/16/2013	33,345.49	3,397.33	29,948.16	379,368.92	388,956.30
9	5/16/2013	33,345.49	3,148.76	30,196.73	349,172.19	358,155.63
10	8/16/2013	33,345.49	2,898.13	30,447.36	318,724.83	325,099.33
11	11/16/2013	33,345.49	2,645.42	30,700.07	288,024.76	293,765.26
12	2/16/2014	33,345.49	2,390.61	30,954.88	257,069.88	262,211.28
13	5/16/2014	33,345.49	2,133.66	31,211.81	225,858.07	230,375.23
14	8/16/2014	33,345.49	1,874.02	31,470.87	194,387.20	198,274.04
15	11/16/2014	33,345.49	1,613.41	31,732.08	162,655.12	165,908.22
16	2/16/2015	33,345.49	1,350.04	31,995.45	130,659.67	133,272.86
17	5/16/2015	33,345.49	1,084.48	32,261.01	98,398.66	100,366.63
18	8/16/2015	33,345.49	816.71	32,528.78	65,869.88	67,187.28
19	11/16/2015	33,345.49	546.72	32,798.77	33,071.11	33,732.53
20	2/16/2016	33,345.49	274.38	33,071.11	0.00	
Grand Totals		666,909.80	54,745.80	612,184.00		

State of Michigan, Department of
Technology, Management and Budget,
as Lessee

By: Natalie Spanolo

Name: Natalie Spanolo

Title: Acting Purchasing Director

PNC Equipment Finance, LLC,
as Lessor

By: Sandra Thomas

Name: Sandra Thomas

Title: Assistant Vice President

State of Michigan, Department of Corrections
as Lessee

By: Barry L. Wickman

Name: Barry L. Wickman

Title: Administrative Officer

LEASE PAYMENT INSTRUCTIONS

LESSEE NAME: State of Michigan

INVOICE MAILING ADDRESS:

Department of Corrections
Finance
PO Box 30003
Lansing, MI 48909

Mail invoices to the attention of: Chief Accountant

Approval of Invoices required by: N/A

Phone () Fax ()

Accounts Payable Contact: Same as above

Phone () Fax ()

Processing time for

Invoices: Approval: Checks:

Do you have a Purchase Order Number that you would like included on the invoice? No ☒ Yes

PO#

Do your Purchase order numbers change annually? No Yes ☒ at the beginning of every fiscal year.

Processing time for new purchase orders: October 1st of every year.

LESSEE:

By: Natalie Spando

Title: Acting Purchasing Director

Date: 2/14/11

**U.S. BANK NATIONAL ASSOCIATION
MONEY MARKET ACCOUNT
DESCRIPTION AND TERMS**

The U.S. Bank Money Market account is an U.S. Bank National Association ("U.S. Bank") interest-bearing time deposit account designed to meet the needs of U.S. Bank's Corporate Trust Services Escrow Group and other Corporate Trust customers of U.S. Bank. Selection of this investment includes authorization to place funds on deposit with U.S. Bank.

U.S. Bank uses the daily balance method to calculate interest on this account (actual/365 or 366) by applying a daily periodic rate to the principal balance in the account each day. Interest is accrued daily and credited monthly to the account. Interest rates are determined at U.S. Bank's discretion, and may be tiered based on customer deposit amount.

The owner of the account is U.S. Bank as Agent for its trust customers. U.S. Bank's trust department performs all account deposits and withdrawals. The deposit account is insured by the Federal Deposit Insurance Corporation up to \$100,000.

AUTOMATIC AUTHORIZATION

In the absence of specific written direction to the contrary, U.S. Bank is hereby directed to invest and reinvest proceeds and other available moneys in the U.S. Bank Money Market Account.

State of Michigan, Department of Technology,
Management and Budget

Natalie Spaniels
Signature of Authorized Directing Party

144479000
Trust Account Number – includes existing
and future sub-accounts unless otherwise directed

Acting Director, 2/16/11
Title/ Date

ESCROW AGREEMENT

THIS ESCROW AGREEMENT ("*Escrow Agreement*") is made as of February 16, 2011 by and among PNC Equipment Finance, LLC ("*Lessor*"), State of Michigan, Department of Technology, Management and Budget ("*Lessee*") and U.S. BANK NATIONAL ASSOCIATION, as escrow agent ("*Escrow Agent*"). Lessor and Lessee have heretofore entered into that certain equipment lease; Lease with Option To Purchase Agreement dated as of February 16, 2011 (the "*Lease*") and a Schedule of Property No. 1 thereto dated February 16, 2011 (the "*Schedule*" the "*Lease*"). The Lease contemplates that certain equipment described therein (the "*Equipment*") is to be acquired from Johnson Controls, Inc. for an energy performance contract ("*Vendor*"). After acceptance of the Equipment by Lessee, the Equipment is to be leased by Lessor to Lessee pursuant to the terms of the Lease.

The Lease further contemplates that Lessor will deposit an amount equal to the anticipated aggregate acquisition cost of the Equipment (the "*Purchase Price*"), being \$612,164.00, with Escrow Agent to be held in escrow and applied on the express terms set forth herein. Such deposit, together with all interest (hereinafter the "*Escrow Fund*") is to be applied to pay the Vendor its invoice cost (a portion of which may, if required, be paid prior to final acceptance of the Equipment by Lessee); and, if applicable, to reimburse Lessee for progress payments already made by it to the Vendor of the Equipment.

The parties desire to set forth the terms on which the Escrow Fund is to be created and to establish the rights and responsibilities of the parties hereto.

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) in hand paid, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. (a) Escrow Agent hereby agrees to serve as escrow agent upon the terms and conditions set forth herein. (b) The moneys and investments held in the Escrow Fund are irrevocably held in trust for the benefit of Lessee and Lessor, and such moneys, together with any income or interest earned thereon, shall be expended only as provided in this Escrow Agreement, and shall not be subject to levy or attachment or lien by or for the benefit of any creditor of either Lessee or Lessor. Lessor, Lessee and Escrow Agent intend that the Escrow Fund constitute an escrow account in which Lessee has no legal or equitable right, title or interest until satisfaction in full of all conditions contained herein for the disbursement of funds by the Escrow Agent therefrom. However, if the parties' intention that Lessee shall have no legal or equitable right, title or interest until all conditions for disbursement are satisfied in full is not respected in any legal proceeding, the parties hereto intend that Lessor have a security interest in the Escrow Fund, and such security interest is hereby granted by Lessee to secure payment to the Lessor of all obligations in accordance with the Lease terms. For such purpose, Escrow Agent hereby agrees to act as agent for Lessor in connection with the perfection of such security interest and agrees to note, or cause to be noted, on all books and records relating to the Escrow Fund, the Lessor's interest therein.

2. On such day as is determined to the mutual satisfaction of the parties (the "*Closing Date*"), Lessor shall deposit with Escrow Agent cash in the amount of the Purchase Price, to be held in escrow by Escrow Agent on the express terms and conditions set forth herein.

On the Closing Date, Escrow Agent agrees to accept the deposit of the Purchase Price by Lessor, and further agrees to hold the amount so deposited together with all interest and other additions received with respect thereto, as the Escrow Fund hereunder, in escrow on the express terms and conditions set forth herein.

3. Escrow Agent shall at all times segregate the Escrow Fund into an account maintained for that express purpose, which shall be clearly identified on the books and records of Escrow Agent as being held in its capacity as Escrow Agent. Securities and other negotiable instruments comprising the Escrow Fund from time to time shall be held or registered in the name of Escrow Agent (or its nominee). The Escrow Fund shall not, to the extent permitted by applicable law, be subject to levy or attachment or lien by or for the benefit of any creditor of any of the parties hereto (except with respect to the security interest therein held by Lessor).

4. The cash comprising the Escrow Fund from time to time shall be invested and reinvested by Escrow Agent in one or more investments as directed by Lessee in Exhibit 1. Escrow Agent will use due diligence to collect amounts payable under a check or other instrument for the payment of money comprising the Escrow Fund and shall promptly notify Lessee and Lessor in the event of dishonor of payment under any such check or other instruments.. Interest or other amounts earned and received by Escrow Agent with respect to the Escrow Fund shall be deposited in and comprise a part of the Escrow Fund.

5. Upon request by Lessee and Lessor, Escrow Agent shall send monthly statements of account to Lessee and Lessor, which statements shall set forth all withdrawals from and interest earnings on the Escrow Fund, as well as the investments in which the Escrow Fund is invested.

6. Escrow Agent shall take the following actions with respect to the Escrow Fund:

(a) Upon Escrow Agent's acceptance of the deposit of the Purchase Price, an amount equal to Escrow Agent's set-up fee, as set forth on Exhibit 2 hereto, shall be disbursed from the Escrow Fund to Escrow Agent in payment of such fee.

(b) From time to time, Escrow Agent shall pay to the Vendor of the Equipment payments then due and payable with respect thereto upon receipt of duly executed Requisition Request and Certificate of Acceptance form attached as Exhibit 3 hereto, subject to Lessor's prior written approval of each such Requisition Request and Certificate of Acceptance.

(c) If an Event of Default or Non-Appropriation Event occurs under the Lease prior to the Lessee's acceptance of all the Equipment or to the extent that funds have not been disbursed from the Escrow Fund within the eighteen-month period identified in the Lease, funds then on deposit in the Escrow Fund shall be applied to the prepayment of Rent Payments under the Lease as instructed by Lessor.

(d) Upon receipt by Escrow Agent of written notice from Lessor that the purchase price of the Equipment has been paid in full, Escrow Agent shall apply the then remaining Escrow Fund, first, to all outstanding fees and expenses incurred by Escrow Agent in connection herewith as evidenced by its statement forwarded to Lessor and Lessee, and, second, to Lessor for application against the interest component of Rent Payments under the Lease as provided therein, unless otherwise agreed by Lessor.

(e) If the Escrow is canceled in accordance with provisions of Section 15, prior to the Lessee's acceptance of all the Equipment, or if the Escrow is canceled prior to the disbursement of all funds from the Escrow Fund, then any Funds in the Escrow Fund shall be used solely as a prepayment of Rent Payments under the Lease.

7. The fees and expenses, including any legal fees, of Escrow Agent incurred in connection herewith shall be the responsibility of Lessee. The basic fees and expenses of Escrow Agent shall be as set forth on Exhibit 2 hereto and Escrow Agent is hereby authorized to deduct such fees and expenses from the Escrow Fund as and when the same are incurred without any further authorization from Lessee or Lessor. Escrow Agent may employ legal counsel and other experts as it deems necessary for advice in connection with its obligations hereunder. Escrow Agent waives any claim against Lessor with respect to compensation hereunder.

8. Escrow Agent shall have no liability for acting upon any written instruction presented by Lessor in connection with this Escrow Agreement, which Escrow Agent in good faith believes to be genuine. Furthermore, Escrow Agent shall not be liable for any act or omission in connection with this Escrow Agreement except for its own negligence, willful misconduct or bad faith. Escrow Agent shall not be liable for any loss or diminution in value of the Escrow Fund as a result of the investments made by Escrow Agent.

9. Escrow Agent may resign at any time by giving thirty (30) days' prior written notice to Lessor and Lessee. Lessor may at any time remove Escrow Agent as Escrow Agent under this Escrow Agreement upon written notice. Such removal or resignation shall be effective on the date set forth in the applicable notice. Upon the effective date of resignation or removal, Escrow Agent will transfer the Escrow Fund to the successor Escrow Agent selected by Lessor.

10. This Escrow Agreement and the escrow established hereunder shall terminate upon receipt by Escrow Agent of the written notice from Lessor specified in Section 6(c) or Section 6(d) or Section 6(e) or terminated as provided in Section 15.

11. In the event of any disagreement between the undersigned or any of them, and/or any other person, resulting in adverse claims and demands being made in connection with or for any moneys involved herein or affected hereby, Escrow Agent shall be entitled at its option to refuse to comply with any such claim or demand, so long as such disagreement shall continue, and in so refusing Escrow Agent may refrain from making any delivery or other disposition of any moneys involved herein or affected hereby and in so doing Escrow Agent shall not be or become liable to the undersigned or any of them or to any person or party for its failure or refusal to comply with such conflicting or adverse demands, and Escrow Agent shall be entitled to continue so to refrain and refuse so to act until:

(a) the rights of the adverse claimants have been finally adjudicated in a court assuming and having jurisdiction of the parties and the moneys involved herein or affected hereby; or

(b) all differences shall have been adjusted by agreement and Escrow Agent shall have been notified thereof in writing signed by all of the persons interested.

12. All notices (excluding billings and communications in the ordinary course of business) hereunder shall be in writing, and shall be sufficiently given and served upon the other party if delivered (a) personally, (b) by United States registered or certified mail, return receipt requested, postage prepaid, (c) by an overnight delivery by a service such as Federal Express or Express Mail from which written confirmation of overnight delivery is available, or (d) by facsimile with a confirmation copy by regular United States mail, postage prepaid, addressed to the other party at its respective address stated below the signature of such party or at such other address as such party shall from time to time designate in writing to the other party, and shall be effective from the date of mailing.

13. This Escrow Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns. No rights or obligations of Escrow Agent under this Escrow Agreement may be assigned without the prior written consent of Lessor.

14. This Escrow Agreement shall be governed by and construed in accordance with the laws in the State of Michigan. This Escrow Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof, and no waiver, consent, modification or change of terms hereof shall bind any party unless in writing signed by all parties.

15. Statutory Obligations. Subject to the provisions of Section 6(e), Lessee shall provide written notice to Lessor and Escrow Agent of any of the following; (a) Lessor or any subcontractor, manufacturer, or supplier of Lessor appears in the register compiled by the Michigan Department of Labor pursuant to 1980 PA 278, as amended, MCL 423.321 *et seq.* (Employers Engaging in Unfair Labor Practices Act); (b) Lessor or any subcontractor, manufacturer, or supplier of Lessor is found liable for discrimination, pursuant to 1976 PA 453, as amended, MCL 37.2101 *et seq.* (Elliott-Larsen Civil Rights Act) or 1976 PA 220, as amended, MCL 37.1101 *et seq.* (Persons With Disabilities Civil Rights Act). The written notice shall provide Lessor or Escrow Agent, as appropriate, with 30 days to cure its violation of subsections (a) or (b) above to the satisfaction of Lessee. If the Lessor and if appropriate, Escrow Agent, are unable to cure the violations of subsections (a) or (b), then at that time Lessee shall be entitled to, at its option, cancel this Escrow Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Escrow Agreement to be duly executed as of the day and year first above set forth.

PNC Equipment Finance, LLC, as Lessor

By Sandra Thomas
Name: Sandra Thomas
Title: Assistant Vice President

Address: 995 Dalton Avenue
Cincinnati, OH 45203

State of Michigan, Department of Technology,
Management and Budget, as Lessee

By Natalie Spaniol
Name: Natalie Spaniol
Title: Acting Purchasing Director

Address: 530 West Allegan
Lansing, MI 48933

State of Michigan, Department of Corrections,
as Lessee

By B. L. Wickner
Name: Berry L. Wickner
Title: Administrative Officer

U.S. BANK NATIONAL ASSOCIATION, as Escrow
Agent

By _____
Name: _____
Title: _____

Address: 10 W. Broad St., 12th Floor
CN OH BD12
Columbus, OH 43215

EXHIBIT 1

INVESTMENT DIRECTION LETTER

U.S. Bank National Association
10 W. Broad Street, 12th Floor
CN OH BD12
Columbus, OH 43215

Re: Escrow Agreement dated as of February, 16, 2011
among PNCEF, LLC, dba PNC Equipment Finance, as Lessor,
State of Michigan, Department of Technology, Management and Budget, as Lessee, and
U.S. Bank National Association, as Escrow Agent

Ladies and Gentlemen:

Pursuant to the above-referenced Escrow Agreement, \$612,164.00 will be deposited in escrow with you on or about November 18, 2010. Such funds shall be invested in one or more of the following qualified investments in the amounts indicated:

- | | PLEASE CHECK DESIRED QUALIFIED INVESTMENTS: | AMOUNT OF INVESTMENT |
|----|---|----------------------|
| 1. | <input type="checkbox"/> Direct general obligations of the United States of America; | \$ _____ |
| 2. | <input type="checkbox"/> Obligations -- the timely payment of the principal of and interest on which is fully and unconditionally guaranteed by the United States of America; | \$ _____ |
| 3. | <input type="checkbox"/> General obligations of the agencies and instrumentalities of the United States of America acceptable to Lessor; | \$ _____ |
| 4. | <input checked="" type="checkbox"/> Money market funds whose investment parameters target investments in securities as described above; | \$612,164.00 |

IF NONE OF THE ABOVE BOXES ARE CHECKED, INVESTMENT SHALL BE MADE IN MONEY MARKET FUNDS AS DESCRIBED IN THE FOURTH CATEGORY ABOVE, UNTIL LESSEE DIRECTS OTHERWISE.

Very truly yours,

STATE OF MICHIGAN, DEPARTMENT OF TECHNOLOGY,
MANAGEMENT AND BUDGET, AS LESSEE

By: Natasha Spamoto
Name: Natasha Spamoto
Title: Acting Purchasing Director

EXHIBIT 2

ESCROW AGENT FEES AND EXPENSES

SET-UP FEES

N/A waived by Lessor - payable from the Escrow Fund upon acceptance of escrow deposit.

EXPENSES

Any and all out-of-pocket expenses incurred by Escrow Agent will be the responsibility of Lessee and paid from the Escrow Fund.

EXHIBIT 3

REQUISITION REQUEST AND CERTIFICATE OF ACCEPTANCE No. _____
(to be submitted with each requisition request for payment to the vendor)

-or-

____ (v) FINAL REQUISITION REQUEST AND CERTIFICATE OF ACCEPTANCE
(to be submitted with the final requisition request upon acceptance of the Equipment)

The Escrow Agent is hereby requested to pay from the Escrow Fund established and maintained under that certain Escrow Agreement dated as of February 16, 2011 (the "Escrow Agreement") by and among PNC Equipment Finance, LLC (the "Lessor"), State of Michigan, Department of Technology, Management and Budget (the "Lessee"), and U.S. Bank National Association (the "Escrow Agent"), the amount set forth below to the named payee(s). The amount shown is due and payable under a purchase order or contract (or has been paid by and not previously reimbursed to Lessee) with respect to equipment being leased under that certain Lease With Option To Purchase Agreement dated as of February 16, 2011 (the "Lease") and Lease Schedule 143555000 thereto dated February 16, 2011 (the "Schedule" and, together with the terms and conditions of the Lease incorporated therein, the "Lease"), by and between the Lessor and the Lessee, and has not formed the basis of any prior requisition request.

PAYEE	AMOUNT

Total requisition amount \$: _____

The undersigned, as Lessee under the Lease hereby certifies:

1. The items of the Equipment, as such term is defined in the Lease, fully and accurately described on the Equipment List attached hereto have been delivered and installed at the location(s) set forth therein.
2. A present need exists for the Equipment which need is not temporary or expected to diminish in the near future. The Equipment is essential to and will be used by the Lessee only for the purpose of performing one or more governmental functions of Lessee consistent with the permissible scope of Lessee's authority.
3. The estimated useful life of the Equipment based upon the manufacturer's representations and the Lessee's projected needs is not less than the Lease Term of lease with respect to the Equipment.
4. The Lessee has conducted such inspection and/or testing of the Equipment as it deems necessary and appropriate and hereby acknowledges that it accepts the Equipment for all purposes as of the date of this Certificate.
5. The Equipment is covered by insurance in the types and amounts required by the Lease.

6. No Event of Default or Non-Appropriation Event, as each such term is defined in the Lease, and no event which with the giving of notice or lapse of time, or both, would become such an Event of Default or Non-Appropriation Event has occurred and is continuing on the date hereof.

7. Sufficient funds have been appropriated by the Lessee for the payment of all Rent Payments due under the Lease during Lessee's current fiscal year.

8. Based on the foregoing, Lessor is hereby authorized and directed to fund the acquisition of the Equipment set forth on the Equipment List by paying, or causing to be paid, the manufacturer(s)/vendor(s) the amounts set forth on the attached invoices.

9. The following documents are attached hereto and made a part hereof:

- (a) Original Invoice(s);
- (b) Copies of Certificate(s) of Origin designating Lessor as lienholder if any part of the Equipment consists of motor vehicles, and evidence of filing; and
- (c) Requisition for Payment.

10. If this is the final acceptance of Equipment, then as of the Acceptance Date stated below and as between the Lessee and the Lessor, the Lessee hereby agrees that: (a) the Lessee has received and inspected all of the Equipment described in the Lease; (b) all Equipment is in good working order and complies with all purchase orders, contracts and specification; (c) the Lessee accepts all Equipment for purposes of the Lease "as-is, where-is"; and (d) the Lessee waives any right to revoke such acceptance.

If Lessee paid an invoice prior to the commencement date of the Lease and is requesting reimbursement for such payment, also attach a copy of evidence of such payment together with a copy of Lessee's Declaration of Official Intent and other evidence that Lessee has satisfied the requirements for reimbursement set forth in Treas. Reg. §1.150-2.

Acceptance Date: _____

State of Michigan, Department of Technology, Management
and Budget
as Lessee

By _____

Name: _____

Title: _____

Date: _____

State of Michigan, Department of Correction,
as Lessee

By _____
Name: _____
Title: _____
Date: _____

PNC Equipment Finance, LLC
as Lessor

By: _____
Title: _____
Date: _____

EXAMPLE

LEASE ESCROW ADDENDUM
Dated As of February 16, 2011

Lease with Option to Purchase No. _____ Dated February 16, 2011

Lessee: State of Michigan

Reference is made to the above Lease with Option to Purchase ("Lease") by and between PNC Equipment Finance, LLC ("Lessor") and the above lessee ("Lessee"). This Addendum amends and modifies the terms and conditions of the Lease and is hereby made a part of the Lease. Unless otherwise defined herein, capitalized terms defined in the Lease shall have the same meaning when used herein.

NOW, THEREFORE, as part of the valuable consideration to induce the execution of the Lease, Lessor and Lessee hereby agree to amend the Lease as follows:

1. *"Escrow Agreement"* means the Escrow Agreement relating to a Lease, dated the Commencement Date under such Lease among Lessor, Lessee and the escrow agent therein identified, with respect to the Escrow Fund established and to be administered thereunder. *"Escrow Fund"* means the fund of that name established pursuant to an Escrow Agreement.
2. Lessee and Lessor together with a mutually acceptable escrow agent agree to enter into an escrow agreement (Escrow Agreement) establishing a fund ("Equipment Acquisition Fund") from which the Purchase Price of the Equipment will be paid. The terms and conditions of the Escrow Agreement shall be satisfactory in form and substance, to Lessor and Lessee.
3. In order to provide financing to pay the costs to acquire and install the Equipment ("*Total Amount Financed*") as described in a Lease, Lessor and Lessee hereby agree to execute and deliver an Escrow Agreement relating to such Lease on the date on which the funding conditions for such Lease are satisfied. If Lessee signs and delivers a Lease and an Escrow Agreement and if all funding conditions have been satisfied in full, then Lessor will deposit or cause to be deposited into an Escrow Fund under the related Escrow Agreement an amount (which may include estimated investment earnings thereon) equal to the Purchase Price for the Equipment to be financed under the related Lease.
4. Lessee shall, at its sole expense, arrange for the transportation, delivery and installation of all Equipment to the location specified in the Lease ("*Location*") by Equipment suppliers ("*Suppliers*") selected by Lessee. Lessee shall accept Equipment for purposes of the related Lease as soon as it has been delivered and is operational. Lessee shall evidence its acceptance of any Equipment by signing and delivering to Lessor a Certificate of Acceptance in the form and manner required by the applicable Escrow Agreement.
5. If a Non-Appropriation Event or an Event of Default occurs prior to Lessee's acceptance of all the Equipment under the related Lease, the amount then on deposit in the Escrow Fund shall be applied to prepay the unpaid principal component of the Rent Payments in whole on the first business day of the month next succeeding the occurrence of either such Event plus accrued interest to the prepayment date; *provided, however*, that the amount to be prepaid by Lessee pursuant to this Section 5 shall first be paid from moneys in the related Escrow Fund and then from Legally Available Funds and other moneys available for such purpose as a result of the

exercise by Lessor of its rights and remedies under the related Lease. Any funds on deposit in the Escrow Fund on the prepayment date described in this Section 5 in excess of the unpaid principal component of the Rent Payments to be prepaid plus accrued interest thereon to the prepayment date shall be paid promptly to Lessee.

6. To the extent that Lessee has not accepted items of Equipment before the eighteen-month anniversary of the Commencement Date identified on the related Lease, the amount then on deposit in the related Escrow Fund shall be applied to prepay the unpaid principal component of the Rent Payments in part, in inverse order of Rent Payments, on the first business day of the next month plus accrued interest to the prepayment date; *provided, however*, that the amount to be prepaid by Lessee pursuant to this Section 6 shall first be paid from moneys in the related Escrow Fund and then from Legally Available Funds. Notwithstanding any such partial prepayment, the related Lease shall remain in full force and effect with respect to the portion of the Equipment accepted by Lessee during such eighteen-month period, and the portion of the principal component of Rent Payments remaining unpaid after such prepayment plus accrued interest thereon shall remain payable in accordance with the terms of the related Lease. Upon Lessor's request, Lessee shall execute an amendment to the related Payment Lease that reflects the change to the Rent Payments as a result of such partial prepayment.
7. At Lessor's request, Lessee shall join Lessor in executing any necessary or appropriate Financing Statements indicating its obligation under the Lease. Notwithstanding this Section 7, the provisions of Section 1 of the Escrow Agreement remain in force.
8. The Lease Term of the Lease shall commence on the earlier of the date specified in the Payment Schedule to the Lease or the date of Lessor's deposit of funds into the Equipment Acquisition Fund. Notwithstanding the statements regarding delivery and acceptance of the Equipment in the Lease, the parties acknowledge that the Equipment will be delivered or installed as provided in the Escrow Agreement.
9. The delivery of documents and the satisfaction of any other conditions required by the Escrow Agreement or this Addendum shall be additional Funding Conditions for the Lease.
10. Upon Lessee's execution of the Escrow Agreement, Lessee hereby represents to Lessor that:
 - (a) Lessee has full power, authority and legal right to execute and deliver the Escrow Agreement and to perform its obligations under the Escrow Agreement, and all such actions have been duly authorized by appropriate findings and actions of Lessee's governing body;
 - (b) the Escrow Agreement has been duly executed and delivered by Lessee and constitutes a legal, valid and binding obligations of Lessee, enforceable in accordance with its terms; and
 - (c) the Escrow Agreement is authorized under, and the authorization, execution and delivery of the Escrow Agreement complies with, all applicable federal, state and local laws and regulations (including, but not limited to, all open meeting, public bidding and public investment (laws) and all applicable judgments and court orders.
11. The opinion of Lessee's legal counsel will include the following statements:
 - Lessee is one of the principal state departments of the State of Michigan.

- Lessee has the requisite power and authority to; lease; to acquire the Equipment with an option to purchase; to execute and deliver the Lease, and to perform its obligations under the Lease.
- The Lease has been duly authorized, executed, and delivered by and on behalf of Lessee; the Lease is a valid and binding obligation of Lessee; and enforceable in accordance with its terms.
- To the best of my knowledge, the authorization, execution, and delivery of the Lease and all other proceedings of Lessee relating to the Lease transaction have been performed in accordance with open meetings, public bidding and all other applicable state or federal laws.
- The person signing the Lease for the State of Michigan is a duly authorized representative of Lessee pursuant to 1984 PA 431.

12. It shall be an additional event of default under the Lease if lessee fails to pay or perform any of its obligations under the Escrow Agreement or this Addendum or if any of the representations of Lessee in the Escrow Agreement or this Addendum prove to be false, misleading or erroneous in any material respect.

Except as expressly amended by this Addendum and other modifications signed by Lessor, the Lease remains unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Addendum as of the date first referenced above.

State of Michigan, Department of Technology,
Management and Budget, as Lessee

By Natalie Spauldo
Name: Natalie Spauldo
Title: Acting Purchasing Director

State of Michigan, Department of Corrections,
as Lessee

By B. L. Wickner
Name: Barry L. Wickner
Title: Administrative Officer

PNC Equipment Finance, LLC
as Lessor

By Sandra Thomas
Name: Sandra Thomas
Title: Assistant Vice President

Information Return for Tax-Exempt Governmental Obligations

► Under Internal Revenue Code section 149(e)

► See separate instructions.

Caution: If the issue price is under \$100,000, use Form 8038-GC.

OMB No. 1545-0720

Part I Reporting Authority

If Amended Return, check here ☐

1 Issuer's name		2 Issuer's employer identification number (EIN) 38 ; 6000134
3 Number and street (or P.O. box if mail is not delivered to street address) State of Michigan Department of Technology Management and Budget	Room/suite	4 Report number (For IRS Use Only) 3
5 City, town, or post office, state, and ZIP code 530 W. Allegan		6 Date of Issue
7 Name of Issue Energy Performance Contract Equipment Purchased from 071B0200357		8 CUSIP number
9 Name and title of officer of the issuer or other person whom the IRS may call for more information Brenda Sprunger, Procurement Technician		10 Telephone number of officer or other person (517) 241-0920

Part II Type of Issue (enter the issue price) See instructions and attach schedule

11 Education	11		
12 Health and hospital	12		
13 Transportation	13		
14 Public safety	14		
15 Environment (including sewage bonds)	15		
16 Housing	16		
17 Utilities	17		
18 Other. Describe ► Energy Performance Contract Equipment Purchased from 071B0200357	18	612,164	00
19 If obligations are TANs or RANs, check only box 19a			
If obligations are BANs, check only box 19b			
20 If obligations are in the form of a lease or installment sale, check box			

Part III Description of Obligations. Complete for the entire issue for which this form is being filed.

	(a) Final maturity date	(b) Issue price	(c) Stated redemption price at maturity	(d) Weighted average maturity	(e) Yield
21	02/16/2016	\$ 612,164.00	\$	2.693678043 years	3.32 %

Part IV Uses of Proceeds of Bond Issue (including underwriters' discount)

22 Proceeds used for accrued interest	22	N/A	
23 Issue price of entire issue (enter amount from line 21, column (b))	23	612,164	00
24 Proceeds used for bond issuance costs (including underwriters' discount)	24	N/A	
25 Proceeds used for credit enhancement	25	N/A	
26 Proceeds allocated to reasonably required reserve or replacement fund	26	N/A	
27 Proceeds used to currently refund prior issues	27	N/A	
28 Proceeds used to advance refund prior issues	28	N/A	
29 Total (add lines 24 through 28)	29	N/A	
30 Nonrefunding proceeds of the issue (subtract line 29 from line 23 and enter amount here)	30	612,164	00

Part V Description of Refunded Bonds (Complete this part only for refunding bonds.)

31 Enter the remaining weighted average maturity of the bonds to be currently refunded	N/A	years
32 Enter the remaining weighted average maturity of the bonds to be advance refunded	N/A	years
33 Enter the last date on which the refunded bonds will be called (MM/DD/YYYY)	N/A	
34 Enter the date(s) the refunded bonds were issued (MM/DD/YYYY)	N/A	

Part VI Miscellaneous

- | | | | |
|------------|--|---|----|
| 35 | | 0 | 00 |
| 36a | | 0 | 00 |
| 37a | | 0 | 00 |
- 35** Enter the amount of the state volume cap allocated to the issue under section 141(b)(5)
- 36a** Enter the amount of gross proceeds invested or to be invested in a guaranteed investment contract (GIC) (see instructions)
- b Enter the final maturity date of the GIC ▶ _____
- 37** Pooled financings: a Proceeds of this issue that are to be used to make loans to other governmental units
- b If this issue is a loan made from the proceeds of another tax-exempt issue, check box ☐ and enter the name of the issuer ▶ _____ and the date of the issue ▶ _____
- 38** If the issuer has designated the issue under section 265(b)(3)(B)(i)(III) (small issuer exception), check box ☐
- 39** If the issuer has elected to pay a penalty in lieu of arbitrage rebate, check box ☐
- 40** If the issuer has identified a hedge, check box ☐

Signature and Consent	Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. I further declare that I consent to the IRS's disclosure of the issuer's return information, as necessary to process this return, to the person that I have authorized above.			
	<div style="display: flex; align-items: center;"> <div style="flex: 1;"> </div> <div style="flex: 1; text-align: center;"> 2/14/11 </div> </div>	Date	<div style="display: flex; align-items: center;"> <div style="flex: 1;">Natalie Spaniolio, Acting Director</div> </div>	Type or print name and title
Paid Preparer's Use Only	Preparer's signature	Date	Check if self-employed <input type="checkbox"/>	Preparer's SSN or PTIN
	Firm's name (or yours if self-employed), address, and ZIP code	EIN	Phone no. ()	

DUAL OBLIGEE RIDER

WHEREAS, Heretofore, and on or about the 30th day of September, 2010
Johnson Controls, Inc.

as Principal entered into a written agreement with State of Michigan
Correctional for Performance Contracting; State of Michigan - Cotton
in accordance with drawings and specifications prepared by
, herein referred to as the Contract, and

WHEREAS, Johnson Controls, Inc., as Principal,
 and Safeco Insurance Company of America, as Surety,
 made executed and delivered to said Owner, as Obligor, their joint and several Performance Bond, and Payment Bond
 and

WHEREAS, The Obligor has requested the Principal and Surety to join with the Obligor in the execution and delivery
 of this Rider, and the Principal and Surety have agreed so to do upon the conditions herein stated.

NOW, THEREFORE, in consideration of One Dollar and the other good and valuable considerations, receipt of which
 is hereby acknowledged, the undersigned hereby agree as follows:

The Performance Bond and Payment Bond aforesaid shall be and it is hereby amended as follows:

1. The name of PNC Equipment Finance LLC; 955 Dalton Avenue; Cincinnati, OH 45203,
 shall be added to said Bonds as an additional Obligor.
2. The rights of PNC Equipment Finance LLC, as an additional Obligor, shall be subject to the
 following conditions: (a) The Surety shall not be liable under this Bond to the Obligors, or either of them, unless the
 Obligors, or either of them shall make payments to the Principal strictly in accordance with the terms of said contract as
 to payments and shall perform all the other obligations to be performed under said contract at the time and in the
 manner therein set forth, (b) The aggregate liability of the Surety under this Bond to the Owners, as their interests may
 appear, is limited to the penal sum of this Bond, (c) The Surety may, at its option, make any payments under this Bond
 by check issued jointly State of Michigan and PNC Equipment Finance LLC.
3. Surety agrees that any change order issued in accordance with the general conditions of the contract, which change
 order increases the total contract price, shall be binding upon Surety and covered under the Bonds without notice to or
 any act by Surety.
4. Except as herein modified, said Performance Bond and Payment Bond shall be and remain in full force and effect.

Signed, sealed and dated this 16th day of February, 2011

State of Michigan

By:

Natasha Spanio

Johnson Controls, Inc.

By:

Tracy K. Matthews

Tracy K. Matthews; Attorney-In-Fact

Safeco Insurance Company of America

By:

Cathy Hutson

Cathy Hutson; Attorney-In-Fact

PNC Equipment Finance LLC

By:

Sandra Thomas

Johnson Controls, Inc.
5757 N. Green Bay Avenue
Milwaukee, WI 53209



DELEGATION OF AUTHORITY

The undersigned, President of Johnson Controls, Inc., a Wisconsin corporation (the "Company"), pursuant to the authority vested in him by a certain resolution adopted by the Board of Directors of the Company on January 23, 1980, hereby authorizes:

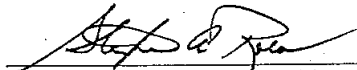
Tracy K. Matthews
Hays Companies
1200 N. Mayfair Road, Suite 100
Milwaukee, WI 53226

to perform, on behalf of the Company, the acts described below:

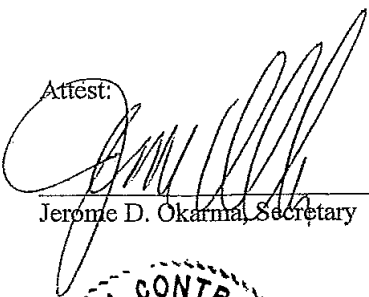
To execute, seal and deliver, as attorney-in-fact for the Company, surety bonds forwarded to Hays Companies by a Company authorized surety that do not exceed Two Million Dollars (\$2,000,000.00) that are necessary and proper in carrying on the business of the Company.

This authority shall remain in full force and effect for six (6) months from the date of issue.

Signed at Milwaukee, Wisconsin, this 16th day of February 2011.


Stephen A. Roell, President

Attest:


Jerome D. Okarma, Secretary



This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

SAFECO INSURANCE COMPANY OF AMERICA
SEATTLE, WASHINGTON
POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS: That Safeco Insurance Company of America (the "Company"), a Washington stock insurance company, pursuant to and by authority of the By-law and Authorization hereinafter set forth, does hereby name, constitute and appoint **DANIEL J. KWIECINSKI, DANIEL J. SAPIRO, KATHLEEN A. CRARY, WENDY S. MILLER, KATHLEEN A. YOSS, KRISTIN N. SCHMIT, TRACY K. MATTHEWS, LISA M. SLAKES, CATHY HUTSON, LUCY A. HANTZSCH, ALL OF THE CITY OF MILWAUKEE, STATE OF WISCONSIN.....**

each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations in the penal sum not exceeding **TWO HUNDRED MILLION AND 00/100***** DOLLARS (\$ 200,000,000.00*****)** each, and the execution of such undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents, shall be as binding upon the Company as if they had been duly signed by the president and attested by the secretary of the Company in their own proper persons.

That this power is made and executed pursuant to and by authority of the following By-law and Authorization:

ARTICLE IV - Execution of Contracts: Section 12. Surety Bonds and Undertakings.

Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitations as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and executed, such instruments shall be as binding as if signed by the president and attested by the secretary.

By the following instrument the chairman or the president has authorized the officer or other official named therein to appoint attorneys-in-fact:

Pursuant to Article IV, Section 12 of the By-laws, Garnet W. Elliott, Assistant Secretary of Safeco Insurance Company of America, is authorized to appoint such attorneys-in-fact as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

That the By-law and the Authorization set forth above are true copies thereof and are now in full force and effect.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Company and the corporate seal of Safeco Insurance Company of America has been affixed thereto in Plymouth Meeting, Pennsylvania this 13th day of January 2011.



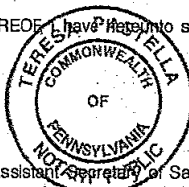
SAFECO INSURANCE COMPANY OF AMERICA

By Garnet W. Elliott
Garnet W. Elliott, Assistant Secretary

COMMONWEALTH OF PENNSYLVANIA ss
COUNTY OF MONTGOMERY

On this 13th day of January, 2011, before me, a Notary Public, personally came Garnet W. Elliott, to me known, and acknowledged that he is an Assistant Secretary of Safeco Insurance Company of America; that he knows the seal of said corporation; and that he executed the above Power of Attorney and affixed the corporate seal of Safeco Insurance Company of America thereto with the authority and at the direction of said corporation.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at Plymouth Meeting, Pennsylvania, on the day and year first above written.



Notarial Seal
Teresa Pastella, Notary Public
Plymouth Twp., Montgomery County
My Commission Expires Mar. 28, 2013
Member, Pennsylvania Association of Notaries

By Teresa Pastella
Teresa Pastella, Notary Public

CERTIFICATE

I, the undersigned, Assistant Secretary of Safeco Insurance Company of America, do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy, is in full force and effect on the date of this certificate; and I do further certify that the officer or official who executed the said power of attorney is an Assistant Secretary specially authorized by the chairman or the president to appoint attorneys-in-fact as provided in Article IV, Section 12 of the By-laws of Safeco Insurance Company of America.

This certificate and the above power of attorney may be signed by facsimile or mechanically reproduced signatures under and by authority of the following vote of the board of directors of Safeco Insurance Company of America at a meeting duly called and held on the 18th day of September, 2009.

VOTED that the facsimile or mechanically reproduced signature of any assistant secretary of the company, wherever appearing upon a certified copy of any power of attorney issued by the company in connection with surety bonds, shall be valid and binding upon the company with the same force and effect as though manually affixed.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seal of the said company, this 16th day of February 2011.



David M. Carey
David M. Carey, Assistant Secretary

Not valid for mortgage, note, loan, letter of credit, bank deposit, currency rate, interest rate or residual value guarantees.

To confirm the validity of this Power of Attorney call 1-610-832-8240 between 9:00 am and 4:30 pm EST on any business day.

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

October 12, 2010

NOTICE
OF
CONTRACT NO. 071B0200357
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR		TELEPHONE (608) 279-1105 Stephen J. Anderson
Johnson Controls, Inc. 3007 Malmo Drive Arlington Heights, IL 60005-4727 Email: Stephen.J.Anderson@jci.com		CONTRACTOR NUMBER/MAIL CODE
		BUYER/CA (517) 373-0301 Sue Cieciva
Contract Compliance Inspector: Jerry Elmblad (517) 373-4471 Energy Performance Contract – Cotton Correctional Facility Department of Corrections		
CONTRACT PERIOD: 2 years + 5 months From: September 30, 2010 To: March 1, 2013		
TERMS		SHIPMENT
N/A		N/A
F.O.B.		SHIPPED FROM
N/A		N/A
MINIMUM DELIVERY REQUIREMENTS N/A		
MISCELLANEOUS INFORMATION:		

The terms and conditions of this Contract are those of RFP #071I0200107,
This Contract Agreement and the vendor's quote dated August 18, 2010. In the event of any
conflicts between the specifications, and terms and conditions, indicated by the State and those
indicated by the vendor, those of the State take precedence.

Estimated Contract Value (Not to Exceed): \$1,287,164.00

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

CONTRACT NO. 071B0200357
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR		TELEPHONE (608) 279-1105 Stephen J. Anderson
Johnson Controls, Inc. 3007 Malmo Drive Arlington Heights, IL 60005-4727 Email: Stephen.J.Anderson@jci.com		CONTRACTOR NUMBER/MAIL CODE
Contract Compliance Inspector: Jerry Elmblad (517) 373-4471 Energy Performance Contract – Cotton Correctional Facility Department of Corrections		BUYER/CA (517) 373-0301 Sue Cieciwa
CONTRACT PERIOD: 2 years + 5 months From: September 30, 2010 To: March 1, 2013		
TERMS	SHIPMENT	
N/A	N/A	
F.O.B.	SHIPPED FROM	
N/A	N/A	
MINIMUM DELIVERY REQUIREMENTS N/A		
MISCELLANEOUS INFORMATION: The terms and conditions of this Contract are those of RFP #071I0200107, This Contract Agreement and the vendor's quote dated August 18, 2010. In the event of any conflicts between the specifications, and terms and conditions, indicated by the State and those indicated by the vendor, those of the State take precedence. Estimated Contract Value (Not to Exceed): \$1,287,164.00		

THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the RFP No. 071I0200107. Orders for delivery will be issued directly by the Department of Corrections through the issuance of a Purchase Order Form.

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

FOR THE CONTRACTOR:	FOR THE STATE:
Johnson Controls, Inc.	Signature
Firm Name	Anthony J. Des Chenes, Director
Authorized Agent Signature	Name/Title
Authorized Agent (Print or Type)	Commodities Division, Purchasing Operations
Date	Division
	Date



ENERGY PERFORMANCE CONTRACT

TABLE OF CONTENTS

Article 1: Definitions, Schedules, Exhibits and Appendices

Article 2: Energy Usage Records and Data

Article 3: Purchase and Sale; Commencement Date and Terms; Interim Period

Article 4: Savings Guarantee; Annual Reconciliation; Payments to ESCO

Article 5: Fiscal Funding

Article 6: Construction Schedule and Equipment Installation; Approval

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Article 9: Permits and Approvals; Coordination

Article 10: Performance by ESCO

Article 11: Environmental Requirements

Article 12: Ownership of Certain Proprietary Rights; Existing Equipment

Article 13: Location and Access

Article 14: Equipment Service

Article 15: Modification, Upgrade or Alteration of the Equipment

Article 16: Standards of Comfort

Article 17: Material Changes

Article 18: Property/Casualty/Insurance; Indemnification

Article 19: Conditions Beyond the Control of the Parties

Article 20: Events of Default

Article 21: Remedies Upon Default

Article 22: Assignment

Article 23: Representations and Warranties

Article 24: Additional Representations of the Parties

Article 25: Miscellaneous Documentation Provision

Article 26: Conflicts of Interest



Article 27: Complete Contract

Article 28: Applicable Law

Article 29: Interpretation of Contract

Article 30: Notice

Article 31: Statutory Obligations

Contract Attachment I: Schedules, Exhibits, and Appendices

Schedules

Schedule A – Equipment to be Installed by ESCO

Schedule B – Description of Facility; Pre-Existing Equipment Inventory

Schedule C – Energy and Cost Savings Guarantee

Schedule D – Compensation to ESCO for Annual Services

Schedule E – Baseline Energy Consumption

Schedule F – Savings Measurement and Verification Plan; Methodology to Adjust Baseline

Schedule G – Construction and Installation Schedule

Schedule H – Systems Start-Up and Commissioning of Equipment; Operating Parameters of Installed Equipment

Schedule I – Standards of Comfort

Schedule J – ESCO's Maintenance Responsibilities

Schedule K – Agency's Maintenance Responsibilities

Schedule L – Facility Maintenance Checklist

Schedule M – ESCO's Training Responsibilities

Schedule N – Payment Schedule

Schedule O – Alternative Dispute Resolution Procedures

Schedule P – Final Project Cost & Project Cash Flow Analysis

Schedule R – Annual Reporting Requirements

Exhibits

Exhibit I – Performance Bond

Exhibit II – Labor and Material Payment Bond

Exhibit II (i) – Certificate of Acceptance – Technical Audit

Exhibit II (ii) – Certificate of Acceptance – Installed Equipment

Exhibit III – Equipment Warranties



Appendices

Appendix A – RFP for ESCO Solicitation

Appendix B – ESCO Proposal

Appendix C – Technical Energy Audit Report

Pre-Existing Service Contracts – Deleted, Not Applicable

Energy Savings Projections

Facility Changes Checklist

Current and Known Capital Projects at Facility – Deleted, Not Applicable

Article 2 – DTMB Terms and Conditions

Attachment I – Special Working Rules

Department of Corrections Inside Prison

Department of Corrections Outside Prison

Article 6 – ARRA Terms and Conditions



ENERGY PERFORMANCE CONTRACT

This Energy Performance Contract (Contract) is entered into as of September 30, 2010 between Johnson Controls, Inc. (ESCO), having its principal offices at 3007 Malmo Drive, Arlington Heights, IL, and the Department of Technology, Management and Budget (DTMB) for the Department of Corrections (Agency) for the purpose of installing the energy and water cost saving equipment, described in **Schedule A – Equipment to be Installed by ESCO**, and providing other services designed to save energy for the Agency's property and buildings, known as G. Robert Cotton Correctional Facility, located at Jackson, Michigan (Facility).

RECITALS

WHEREAS, Agency manages the Facility, and desires energy and water cost saving equipment and services designed to save energy and associated energy costs at the Facility; and

WHEREAS, DTMB is authorized to enter into this agreement for the acquisition and installation of energy and water cost savings equipment, collectively referred to as the "Work" (as later defined); and

WHEREAS, ESCO has expertise with the recommended procedures for controlling energy through services it has provided and equipment it has installed and maintained at other project sites similar in scope and scale of the Facility; and

WHEREAS, ESCO was selected by DTMB pursuant to a Request for Proposal and has accepted the ESCO's Technical Energy Audit and Project Development Proposal (as later defined); and

WHEREAS, ESCO has made an assessment of the utility consumption characteristics of the Facility and existing equipment described in **Schedule B - Description of Facility**, which was delivered to DTMB and Agency as a Technical Energy Audit Report (Audit), which DTMB and Agency has approved and is attached as **Appendix C – Technical Energy Audit Report**; and

WHEREAS, DTMB and Agency desire to retain ESCO to purchase, install, and service the Parties' agreed upon energy and water cost savings equipment and to provide the services and strategies described in the attached Schedules, for the purpose of achieving energy and water cost reductions within the Facility, as more fully provided in this Contract; and

WHEREAS, DTMB and Agency are authorized under the laws of the State of Michigan to enter into this Contract. 1984 PA 431, MCL 18.1253;

THEREFORE, in consideration of the mutual promises and covenants, and intending to be legally bound, DTMB, Agency, and ESCO agree that the following Contract terms: and Schedules, Exhibits and Appendices, which are attached and are made a part of this Contract.



ARTICLE 1. DEFINITIONS, SCHEDULES, EXHIBITS AND APPENDICES

Section 1.1. Definitions.

Certificate of Acceptance: The certificate substantially in the form provided in Exhibit II (ii).

Contract: This Energy Performance Contract and all its attached Schedules and Exhibits.

Contract Amount: The total amount of all materials, labor, auditing, design, engineering, project construction management fees, overhead, profit, contingency, subcontracted services related to the project.

Energy and Water Cost Savings: The guaranteed savings as provided in Schedule C – Energy and Cost Savings Guarantee.

Energy and Cost Savings Guarantee: The ESCO's guarantee that is achieved from the installation and operation of the Equipment and provision of services provided for in this Contract as specified in Schedule D - Compensation to ESCO for Annual Services and in accordance with the Savings Calculation Formula as set forth in Schedule F - Savings Measurement and Verification Plan; Methodology to Adjust Baseline.

Equipment: The goods listed and identified on Schedule A - Equipment to be Installed by ESCO, together and with all additions, modifications, attachments, replacements and parts.

Event of Default: The events described in Article 19 – Conditions Beyond the Control of the Parties.

Interim Period: The period from Contract execution to the Commencement Date.

Commencement Date: The date stated in **Section 3.2 Commencement Date**.

Facility: The facilities selected for energy and water saving measures (equipment and services) designed to reduce consumption and associated costs.

Technical Energy Audit Report (Audit Report): The study by the qualified energy services provider selected for a particular energy performance contract project which includes detailed

Work: Collectively, the Equipment, professional services and project construction related to the project.

Section 1.2. Technical Energy Audit Report and Project Development Proposal.

ESCO has completed the Audit Report of the Facility as set forth in Appendix C – Technical Energy Audit Report dated August 18, 2010 which has been approved and accepted by DTMB and Agency as set forth in Exhibit II (i) - Certificate of Acceptance—Technical Energy Audit

Report. The Audit Report includes all energy conservation measures agreed upon by the Parties.

Section 1.3. Schedules, Exhibits and Appendices

ESCO has prepared and DTMB and Agency have approved and accepted the following Schedules:



Schedules

Schedule A	Equipment to be Installed by ESCO
Schedule B	Description of Facility; Pre-Existing Equipment Inventory
Schedule C	Energy and Cost Savings Guarantee
Schedule D	Compensation to ESCO for Annual Services
Schedule E	Baseline Energy Consumption
Schedule F	Savings Measurement and Verification Plan; Methodology to Adjust Baseline
Schedule G	Construction and Installation Schedule
Schedule H	Systems Start-Up and Commissioning of Equipment; Operating Parameters of Installed Equipment
Schedule I	Standards of Comfort
Schedule J	ESCO's Maintenance Responsibilities
Schedule K	Agency's Maintenance Responsibilities
Schedule L	Facility Maintenance Checklist
Schedule M	ESCO's Training Responsibilities
Schedule N	Payment Schedule
Schedule O	Alternative Dispute Resolution Procedures
Schedule P	Final Project Cost & Project Cash Flow Analysis
Schedule R	Annual Reporting Requirements

Exhibits

Exhibit I	Performance Bond/Construction Bond
Exhibit II	Labor and Material Payment Bond
Exhibit II (i)	Certificate of Acceptance—Technical Energy Audit Report
Exhibit II (ii)	Certificate of Acceptance—Installed Equipment
Exhibit III	Equipment Warranties

Appendices

Appendix A	RFP for ESCO Solicitation
Appendix B	ESCO Proposal
Appendix C	Technical Energy Audit Report

Section 1.3. Other Documents

This Contract incorporates the entire RFP and ESCO Proposal for this Project labeled Appendix A and B respectively. Acceptance by DTMB and the Agency of the Audit Report is reflected in Exhibit II (i). Notwithstanding, the provisions of this Contract and the attached Schedules shall govern in the event of any inconsistencies between the Technical Energy Audit Report and the provisions of this Contract.



ARTICLE 2. ENERGY USAGE RECORDS AND DATA

Agency has furnished and will continue to furnish (or authorize its energy suppliers to furnish) during the term of this Contract to ESCO or its designee, upon its request, all of its records and complete data concerning energy and water usage and related maintenance for the Agency's Facility.

ARTICLE 3. PURCHASE AND SALE; COMMENCEMENT DATE AND TERMS; INTERIM PERIOD

Section 3.1. Purchase and Sale

DTMB for the Agency agrees to purchase the Equipment, as provided for in, Schedule N - Payment Schedule. ESCO agrees to provide the Equipment and, installation as provided herein, as in Schedule A - Equipment to be Installed by ESCO based upon the terms and conditions in Schedule N - Payment Schedule.

The agreed to Contract Amount for the Work is a Not to Exceed Price of **\$1,287,164.00** as set forth in Schedule P - Final Project Cost & Project Cash Flow Analysis. Payment terms are described in Schedule N - Payment Schedule.

ESCO will provide the Work and all related services identified in Schedule A - Equipment to be Installed by ESCO and the services detailed in Schedule J - ESCO's Maintenance Responsibilities and Schedule D - Compensation to ESCO for Annual Services. ESCO must supervise and direct the Work and is solely responsible for all construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the Work under this Contract. ESCO must pay for all labor, materials, equipment, tools, construction equipment and machinery, transportation and other facilities and services necessary for the proper execution and completion of the Work.

Agency will pay ESCO in accordance with Schedule N - Payment Schedule. Payments will be made on a progress basis in accordance with Schedule N, for Work completed and authorized by Agency during the Interim Period.

Section 3.2. Commencement Date

The Commencement Date will be the first day of the month after the month in which all schedules are accepted by DTMB and Agency; and ESCO has delivered the Notice to DTMB and Agency that it has installed and commenced operating all of the Equipment specified in Schedule A - Equipment to be Installed by ESCO and in accordance with the provisions of Article 6 - Construction Schedule and Equipment Installation; Approval, Schedule G Construction and Installation Schedule and Schedule H - Systems Start-Up and Commissioning of Equipment; Operating Parameters of Installed Equipment; and DTMB and Agency has inspected and accepted the installation and operation as evidenced by delivery to ESCO of the Certificate of Acceptance as required in Exhibit II (ii) - Certificate of Acceptance—Installed Equipment.

The Commencement Date will not occur and DTMB and the Agency will not be required to accept the Work until all Equipment installation for the Facility is completed by ESCO in accordance with the terms and conditions of this Contract. DTMB and Agency will have 30 days after notification by the ESCO to inspect and accept the Equipment. DTMB and Agency reserve the right to reject the Equipment if installation fails to meet reasonable standards of workmanship, does not comply with applicable building codes, or is otherwise not in compliance with this Contract. ESCO will not be paid in full, including retainage, until the Equipment installation punch list is completed and ESCO has satisfied all claims for labor and materials and the Certificate of Acceptance has been signed by DTMB. The Certificate of Acceptance will not be unreasonably withheld by the DTMB and Agency.



Compensation payments to ESCO for on-going services and maintenance under this Contract as set forth in **Schedule D - Compensation to ESCO for Annual Services** will begin no earlier than **30 days** from the Commencement Date as defined herein.

Section 3.3. Term of Contract; Interim Period

Subject to the following sentence, the term of this Contract is **two years** measured beginning with the Commencement Date. Nonetheless, the Contract is effective and binding upon the parties immediately upon its execution by DTMB, and the period from Contract execution until the Commencement Date shall be known as the "Interim Period". All energy savings achieved during the interim period will be fully credited to Agency.

ARTICLE 4. SAVINGS GUARANTEE; ANNUAL RECONCILIATION; PAYMENTS TO ESCO

Section 4.1. Energy and Cost Savings Guarantee

ESCO has formulated and, subject to the adjustments provided for in **Article 17 Material Changes**, has guaranteed the annual level of energy and water cost savings to be achieved as a result of the installation and operation of the Equipment and provision of maintenance and services provided for in this Contract in accordance with the methods of savings measurement and verification as set forth in **Schedule F - Savings Measurement and Verification Plan; Methodology to Adjust Baseline**. The Energy and Cost Savings Guarantee is set forth in annual increments for the term of the Contract as specified in **Schedule C - Energy and Cost Savings Guarantee** and has been structured by the ESCO for the guaranteed amount to be sufficient to cover any and all annual payments required to be made by the Agency as set forth in **Schedule D - Compensation to ESCO for Annual Services** and **Schedule N - Payment Schedule**.

Section 4.2. Annual Review and Reimbursement/Reconciliation

Energy-related cost savings shall be measured and/or calculated as specified in **Schedule F - Savings Measurement and Verification Plan; Methodology to Adjust Baseline** and a report provided within **30 days** of the end of the year for the previous year for each anniversary of the Commencement Date.

In the event the Energy and Cost Savings achieved during such guarantee year are less than the Guaranteed Energy and Cost Savings as defined in **Schedule C - Energy and Cost Savings Guarantee**, ESCO shall pay the Agency an amount equal to the deficiency in cash.

The ESCO shall remit guarantee payments to Agency within **30 days** of written notice by the Agency of such monies due. DTMB and Agency are solely entitled to any excess savings. In no event will excess savings be used to refund ESCO's saving guarantees paid in prior years of the Contract.

Section 4.3. ESCO Compensation and Fees

ESCO has structured the Energy and Cost Savings Guarantee referred to in Section 4.1 above, to be sufficient to include all payments required to be made by DTMB and Agency in connection with the purchase of the Equipment set forth in **Schedule N - Payment Schedule**. Additionally, ESCO guarantees that the actual energy and operations savings achieved by Agency through the operation of Equipment and performance of services by ESCO will be sufficient to pay for all annual fees to be paid by Agency to ESCO for the provision of maintenance and services in accordance with the provisions of **Schedule D - Compensation to ESCO for Annual Services** and **Schedule J - ESCO's Maintenance Responsibilities**.



Section 4.4. Billing Information Procedure

Payments due to ESCO under Section 4.4 shall be in accordance with **Schedule N – Payment Schedule.**

Section 4.5. Payment – Refer to Section 2.044 Invoicing and Payment – In General

Section 4.6. Effective Date of Payment Obligation

Notwithstanding the above provisions in Section 4, DTMB and Agency will not begin any payments to ESCO under this Contract until all Equipment installation is completed by ESCO in accordance with the provisions of **Section 6 - Construction and Equipment Installation; Approval** and **Schedule H - Systems Start-Up and Commissioning of Equipment; Operating Parameters of Installed Equipment**, and accepted by Agency as evidenced by the signed Certificate of Acceptance as set forth in **Exhibit II (ii) - Certificate of Acceptance - Installed Equipment**, and until the Equipment is fully and properly functioning.

ARTICLE 5. FISCAL FUNDING - Refer to Section 2.154 Termination for Non-Appropriation

ARTICLE 6. CONSTRUCTION SCHEDULE AND EQUIPMENT INSTALLATION; APPROVAL

Section 6.1. Construction Schedule; Equipment

Construction and equipment installation must proceed in accordance with the construction schedule approved by DTMB and Agency and attached as **Schedule G - Construction and Equipment Installation Schedule.**

All equipment/installation work associated with this Contract, such as construction contracts for installation of energy saving equipment, must comply with all applicable federal, state and local Laws including health and safety regulations, environmental protection, permits and licensing.

Section 6.2. Systems Startup and Equipment Commissioning

The ESCO must conduct a thorough and systematic performance test of each element and total system of the installed Equipment in accordance with the procedures specified in **Schedule H - Systems Start-Up and Commissioning of Equipment; Operating Parameters of Installed Equipment** and prior to acceptance of the project by DTMB and Agency as specified in **Exhibit II (ii) - Certificate of Acceptance – Installed Equipment**. Testing must be designed to determine if the Equipment is functioning in accordance with both its published specifications and the Schedules to this Contract, and to determine if modified building systems, subsystems or components are functioning properly within the new integrated environment. The ESCO must provide notice to DTMB and Agency of the scheduled test(s) and DTMB and Agency and/or its designees have the right to be present at all the tests conducted by ESCO and/or manufacturers of the Equipment. The ESCO is responsible for correcting and/or adjusting all deficiencies in systems and Equipment operations that may be observed during system commissioning procedures as specified in **Schedule H - Systems Start-Up and Commissioning of Equipment; Operating Parameters of Installed Equipment**. The Contractor is responsible for correcting and/or adjusting all deficiencies in Equipment operation that may be observed during system testing procedures. Prior to DTMB and Agency acceptance ESCO must also provide DTMB and Agency with reasonably satisfactory documentary evidence that the Equipment installed is the Equipment specified in **Schedule A - Equipment to be Installed by ESCO.**



ARTICLE 7. EQUIPMENT WARRANTIES - Refer to Section 2.120 Warranties

ESCO warrants that all equipment acquired and installed as part of this Contract is new, materially free from defects in materials or workmanship, will be installed properly in a good and workmanlike manner, and will function properly for a period of one (1) year from the date of the Substantial Completion for the particular energy conservation measure if operated and maintained in accordance with the procedures established per building. Substantial Completion shall be defined as the stage in the progress of the Work where the Work is sufficiently complete in accordance with the Contract Documents so that the Agency can utilize and take beneficial use of the Work for its intended use or purpose. Substantial Completion does not occur until the Equipment or system has been commissioned, accepted, and the "Substantial Completion" form fully executed.

After the warranty period, ESCO will have no responsibility for performing maintenance, repairs, or making manufacturer warranty claims relating to the Equipment, except as provided in **Schedule J - ESCO's Maintenance Responsibilities**.

ESCO further agrees to assign to DTMB or Agency all manufacturer's warranties relating to the Equipment and to deliver the written warranties, which must be attached and set forth as **Exhibit III - Equipment Warranties**; pursue rights and remedies against the manufacturers under the warranties in the event of Equipment malfunction or improper or defective function, and defects in parts, workmanship and performance. ESCO must, during the warranty period, notify DTMB and Agency whenever defects in Equipment parts or performance occur which give rise to warranty rights and remedies and those rights and remedies are exercised by ESCO.

During the warranty period, the cost of any risk of damage or damage to the Equipment and its performance, including damage to property and equipment of the Agency, due to ESCO's failure to exercise its warranty rights obligations must be borne solely by ESCO.

All warranties, to the extent transferable, shall be transferable and extend to the Agency. The warranties must specify that only new, not reconditioned, parts may be used and installed when repair is necessitated by malfunction. All extended warranties must be addressed as the property of DTMB and Agency and appropriately documented and titled.

Nothing in the Equipment Warranties Section is to be construed as to excuse the ESCO from complying with its obligations to perform under all terms and conditions of this Contract.

ARTICLE 8. TRAINING BY ESCO

The ESCO must conduct the training program described in **Schedule M - ESCO's Training Responsibilities**. The training specified in **Schedule M - ESCO's Training Responsibilities** must be completed before acceptance of the Equipment installation. The ESCO must provide ongoing training with respect to updated or altered Equipment, including upgraded software. Ongoing training must be provided at no charge to the Agency and will have no effect on prior acceptance of Equipment installation.

ARTICLE 9. PERMITS AND APPROVALS; COORDINATION

Section 9.1. Permits and Approvals

Agency will use its best efforts to assist ESCO in obtaining all necessary permits and approvals for installation of the Equipment. The Agency, however, will not be responsible for payment of any permit fees. The Equipment and the operation of the Equipment by ESCO must at all times conform to all federal, state, and local code requirements. ESCO must furnish copies of each permit or license which is required to perform the Work to Agency before the ESCO commences the portion of the Work requiring the permit or license.



Section 9.2. Coordination During Installation

The Agency and ESCO must coordinate the activities of ESCO's Equipment installers with those of the Agency, its employees, and agents. ESCO must not commit or permit any act which will interfere with the performance of business activities conducted by the Agency or its employees without prior written approval of the Agency.

ARTICLE 10. PERFORMANCE BY ESCO

Section 10.1. Corrective Action; Accuracy of the Services

ESCO must perform all tasks/phases under the Contract, including construction, and install the Equipment without causing harm to the structural integrity of the buildings or their operating systems and so as to conform to the standards specified in **Schedule I - Standards of Comfort**

and the construction schedule specified in **Schedule G - Construction and Installation Schedule**. ESCO must repair and restore to its original condition any area of damage caused by ESCO's performance under this Contract. The Agency reserves the right to review the work performed by ESCO and to direct ESCO to take corrective action if, in the opinion of the DTMB

and Agency, the structural integrity of the Facility or its operating system is or will be damaged. All costs associated with corrective action to damage caused by ESCO's performance of the work must be borne exclusively by ESCO.

ESCO is solely responsible for the professional and technical accuracy of all services performed, whether by the ESCO, its subcontractors, or others on its behalf, throughout the term of this Contract.

Section 10.2. Annual Reporting Requirements; Annual ENERGY STAR Rating

Within ninety (90) days of the end of each year during the guarantee period as specified in **Schedule C - Energy and Cost Savings Guarantee** the ESCO must complete and submit the data required in **Schedule R - Annual Reporting Requirements**. The ESCO shall provide an ENERGY STAR rating for each eligible facility for each year of the guarantee period if applicable.

ARTICLE 11: ENVIRONMENTAL REQUIREMENTS

Section 11.1. Excluded Material and Activities

DTMB and Agency recognizes that with the installation and/or service or maintenance of Equipment at Agency's Facility ESCO may encounter, but is not responsible for, any work relating to (i) asbestos, materials containing asbestos, or the existence, use, detection, removal, containment or treatment thereof, (ii) fungus (any type of form of fungi, including mold or mildew, and myotoxins, spores, scents or by-products produced or released by fungi), (iii) incomplete or damaged work or systems or code violations that may be discovered during or prior to the work of this agreement, or (iv) pollutants, hazardous wastes, hazardous materials, contaminants other than those described in this Section below (collectively "Hazardous Materials"), or the storage, handling, use, transportation, treatment, or the disposal, discharge, leakage, detection, removal, or containment thereof. The materials and activities listed in the foregoing sentence are referred to as "Excluded Materials and Activities". Agency agrees that if performance of work involves any Excluded Materials and Activities, Agency will perform or arrange for the performance of such work and will bear the sole risk and responsibility therefore.

In the event ESCO discovers Hazardous or Excluded Materials, ESCO will immediately cease work, remove all ESCO personnel or subcontractors from the site, and notify DTMB and Agency. The Agency is responsible to handle such Materials at its expense. ESCO will undertake no further work at the Facility except as authorized by the Agency in writing. Notwithstanding anything in this Contract to the contrary, any such event of discovery or remediation by the Agency shall not constitute a default by DTMB and Agency. In the event of such stoppage of work by ESCO, the Time for Completion of Work will be automatically extended by the amount



of time of the work stoppage and any additional costs incurred by ESCO as a result will be added by Change Order. In the event of discovery of Hazardous or Excluded Materials, the State can terminate this Contract.

ESCO is solely responsible for any hazardous or other materials, including, without limitation, those listed in this **Section 11.1** that it may bring to the Facility.

Section 11.2. Polychlorinated Biphenyl (PCB) Ballasts; Mercury Lamps

ESCO's is responsible for the proper and legal management in the disposal of all of the Facility's PCB ballasts removed as a result of the installation of the Equipment. ESCO must enter into a subcontract with an approved PCB ballast disposal ESCO who will provide an informational packet, packing receptacles and instructions, labels and shipping materials, transportation, and recycling or incineration services for PCB ballasts. All capacitors and asphalt potting compound materials removed from Facility's PCB ballasts must be incinerated in a federally approved facility. After proper disposal, a Certificate of Destruction must be provided by the approved facility to DTMB and Agency. ESCO will enter into a subcontract with an approved lamp disposal company who will provide approved containers, materials required to label, transportation, recycling or incineration in accordance with EPA requirements, and a copy of the manifest.

Agency agrees to sign manifests of ownership for all PCB ballasts and mercury lamps removed from the Facility.

ARTICLE 12. OWNERSHIP OF CERTAIN PROPRIETARY RIGHTS; EXISTING EQUIPMENT

Section 12.1. Ownership of Certain Proprietary Property Rights

Agency will not, by virtue of this Contract, acquire any interest in any formulas, patterns, devices, secret inventions or processes, copyrights, patents, other intellectual or proprietary rights, or similar items of property which are or may be used in connection with the Equipment. The ESCO must grant to the State of Michigan Agency a perpetual, irrevocable royalty-free license for any and all software or other intellectual property rights necessary for the Agency to continue to operate, maintain, and repair the Equipment in a manner that will yield guaranteed utility consumption reductions for the specified Contract term. ESCO will not be liable for providing new versions of software or other enhancements if or unless the new versions or enhancements are necessary to achieve the guaranteed utility consumption reductions for the expected useful life of the Equipment.

Section 12.2. Ownership of Existing Equipment

Ownership of the equipment and materials presently at the Facility at the time of execution of this Contract remain the property of the Agency even if it is replaced or its operation made unnecessary by work performed by ESCO pursuant to this Contract. The ESCO must notify the Agency in writing of all equipment and materials to be replaced at the Facility and the Agency must within **15 days** designate in writing to the ESCO the equipment and materials that must not be disposed of off-site by the ESCO. It is agreed to by both Parties that the Agency is be responsible for designating the storage location for the equipment and materials not be disposed of by ESCO. The ESCO is responsible for the disposal of all equipment and materials designated by the Agency as disposable off-site in accordance with all applicable laws and regulations for disposals.



ARTICLE 13. LOCATION AND ACCESS

ESCO acknowledges that there exists sufficient space at the Facility for the installation and operation of the Equipment. Agency must take reasonable steps to protect the Equipment from damage, theft, and misuse during the term of this Contract. Subject to Agency's security requirements, Agency must provide access to the Facility for ESCO to perform any function related to this Contract during regular business hours, or at other reasonable hours as may be requested by ESCO and acceptable to the Agency. ESCO must be granted immediate access to make emergency repairs or corrections as it may, in its discretion, determine are needed. The ESCO's access to the Facility to make emergency repairs or corrections must not be unreasonably restricted by the Agency, ESCO must immediately notify the Agency when emergency action is taken and follow up with written notice within three (3) business days specifying the action taken, the reasons for the action, and the impact to the Facility, if any.

ARTICLE 14. EQUIPMENT SERVICE

Section 14.1. Actions by ESCO

ESCO must provide all service, repairs, and adjustments to the Equipment pursuant to **Schedule J - ESCO's Maintenance Responsibilities**. Agency will incur no cost for Equipment service, repairs, and adjustments, except as set forth in **Schedule D - Compensation to ESCO for Annual Services**, provided, however, that if the need for maintenance or repairs principally arises due to the negligence or willful misconduct of the Agency or any employee or other agent of Agency, and ESCO can demonstrate such causal connection, ESCO may charge Agency for the actual cost of the maintenance or repair if cost is not covered by a warranty or insurance.

Section 14.2. Malfunctions and Emergencies

Agency will use its best efforts to notify the ESCO or its designated subcontractors within 24 hours after the Agency's actual knowledge and occurrence of: (i) any malfunction in the operation of the Equipment or any preexisting energy related equipment that might materially impact upon the guaranteed energy savings, (ii) any interruption or alteration to the energy supply to the Facility (iii) any alteration or modification in any energy-related equipment or its operation.

Where Agency exercises due diligence in attempting to assess the existence of a malfunction, interruption, or alteration it will be deemed not at fault in failing to correctly identify such conditions as having a material impact upon the guaranteed energy savings. Agency will notify ESCO within twenty-four (24) hours upon its having actual knowledge of any emergency condition affecting the Equipment. ESCO must respond or cause its designee(s) to respond within **24 hours** and must promptly proceed to institute corrective measures. Any telephonic notice of such conditions by Agency must be followed within three business days by written notice to ESCO from Agency. If Agency unreasonably delays in notifying ESCO of a malfunction or emergency, and the malfunction or emergency is not otherwise corrected or remedied, ESCO may charge Agency for its loss, due to the delay, associated with the guaranteed savings under this Contract for the particular time period, provided that ESCO is able to show the direct causal connection between the delay and the loss.

The ESCO must provide a written record of all service work performed to DTMB and Agency. This record must state the reason for the service, description of the problem, and the corrective action performed.

Section 14.3. Actions by Agency

Agency must not move, remove, modify, alter, or change in any way the Equipment or any part thereof without the prior written approval of ESCO except as set forth in **Schedule K –**

Agency's Maintenance Responsibilities. Agency may take reasonable steps to protect the Equipment if, due to an emergency, it is not possible or reasonable to notify ESCO before taking any actions. In the event of an emergency, Agency must take reasonable steps to protect the Equipment from damage and use its best efforts to reasonable follow the instructions for emergency action provided in



advance by ESCO. Agency agrees to maintain the Facility in good repair and to protect and preserve all portions which may in any way affect the operation or maintenance of the Equipment.

ARTICLE 15. MODIFICATION, UPGRADE OR ALTERATION OF THE EQUIPMENT

Section 15.1. Modification of Equipment

During the term of this Contract, Agency will not, without the prior written consent of ESCO, affix or install any accessory Equipment or device on any of the Equipment if the addition will change or impair the originally intended functions, value, or use of the Equipment without ESCO's prior written approval, which shall not be unreasonably withheld.

Section 15.2. Upgrade or Alteration of Equipment

ESCO must at all times have the right, subject to Agency's prior written approval, which approval must not be unreasonably withheld and Third Party Financing Company's prior written consent to modify, replace or make additions to the Equipment, revise any procedures for the operation of the Equipment or implement other energy saving actions in the Facility, provided that: (i) the ESCO complies with the standards of comfort and services set forth in **Schedule I – Standards of Comfort** herein; (ii) the modification or addition to, or replacement of the Equipment, and any operational changes, or new procedures are necessary to enable the ESCO to achieve the guaranteed energy and cost savings at the Facility and; (iii) all costs incurred relative to the modification, addition to or replacement of the Equipment, or operational changes or new procedures must be solely the responsibility of the ESCO.

All proposed modifications, additions or replacements of the Equipment or revisions to operating or other procedures must be described in a supplemental Schedule(s) to be provided to the

DTMB and Agency for approval, which may not be unreasonably withheld, provided that any replacement of the Equipment must, unless otherwise agreed, be new and have equal or better potential to reduce energy consumption at the Facility than the Equipment being replaced. The ESCO must have the right to update all software used in connection with the Equipment in accordance with **Section 12.1 Ownership of Certain Proprietary Rights** and **Schedule J -ESCO's Maintenance Responsibilities**. All replacements of and alterations or additions to the Equipment must become part the Equipment described in **Schedule A - Equipment to be Installed by ESCO** and must be covered by terms of **Section 6 - Construction Schedule and Equipment Installation; Approval**.

ARTICLE 16. STANDARDS OF COMFORT

ESCO must maintain and operate the Equipment in a manner which will provide the standards of heating, cooling, ventilation, hot water supply, and lighting quality and levels required in **Schedule I - Standards of Comfort**. During the term of this Contract, ESCO and Agency will maintain, according to **Schedule J - ESCO's Maintenance Responsibilities** and **Schedule K - Agency's Maintenance Responsibilities**, and operate the Equipment in a manner that will provide the standards of comfort and levels of operation in **Schedule I – Standards of Comfort**.

ARTICLE 17. MATERIAL CHANGES

Section 17.1. Material Change Defined

A Material Change will include any change in or to the Facility, whether structural, operational or otherwise in nature which reasonably could be expected, in the judgment of the DTMB and Agency, to increase or decrease annual energy consumption in accordance with the provisions and procedures in **Schedule E - Baseline Energy Consumption** and **Schedule F - Savings Measurement and Verification Plan; Methodology to Adjust Baseline** by at least **2%** after adjustments for climatic variations. Actions by the Agency which may result in a Material Change include but are not limited to the following:

- (i) manner of use of the Facility by the Agency; or



- (ii) hours of operation for the Facility or for any equipment or energy using systems operating at the Facility; or
- (iii) Permanent changes in the comfort and service parameters set forth in **Schedule I - Standards of Comfort**; or
- (iv) occupancy of the Facility; or
- (v) structure of the Facility; or
- (vi) types and quantities of equipment used at the Facility or
- (vii) modification, renovation or construction at the Facility; or
- (viii) the Agency's failure to provide maintenance of and repairs to the Equipment in accordance with **Schedule K - Agency's Maintenance Responsibilities**; or
- (ix) any other conditions other than climate affecting energy use at the Facility including but not limited to the replacement, addition or removal of energy and water consuming devices whether plug in or fixed assets,
- (x) casualty or condemnation of the Facility or Equipment, or
- (xi) changes in utility provider or utility rate classification, or
- (xii) any other conditions other than climate affecting energy or water use at the Facility.
- (xiii) Modifications, alterations or overrides of the energy management system schedules or hours of operation, set back/start up or holiday schedules.

Section 17.2. Reported Material Changes; Notice by Agency

The Agency must use its best efforts to deliver to the ESCO a written notice describing all actual or proposed Material Changes in the Facility or in the operations of the Facility at least **15 days** before any actual or proposed Material Change is implemented or as soon as is practicable

after an emergency or other unplanned event. Notice to the ESCO of Material Changes which result because of a bona fide emergency or other situation which precludes advance notification will be deemed sufficient if given by the Agency within **48 hours** after having actual knowledge that the event constituting the Material Change occurred or was discovered by the Agency to have occurred.

Section 17.3. Other Adjustments

As agreed in Section 17.1 Agency will notify ESCO of Materials Changes as known. Both Parties have a vested interest in meeting the guaranteed savings of the Contract. As such, the ESCO will work with DTMB and Agency to investigate, identify and correct any changes that prevent the guaranteed savings from being realized. As a result of any investigation, ESCO, DTMB and Agency must determine what, if any, adjustments to the baseline must be made in accordance with the provisions set forth in **Schedule F - Savings Measurement and Verification Plan; Methodology to Adjust Baseline** and **Schedule E - Baseline Energy Consumption**. Any disputes between the Agency and the ESCO concerning any such adjustment shall be resolved in accordance with the provisions of **Schedule O - Alternative Dispute Resolution Procedures (Refer to Section 2.190 Dispute Resolution)** hereto.

- ARTICLE 18. PROPERTY/CASUALTY/INSURANCE; INDEMNIFICATION - Refer to Section 2.130 Insurance**
- ARTICLE 19. CONDITIONS BEYOND CONTROL OF THE PARTIES - Refer to Section 2.244 Excusable Failure**
- ARTICLE 20. EVENTS OF DEFAULT - Refer to Section 2.150 Termination/Cancellation**
- ARTICLE 21. REMEDIES UPON DEFAULT - Refer to Section 2.150 Termination/Cancellation**
- ARTICLE 22. ASSIGNMENT - Refer to Section 2.029 Assignments**
- ARTICLE 23. REPRESENTATIONS AND WARRANTIES – Refer to Section 2.120 Warranties**
- ARTICLE 24. ADDITIONAL REPRESENTATIONS OF THE PARTIES**



Agency hereby, represents that:

- (i) it has provided or will provide timely to ESCO, all records relating to energy usage and energy-related maintenance of Facility requested by ESCO and the information provided is, and all information in other records to be subsequently provided pursuant to this Contract will be true and accurate in all material respects; and
- (ii) it has not entered into any leases, contracts or Contracts with other persons or entities regarding the leasing of energy efficiency equipment or the provision of energy management services for the Facility or with regard to servicing any of the energy related equipment located in the Facility. Agency will provide ESCO with copies of any successor or additional leases of energy efficiency equipment and contracts for management or servicing of preexisting equipment at Facility which may be later executed within 14 days after execution.

ESCO hereby warrants, represents and promises that:

- (i) before commencing performance of this Contract:
 - (a) it is licensed or otherwise authorized to do business in the State of Michigan.
 - (b) it has provided proof and documentation of all insurance and bonds required for this Contract;
- (ii) it will make available, upon request, all documents relating to its performance under this Contract, including all contracts and subcontracts entered into;
- (iii) it will use qualified subcontractors who are qualified, licensed and bonded in Michigan to perform the subcontracted work pursuant to the terms of this Contract. hereof;
- (iv) The Equipment will meet or exceed the requirements set forth in **Section 6.2 - Systems Start Up and Equipment Commissioning** and in
- (v) **Schedule H - Systems Start-Up and Commissioning of Equipment; Operating Parameters of Installed Equipment.**
- (v) The Equipment is or will be compatible with all other Facility mechanical and electrical systems, subsystems, or components with which the Equipment interacts, and that, as installed, neither the Equipment nor such other systems, subsystems, or components will materially adversely affect each other as a direct or indirect result of Equipment installation or operation;
- (vi) that it is financially solvent, able to pay its debts as they mature and possessed of sufficient working capital to complete the Work and perform its obligations under this Contract.

ARTICLE 25. MICELLANEOUS DOCUMENTATION PROVISIONS

Section 25.1. Waiver of Liens, Construction Performance and Payment Bonds, Labor and Material Payment Bonds

All required bonds are incorporated into this Contract by reference as **Exhibit I - Performance Bond** and **Exhibit II - Labor and Material Payment Bond**, if applicable.

Section 25.2. Further Documents

The parties must execute and deliver all documents and perform all further acts that may be reasonably necessary to effectuate the provisions of this Contract.



Section 25.3 Agency's Responsibilities

(a) Methods of Operation by Agency

The Parties acknowledge and agree that the projected Energy and Water Cost Savings may not be obtained if certain procedures and methods of operation designed for energy and water conservation are not implemented, and followed by Agency on a regular and continuous basis.

(b) Agency's Maintenance Responsibilities

Agency agrees that it will adhere to, follow, and implement the energy conservation procedures and methods of operation agreed to by the Parties and set forth in **Schedule K - Agency Maintenance Responsibilities.**

(c) Inspection of Facility

ESCO will have the right once a month, with prior notice, to inspect Facility to determine if Agency is in compliance with its obligations as set forth in **Section 25.3(b)**. For the purpose of determining Agency's compliance, the checklist forth at **Schedule L - Facility Maintenance Checklist** as completed and recorded by ESCO during its monthly inspections, must be used to measure and record Agency's compliance. Agency will make the Facility available to ESCO for and during each monthly inspection, and will have the right to witness each inspection and ESCO's recordation on the checklist. Agency may complete its own checklist at the same time. ESCO agrees to not interfere with the Agency's operations during the monthly inspections.

Section 25.4. Waiver Of Liens

ESCO must obtain and furnish to DTMB and Agency a Waiver of Liens from each vendor, material manufacturer and laborer in the supply, installation, and servicing of each piece of Equipment.

ARTICLE 26: CONFLICTS OF INTEREST

Section 26.1 Conflicts of Interest - Refer to Section 2.035 Future Bidding Preclusion, Certifications and Representations Section 3.2 Ethics: Gratuities and Influence and 3.3 RFP Preparation

ARTICLE 27. COMPLETE CONTRACT - Refer to Section 2.004 Attachments & Exhibits, Section 2.021 Issuing Office

ARTICLE 28. APPLICABLE LAW - Refer to Section 2.210 Governing Law

ARTICLE 29. INTERPRETATION OF CONTRACT - Refer to Section 2.190 Dispute Resolution

ARTICLE 30. NOTICE - Refer to Section 2.025 Notices

ARTICLE 31. STATUTORY OBLIGATIONS

This Contract may be cancelled by DTMB provided ESCO is notified in writing at least thirty (30) business days prior to the effective date of cancellation and any of the following occur: (a) ESCO or any subcontractor, manufacturer, or supplier of ESCO appears in the register compiled by the Michigan Department of Labor pursuant to 1980 PA 278, as amended, MCL 423.321 et seq. (Employers Engaging in Unfair Labor Practices Act); (b) ESCO or any subcontractor, manufacturer, or supplier of Lessor is found liable for discrimination, pursuant to 1976 PA 453, as amended, MCL 37.2101 et seq (Elliott-Larsen Civil Rights Act) or 1976 PA 220, as amended, MCL 37.1101 et seq (Persons With Disabilities Civil Rights Act).

Nondiscrimination. ESCO shall comply with the Elliott-Larsen Civil Rights Act, 1976 PA 453, as amended, MCL 37.2101 et seq. and the Persons With Disabilities Civil Rights Act, 1976 PA 220, as amended, MCL 37.1101 et seq. (Persons With Disabilities Civil Rights Act), and all other federal, state and local fair employment practices and equal opportunity laws, and covenants that it shall not discriminate against any employee or applicant for employment, to be employed in the performance of this contract, 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 his or her race, religion, color, national origin, age, sex, height, weight, marital status, or physical or mental disability that is unrelated to the individual's ability to perform the duties of a particular job or position. ESCO agrees to include in every subcontract entered into for the performance of this contract this covenant not to discriminate in employment. A breach of this covenant is a material breach of this Contract.



CONTRACT ATTACHMENT I: Schedules, Exhibits, and Appendices

SCHEDULE A. EQUIPMENT TO BE INSTALLED BY ESCO

See pages 5-18 of the hard copy proposal identified as:

**Investment Grade Audit
Energy Performance Contracting Services
Michigan Department of Corrections
G. Robert Cotton Facility
August 2010 (a/ka/ the August 18th Proposal) and attached hereto. ("Proposal")**

All warranties are for one-year, excepting the Greffen Technology equipment which is for three years.

Equipment descriptions and locations are listed at pages 5-18 with specific cut sheet descriptions located in the Appendices of the Proposal.

SCHEDULE B. DESCRIPTION OF FACILITY; PRE-EXISTING EQUIPMENT INVENTORY

General

The G. Robert Cotton Correctional Facility is a 426,375 square foot facility which opened in 1985 and consists of approximately 12 major buildings.

Construction of buildings 100, 200, 300 and the cell blocks are brick walled, with several interior subsections built for security clearance and other purposes. Temporary inmate housing, Building 600 and Braille buildings have aluminum siding and standard insulation.

Building 100 is used as business office headquarters, and control center. Building 200 houses food preparation, dining, and health services. Building 300 contains a gymnasium, library/school and other functions. Buildings 400, 500, 700 and temporary housing buildings serve as prisoner housing. Building 600 acts as work space and food service building. The Braille Building is an office space/workspace.

Occupancy

The prison houses approximately 2000 prisoners in Security Levels I, II and IV. There are also several staff members that maintain operations throughout the entire facility. Occupancy of facilities varies depending on time of day and year, but remains consistent across the whole campus throughout the year.

Hours of operation

Generally speaking, the facility is operational all the time to accommodate the large amount of inmates that reside at Cotton. There is downtime when prisoners are locked up and sections of the facility are not being used. Laundry facilities operate at all times.



Conditions

The G. Robert Cotton facility utilizes a central hot water plant in Building 200, which provides heating water to Buildings 100, 200 and 300, using two 6 million BTU/hr natural gas boilers. The remainder of the facility utilizes separate gas-fired boilers or furnaces. The large cell block buildings (400, 500 and 700) use a hydronic boiler located in between every other cell block. The cell block buildings do not have mechanical cooling, and have central exhaust fans and/or ceiling fans and operable windows. Mechanical DX cooling exists in the Administration (Building 100), Health Care/L-Unit (Building 200) and the Classroom/Library Building (Building 300). Heating for buildings that are not served by the hydronic systems, are typically light commercial natural gas-fired units. Most buildings utilize several independent gas-fired domestic water heaters. Some water conservation measures have been implemented at this campus, but many opportunities still exist. Lighting fixtures in use at this campus appear to be mainly incandescent and T12.

SCHEDULE C. ENERGY AND COST SAVINGS GUARANTEE

The guaranteed savings will be shown with a 3% escalation in utility rates and are on an annual basis. The units of energy saved will stay the same for each year. The yearly guaranteed energy savings will be as follows:

Cotton Correctional Savings Summary

Yearly Savings		Guaranteed \$ Savings	
		Year 1	Year 2
Electric	530,431 kWh	\$39,782.00	\$40,976.00
Gas	5,350 MMBtu	\$46,010.00	\$47,390.00
Water	25,106,511 gallons	<u>\$88,375.00</u>	<u>\$91,026.00</u>
		\$174,167.00	\$179,392.00

SCHEDULE D. COMPENSATION TO ESCO FOR ANNUAL SERVICES

The amount included in this Contract for Measurement and Verification Monitoring is \$21,900.00. This will cover a period of two years and is included in the overall pricing of \$1,287,164.00. This represents 1.7% of the project contract price. The specific number of \$21,900.00 is reflected on page 35 of the Proposal under General Requirements.

SCHEDULE E. BASELINE ENERGY CONSUMPTION

Annual Energy Use Summary Report for G. Robert Cotton Correctional Facility

Electricity					Gas					Water		
Electricity Cost	Cost per kWh	kWh	before \$/sq-ft	kWh / sq-ft	Gas Cost	Cost per Therm	CCF	before \$/sq-ft	mmbtu /sq-ft	Water Cost	Cost per 1000 Gallons	Gallons
\$417,605	\$ 0.075	5,559,428	\$ 0.979	13.04	\$385,055	\$0.858	448,940	\$ 0.903	0.1053	\$141,182	\$3.52	40,208,312

SCHEDULE F. SAVINGS MEASUREMENT AND VERIFICATION PLAN; METHODOLOGY TO ADJUST BASELINE

By utilizing the FEMP Option A method for ECMs L-1 (lighting) and W-1 (water conservation), there will be no baseline adjustments as we are comparing before installation values with after installation measurements.

The other ECMs for ECM M-1 (Greffen Technologies boiler sequencing microprocessor) and ECM M-9 (Building 100 envelope improvements) are Non-Measured and are deemed to achieve the savings upon the signing of the certificate of substantial completion, and will be reported as such in the annual report.

The M&V plan is further stated in pages 39-40 of the Proposal.

SCHEDULE G. CONSTRUCTION AND INSTALLATION SCHEDULE



ID	Task Name	Duration	Start	Finish
1	State of Michigan DOC Cotton	93 days	Fri 10/1/10	Tue 2/8/11
2	Contract	93 days	Fri 10/1/10	Tue 2/8/11
3	Contract Signed	1 day	Fri 10/1/10	Fri 10/1/10
4	Lighting	78 days	Mon 10/11/10	Wed 1/26/11
5	Materials	15 days	Mon 10/11/10	Fri 10/29/10
6	Installation	73 days	Mon 10/18/10	Wed 1/26/11
7	Water Retrofits	78 days	Mon 10/4/10	Wed 1/19/11
8	Materials	15 days	Mon 10/4/10	Fri 10/22/10
9	Installation	63 days	Mon 10/25/10	Wed 1/19/11
10	Building Envelope	30 days	Mon 10/11/10	Fri 11/19/10
11	Materials	10 days	Mon 10/11/10	Fri 10/22/10
12	Installation	20 days	Mon 10/25/10	Fri 11/19/10
13	Boiler Efficiency (Greffen)	21 days	Fri 10/8/10	Fri 11/5/10
14	Materials	16 days	Fri 10/8/10	Fri 10/29/10
15	Installation	5 days	Mon 11/1/10	Fri 11/5/10
16	Commission	12 days	Mon 1/24/11	Tue 2/8/11
17	Verify	10 days	Mon 1/24/11	Fri 2/4/11
18	Turn over	2 days	Mon 2/7/11-	Tue 2/8/11

Deadline

Page 1

Project: Cotton Schedule

Date: Wed 8/18/10

Note-this project schedule is listed on page 41 of the Proposal.

SCHEDULE H. SYSTEMS START-UP AND COMMISSIONING OF EQUIPMENT; OPERATING PARAMETERS OF INSTALLED EQUIPMENT

Equipment start up procedures will be addressed prior to the Certificate of Substantial completion and will be conducted by the Johnson Controls Team and will include subcontractors. Agency personnel will be invited to the start up procedures and will be asked to attend in conjunction with the training listed in Section M of this document.

During the initial Measurement and Verification of the savings for this project, the Johnson Controls personnel will invite Agency representatives to participate in the post installation measurements of the Energy Conservation Measures for this project as part of the commissioning process.

Client and contractor attendance will be documented by a sign-in sheet.

SCHEDULE I. STANDARDS OF COMFORT

The expected outcome of the project will be enhanced comfort due to better lighting levels and building envelope improvements at Building 100 to minimize air leakage. Current conditions will be maintained. It is understood that this energy savings project is not impacting the temperature control of hot water and has no impact on the air handling systems or the operating schedule of furnaces or air handling equipment.



SCHEDULE J. ESCO'S MAINTENANCE RESPONSIBILITIES

A one-year warranty is standard for this project. Beyond the one-year warranty, operations and maintenance of installed lighting equipment and plumbing equipment shall be the responsibility of Cotton Correctional. The Geffen boiler microprocessors will be maintained by Geffen personnel and do have a 3-year warranty period.

SCHEDULE K. AGENCY'S MAINTENANCE RESPONSIBILITIES

The Agency shall maintain their standard operating maintenance procedures and work with the contractor during the warranty period for any equipment adjustments or replacements that need to be made. Beyond the warranty periods, the Agency shall be responsible for all day-to-day maintenance of the energy conservation measures as installed.

SCHEDULE L. FACILITY MAINTENANCE CHECKLIST

On a need to know basis /or quarterly at a minimum, Johnson Controls would ask the Staff at Cotton Correctional to provide a brief summary of the following situations that could limit or potentially void the guarantee:

- Electing not to use a system or a piece of equipment
- An unplanned usage change of the facilities
- Improper maintenance of installed equipment
- Change or replacement of installed equipment
- Reprogramming of settings on equipment

SCHEDULE M. ESCO'S TRAINING RESPONSIBILITIES

Training of the operating personnel on the proper operation of the equipment is crucial for maintaining reliability and long-term integrity of the systems. Training is carried out during the final phase of project commissioning. Training will be on-site and will include:

- Start-up and shutdown procedures, operation under all modes of operation and correct procedures under emergency or abnormal conditions.
- A description of the system capabilities and limitations.
- Procedures necessary for effective operational monitoring and alarming.
- Analysis of useful information that can come from monitored data and why the information is important in analyzing the system operation.
- Inspection, service and maintenance requirements for each system.
- Instruction in the use of all Operations and Maintenance (O&M) documentation. This includes an awareness and understanding of documentation contents, determining what is needed, how to use it and how to keep it up-to-date.
- On-site training will include video/digital recording as appropriate. Said recordings will be delivered to the Agency/DTMB.



SCHEDULE N. PAYMENT SCHEDULE

The following Schedule N divides the Work into significant pay items. This Schedule of Values is supported by the more detailed breakdown on Pages 5 through 18 of:

Investment Grade Audit
 Energy Performance Contracting Services
 Department of Corrections
 G. Robert Cotton Facility
 August 2010 (a/k/a the August 18th Proposal).

Additional items for mobilization, commissioning/verification and monitoring and project closeout are included. The mobilization item cannot be more than 4% of the project cost. The closeout item includes two percent of the project cost for each of the following close-out pay items: (a) fire safety inspection, certificate of occupancy and other code approvals, as specified in the Contract Documents, (b) manufacturer warranties, finalized operating and maintenance documentation, Owner training documentation, and test and balance reports, and (c) finalized as-built/Record Documents.

Mobilization	\$52,000.00
Lighting	432,635.33
Water Retrofits	605,777.20
Building Envelope	24,490.01
Boiler Efficiency	73,279.50
Measurement and Verification	21,900.00
Project Closeout	<u>77,081.96</u>
Total	\$1,287,164.00

Requests for Payment: Not more than once every thirty Calendar Days, the ESCO shall submit to the Agency/DTMB Field Representative a draft Request for Payment, on DTMB Form 440, for review and comment. Upon approval of the draft Request for Payment by the Field Representative, the ESCO shall submit a Request for Payment, on DTMB Form 440, signed by the ESCO and certifying Work completed and enclosing all supporting documentation to the Agency/DTMB. Each Request for Payment must certify that all monies owed by the ESCO to Subcontractors and Suppliers for which payment previously has been sought has been paid from payments received. No Request for Payment shall include amounts for a Subcontractor or Supplier if the Contractor does not intend to use the payments requested, when received, to reduce the Contractor's outstanding obligations on the Work. The Agency/DTMB will pay the Contractor within thirty Calendar Days after the

Agency/DTMB receives and approves a certified Request for Payment. The ESCO will provide a certification in writing that the payment request submittal is true and accurate. If payment is requested based on materials and equipment stored at the site or at another location agreed to in writing, the Request for Payment also must be accompanied by (a) consent of surety, (b) a bill of sale, invoice or other documentation warranting that the

Agency/DTMB has received the materials and equipment free and clear of all liens, and (c) evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect them and the Agency's/DTMB's interests. The Contractor warrants and guarantees that title to all Work, materials and equipment covered by any Request for Payment, whether incorporated in the Work or not, will pass to the Agency/DTMB free and clear of all liens no later than at the time of payment by the Agency/DTMB to the Contractor.

Validity of Requests for Payment will be ascertained by the Agency/DTMB against the above Schedule N within twenty Calendar days after receipt of a Payment Request. Any Requests for Payment deemed to be invalid will be returned to the ESCO with reasons supporting such action.



SCHEDULE O. ALTERNATIVE DISPUTE RESOLUTION PROCEDURES

Refer to Section 2.190 Dispute Resolution

SCHEDULE P. FINAL PROJECT COST & PROJECT CASH FLOW ANALYSIS

Note-in establishing the NPV for this project, we assumed a 4% discount rate and an equal pro-rata step in of capital each year over 7 years. The amount used was \$183,881.00 per year.



Johnson Controls Performance Contract

8/30/2010

for SOM DOC Cotton

Total JCI Project Cost:	\$1,287,164
Rate of Financing:	0.00%
Term of Financing:	7
Total Cash Flow:	\$47,385
Assumed Discount Rate:	4.00%
NPV: \$	35,339
Annual Utility Rate Increase:	3.00%

SCHEDULE P. FINAL PROJECT COST & PROJECT CASH FLOW ANALYSIS

YEAR	Natural Gas Savings	Electrical Savings	Water & Sewer Savings	Total Annual Program Benefit	Annual Program Cost	Annual Cash Flow	Net Present Value
Installation	\$0	\$0	\$0	\$0	\$0	\$0	\$0
1	\$46,010	\$39,782	\$88,375	\$174,167	\$183,881	(\$9,713)	(\$9,340)
2	\$47,390	\$40,976	\$91,026	\$179,392	\$183,881	(\$4,488)	(\$13,490)
3	\$48,812	\$42,205	\$93,757	\$184,774	\$183,881	\$893	(\$12,695)
4	\$50,276	\$43,471	\$96,570	\$190,317	\$183,881	\$6,437	(\$7,193)
5	\$51,785	\$44,775	\$99,467	\$196,027	\$183,881	\$12,146	\$2,790
6	\$53,338	\$46,119	\$102,451	\$201,908	\$183,881	\$18,027	\$17,037
7	\$54,938	\$47,502	\$105,524	\$207,965	\$183,881	\$24,084	\$35,339
Totals	\$352,549	\$304,831	\$677,169	\$1,334,550	\$1,287,164	\$47,385	\$35,339

Utility Rates:

\$ 0.075	\$/kWh
\$ 8.60	\$/MMBTU - Natural Gas
\$ 3.52	\$/1,000 gallon - Water & Sewer

SCHEDULE R. ANNUAL REPORTING REQUIREMENTS

There are no operational savings taken. There is no reporting of emission reductions or Energy Star rating of any building included in this project. The annual report will consist of the lighting (ECM L-1) savings and water (ECM W-1) savings based on the values before installation and post measurements taken during and after the installation period as well as the non-measured savings for the Greffen Technologies (ECM M-1) and Building 100 building envelope improvements (ECM M-9). The annual report will be delivered within a 90 day period after the 1 year anniversary date of the contract year.



Guaranteed first year savings:

ECM	Code	Description	kWh Savings	MMBtu Savings	Water Savings gals	\$ Savings
1	L-1	Lighting Retrofit	528,806			\$39,660.47
3	M-1	Greffen Boiler Burner Controls		2,291.8		\$19,709.14
11	M-9	Building 100 envelope	1,625	445.2		\$3,950.60
12	W-1	Water retrofit		2,613.0	25,106,511	\$110,847.01
Totals			530,431	5,350	25,106,511	\$174,167.21



Schedule R- Annual Reporting Requirements

Agency Name/Agency Contact (Include Email and Phone Number)	
Facility Name/Facility Contact (Include Email and Phone Number)	
ESCO Name/ESCO Contact (Include Email and Phone Number)	
Total Square Footage of Project Site/Contract Start Date/Contract End Date	
Current Repayment Year (ex. Yr. 3/ 2005)	
Reporting Timeframe (ex. Jan 1-Dec. 31)	
Installed Project Cost (no financing costs)	
Total Contract Value of Guaranteed Savings	
Annual Value of Guaranteed Savings	
Measured Energy Savings	
Operational Savings	
Avoided Capital Cost (if applicable)	
Annual Dollar Value of Achieved Savings	
Total Annual Achieved Energy Savings (MMBTU)	
Electric	
Natural Gas	
Oil	
Coal	
Steam	
Other	
Annual Water Savings (kgal)	
Annual Avoided NOx Emissions (Tons)	
Annual Avoided SOx Emissions (Tons)	
Annual Avoided CO2 Emissions (Tons)	
ENERGY STAR Rating (if applicable)	



EXHIBITS

**EXHIBIT I – PERFORMANCE BOND
EXHIBIT II - LABOR AND MATERIAL PAYMENT BOND**

JOHNSON
CONTROLS

BOND REQUEST FORM

6725890

Send to: Hays Companies of Wisconsin
 ATIN: SURETY DEPARTMENT
 1200 N. Mayfair Road, Suite 100; Milwaukee, WI 53226
 Fax No: (414) 259-8414
 Telephone No. (414) 290-3583 Email Address: milwaukeebonds@hayscompanies.com

FOR CONTRACTS OVER \$300,000 THIS MUST BE FILED IN

Reviewed By: ☐ Legal ☒ Risk Management

DO NOT ABBREVIATE WORDS IN ANY OF THE SECTIONS!

Date 9/21/2010

From	<input type="checkbox"/> Johnson Controls York <input type="checkbox"/> Electronic Sys USA	<input type="checkbox"/> Cardkey Systems Incorporated <input type="checkbox"/> Johnson Controls IFM LLC	<input checked="" type="checkbox"/> Johnson Controls Inc <input type="checkbox"/> Johnson Controls Puerto Rico, Inc.	<input type="checkbox"/> JC Government Systems LLC <input type="checkbox"/> Johnson Controls USI
Section A	REGION# & BRANCH # 1608 241	LOCATION Michigan	Name of Requester (First & Last Name) Steve Anderson	Requester Phone Number (include extension) 608-279-1105

Section B	Bond Type	<input type="checkbox"/> Bid <input type="checkbox"/> Letter of Intent	<input type="checkbox"/> Letter of Capacity <input type="checkbox"/> Performance Bond Only	<input checked="" type="checkbox"/> Performance and Labor & Material Payment	<input type="checkbox"/> Maintenance	<input type="checkbox"/> Consent of Surety <input type="checkbox"/> Notary
-----------	-----------	---	---	--	--------------------------------------	---

Section C BID BOND / LETTERS OF CAPACITY OR INTENT

Complete this section if requesting a bid bond, letter of capacity or letter of intent

Bid Date _____

Bond Amount _____

Special Bid Bond Form? ☐ No ☐ Yes (if yes, attach)

Number of Original Bonds Required? _____

Est Contract Amount _____

Est Start Date _____

Est Completion Date _____

Liquidated Damages \$ _____ per _____

Guaranteed Savings? ☐ No ☐ Yes (if yes, attach supplementary guaranteed savings bond request)

Length of Warranty _____

Federal Gov't Invitation Number _____

Section D PERFORMANCE / PAYMENT / MAINTENANCE

Complete this section if requesting a performance, payment or maintenance bond

JC Contract Number 02410112

Contract Date 9/30/2010

Contract Amount \$1,287,164

Bond Amount same

Special Bond Forms? ☒ No ☐ Yes (if yes, attach)

Number of Original Bonds Required? one

Est Completion Date March 15, 2011

Liquidated Damages \$5,000+100 Per day

Guaranteed Savings? ☒ No ☐ Yes (if yes, attach supplementary guaranteed savings bond request) STIPULATED- 2 YRS.

Length of Warranty One-year

Federal Gov't Contract Number _____

Section E	Name	State of Michigan- Cotton Correctional Performance Contract
Project	Address	3500 N. Elm Avenue
	City/State/Zip	Jackson, MI 49201
Type of Work	Performance Contracting	
Obligee	Name	State of Michigan- Department of Technology, Management, and Budget/Purchasing Operations
	Address	530 W. Allegan
	City/State/Zip	Lansing, MI 48933
Architect	Name	
	Address	
	City/State/Zip	

Section F CONSENT OF SURETY INFORMATION

Complete this section if requesting a consent of surety

Surety Bond Number _____

JC Contract Number _____

Percentage of Job Complete _____

Type of Consent (check one)

☐ Final Payment

☐ Reduce Retainage from _____ % to _____ %

☐ Stored Material Value of Material \$ _____

Material Stored at _____

Section G NOTARY BOND INFORMATION

Complete this section if requesting a notary bond

Special Notary Bond Form? ☐ No ☐ Yes (if yes, attach)

Bond Amount _____

Bond Term _____ thru _____

Account number to be charged _____

Section H MAILING INSTRUCTIONS Send Original Bond(s) to

☒ JC Requester ☐ Obligee ☐ Architect

Attention Steve Anderson

Send via ☐ U.S. Mail ☒ Express Mail ☐ Fax

Fax number: 608-222-9490

Address: 2400 Kilgust Rd



		Madison, WI 53713
Form 4373 (Rev 8/2006)	Billing Branch Number	241



STATE OF MICHIGAN (OWNER & CONTRACTOR)

PERFORMANCE BOND

PERFORMANCE BOND

AGENCY No. 472INDEX No. NASURETY COMPANY REFERENCE No. 6725890

That "the Contractor," Johnson Controls, Inc., a corporation X, individual , partnership , joint venture of the State of WI, qualified to do business in the State of Michigan, as Principal, and "the Surety," Safeco Insurance Company of America, of the State of WA, as surety, are held and bound unto the State of Michigan, "the Owner," as Obligor, in the amount of One Million Two Hundred Eighty Seven Thousand One Hundred Sixty Four Dollars and 00/100 Dollars (\$1,287,164.00), for the payment of which the Contractor and Surety bind themselves, their respective heirs, successors, legal representatives and assigns, jointly and severally, in compliance with 1963 PA 213, as amended, MCL 129.201 et seq.

The Contractor has entered into "the Contract" with the Owner for Performance Contracting; State of Michigan - Cotton Correctional Performance, "the Work," covered by the Contract Documents, which are incorporated into this Performance Bond by this reference;

If the Contractor faithfully performs and fulfills all the undertakings, covenants, terms, conditions, warranties, indemnifications and agreements of the Contract Documents within the Contract Time (including any authorized changes, with or without notice to the Surety) and during the Correction Period, and if the Contractor also performs and fulfills all the undertakings, covenants, terms, conditions, warranties, indemnifications and agreements of any and all duly authorized modifications of the Contract Documents, then THIS OBLIGATION IS VOID, OTHERWISE TO REMAIN IN FULL FORCE AND EFFECT

A. No change in Contract Price or Contract Time, "or equal" or substitution or modification of the Contract Documents (including addition, deletion or other revision) releases the Surety of its obligations under this Section 00610 Performance Bond. The Surety expressly waives notice of any such change in Contract Price or Contract Time, "or equal" or substitution or modification of

the Contract Documents (including addition, deletion or other revision).

B. This Performance Bond must be solely for the protection of the Owner and its successors, legal representatives or assigns

C. It is the intention of the Contractor and Surety that they must be bound by all terms and conditions of the Contract Documents (including, but not limited to General Conditions and this Performance Bond). However, this Performance Bond is executed pursuant to 1963 PA 213, as amended, MCL 129.201 et seq, and if any provision(s) of this Performance Bond is/are illegal, invalid or unenforceable, all other provisions of this Performance Bond must nevertheless remain in full force and effect, and the Owner must be protected to the full extent provided by 1963 PA 213, as amended, MCL 129.201 et seq.

IMPORTANT: The Surety must be authorized to do business in the State of Michigan by the Department of Energy, Labor and Economic Growth - Insurance Bureau, must be listed on the current U.S. Department of the Treasury Circular 570, and, unless otherwise authorized by the Owner in writing, must have at least an A- Best's rating and a Class VII or better financial size category per current A. M. Best Company ratings.

Name, Address and Telephone of the Surety:
Safeco Insurance Company of America
1001 Fourth Ave, Safeco Plaza, Seattle, WA 98154

Address and Telephone of Agent, who is either a resident of, or whose principal office is maintained in, the State of Michigan
Hays Companies

Signed and sealed this 23rd day of September, 2010

THE CONTRACTOR: (Print Full Name and Sign) By: Johnson Controls, Inc.
Tracy K. Matthews
WITNESS Leslie A. Varney Name & Title: Tracy K. Matthews Attorney-In-Fact
Telephone No.

THE SURETY: (Print Full Name and Sign) Agent: Safeco Insurance Company of America
WITNESS Lucy A. Hantzsch Attorney-in-Fact: Cathy Hutson Attorney-In-Fact
Telephone No. 866-548-7309

MICHSPEC™ 96 0820

00510 - 117

Rev 1 (10/16/96)



PAYMENT BOND

AGENCY No. 472INDEX No. NASURETY COMPANY REFERENCE No. 6725890

"the Contractor," Johnson Controls, Inc., a corporation X, individual , partnership , joint venture of the State of WI, qualified to do business in the State of Michigan, as Principal, and "the Surety," Safeco Insurance Company of America, of the State of WA, as surety, are held and bound unto the State of Michigan, "the Owner," as Obligor, in the amount of One Million Two Hundred Eighty Seven Thousand One Hundred Sixty Four Dollars and 00/100 Dollars (\$1,287,164.00), for the payment of which the Contractor and Surety bind themselves, their respective heirs, successors, legal representatives and assigns, jointly and severally, in compliance with 1963 PA 213, as amended, MCL 129.201 et seq.

The Contractor has entered into "the Contract" with the Owner for Performance Contracting: State of Michigan - Cotton Correctional , "the Work," covered by the Contract Documents, which are incorporated into this Payment Bond by this reference;

If the Contractor promptly pays all claimants supplying labor or materials to the Contractor or to the Contractor's Subcontractors in the prosecution of the Work, then THIS OBLIGATION IS VOID, OTHERWISE TO REMAIN IN FULL FORCE AND EFFECT.

obligations under this Payment Bond. The Surety hereby expressly waives notice of any such change in Contract Price or Contract Time, "or equal" or substitution or modification of the Contract Documents (including addition, deletion or other revision).

A. All rights and remedies on this Payment Bond are solely for the protection of all claimants supplying labor and materials to the Contractor or the Contractor's Subcontractors in the prosecution of the Work, and must be determined in accordance with Michigan Law.

C. It is the intention of the Contractor and Surety that they must be bound by all terms and conditions of the Contract Documents (including, but not limited to this Payment Bond). However, this Payment Bond is executed pursuant to 1963 PA 213, as amended, MCL 129.201 et seq., and if any provision(s) of this Payment Bond is/are illegal, invalid or unenforceable, all other provisions of this Payment Bond must nevertheless remain in full force and effect, and the Owner must be protected to the full extent provided by 1963 PA 213, as amended, MCL 129.201 et seq.

B. No change in Contract Price or Contract Time, "or equal" or substitution or modification of the Contract Documents (including addition, deletion or other revision) must release the Surety of its

IMPORTANT: The Surety must be authorized to do business in the State of Michigan by the Department of Energy, Labor and Economic Growth - Insurance Bureau, must be listed on the current U.S. Department of the Treasury Circular 570, and, unless otherwise authorized by the Owner in writing, must have at least an A-Best's rating and a Class VII or better financial size category per current A.M. Best Company ratings.

Name, Address and Telephone of the Surety:
Safeco Insurance Company of America
1001 Fourth Ave, Safeco Plaza, Seattle, WA 98154

Address and Telephone of Agent, who is either a resident of, or whose principal office is maintained in, the State of Michigan
Hays Companies

Signed and sealed this 23rd day of September, 2010

Johnson Controls, Inc.

THE CONTRACTOR: (Print Full Name and Sign)

By:

Tracy K. Matthews

WITNESS

Leslie A. Varney
Leslie A. Varney

Name & Title: Tracy K. Matthews Attorney-In-Fact

Telephone No.

THE SURETY: (Print Full Name and Sign)

Agent: Safeco Insurance Company of America

WITNESS

Lucy A. Hantzsch
Lucy A. Hantzsch

Attorney-in-Fact

Cathy Hutson
Cathy Hutson Attorney-in-Fact

Telephone No. 866-548-7309



Johnson Controls, Inc.
5757 N. Green Bay Avenue
Milwaukee, WI 53209



DELEGATION OF AUTHORITY

The undersigned, President of Johnson Controls, Inc., a Wisconsin corporation (the "Company"), pursuant to the authority vested in him by a certain resolution adopted by the Board of Directors of the Company on January 23, 1980, hereby authorizes:

Tracy K. Matthews
Hays Companies
1200 N. Mayfair Road, Suite 100
Milwaukee, WI 53226

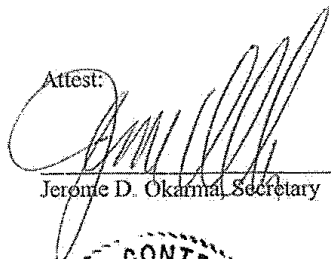
to perform, on behalf of the Company, the acts described below:


To execute, seal and deliver, as attorney-in-fact for the Company, surety bonds forwarded to Hays Companies by a Company authorized surety that do not exceed Two Million Dollars (\$2,000,000.00) that are necessary and proper in carrying on the business of the Company.

This authority shall remain in full force and effect for six (6) months from the date of issue.

Signed at Milwaukee, Wisconsin, this 20th day of September 2010

Attest:


Jerome D. Okarma, Secretary


Stephen A. Roell, President



POWER
OF ATTORNEY

Safeco Insurance Company of America
General Insurance Company of America
1001 4th Avenue
Suite 1700
Seattle WA 98154

No 10618

KNOW ALL BY THESE PRESENTS:

That **SAFECO INSURANCE COMPANY OF AMERICA** and **GENERAL INSURANCE COMPANY OF AMERICA**, each a Washington corporation, does each hereby appoint

*****KATHLEEN A CRARY; LUCY A HANTZSCH; CATHY HUTSON; DANIEL J KWIECINSKI; TRACY K. MATTHEWS; WENDY S MILLER; DANIEL J SAPIRO; LISA M SLAKES; Milwaukee, Wisconsin*****

its true and lawful attorney(s)-in-fact, with full authority to execute on its behalf fidelity and surety bonds or undertakings and other documents of a similar character issued in the course of its business and to bind the respective company thereby

IN WITNESS WHEREOF, **SAFECO INSURANCE COMPANY OF AMERICA** and **GENERAL INSURANCE COMPANY OF AMERICA** have each executed and attested these presents

this 21st day of March, 2009

Dexter R. Legg, Secretary

Timothy A. Mikolajewski, Vice President

CERTIFICATE

Extract from the By-Laws of **SAFECO INSURANCE COMPANY OF AMERICA**
and of **GENERAL INSURANCE COMPANY OF AMERICA**:

"Article V, Section 13. - FIDELITY AND SURETY BONDS ... the President, any Vice President, the Secretary, and any Assistant Vice President appointed for that purpose by the officer in charge of surety operations, shall each have authority to appoint individuals as attorneys-in-fact or under other appropriate titles with authority to execute on behalf of the company fidelity and surety bonds and other documents of similar character issued by the company in the course of its business.. On any instrument making or evidencing such appointment, the signatures may be affixed by facsimile. On any instrument conferring such authority or on any bond or undertaking of the company, the seal, or a facsimile thereof, may be impressed or affixed or in any other manner reproduced; provided however, that the seal shall not be necessary to the validity of any such instrument or undertaking."

Extract from a Resolution of the Board of Directors of **SAFECO INSURANCE COMPANY OF AMERICA**
and of **GENERAL INSURANCE COMPANY OF AMERICA** adopted July 28 1970

"On any certificate executed by the Secretary or an assistant secretary of the Company setting out,

- (i) The provisions of Article V, Section 13 of the By-Laws, and
 - (ii) A copy of the power-of-attorney appointment, executed pursuant thereto, and
 - (iii) Certifying that said power-of-attorney appointment is in full force and effect
- the signature of the certifying officer may be by facsimile, and the seal of the Company may be a facsimile thereof."

I, Dexter R. Legg, Secretary of **SAFECO INSURANCE COMPANY OF AMERICA** and of **GENERAL INSURANCE COMPANY OF AMERICA**, do hereby certify that the foregoing extracts of the By-Laws and of a Resolution of the Board of Directors of these corporations, and of a Power of Attorney issued pursuant thereto, are true and correct and that both the By-Laws, the Resolution and the Power of Attorney are still in full force and effect

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the facsimile seal of said corporation

this 20th day of September, 2010



Dexter R. Legg, Secretary



EXHIBIT II (i) - CERTIFICATE OF ACCEPTANCE—TECHNICAL AUDIT



JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF CORRECTIONS
LANSING

PATRICIA L. CARUSO
DIRECTOR

September 2, 2010

Mr. Steve Anderson
Johnson Controls, INC
3007 Malmo Drive
Arlington Heights, IL 60005

Dear Mr. Anderson:

Enclosed is the Notice of Acceptance of Technical Audit Report for the G. Robert Cotton Correctional Facility, Contract Number 071B0200275.

The acceptance is for the Investment Grade Audit supplied to us dated August 18, 2010 with the following ECM's identified to be corrected:

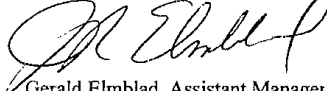
Lighting Retrofit	cost	\$ 503,326.00
Greffen Technology	cost	\$ 82,028.00
Building Envelope	cost	\$ 27,850.00
Water Conservation	cost	\$ <u>694,654.00</u>
Total Improvement	cost	\$ 1,307,858.00
IGA Audit Deduct		\$ (20,694.00)
Two years Measurement and Verification	cost	\$ <u>21,900.00</u>
Is included in total improvements line		
Total Cost (Not to Exceed)		\$ 1,287,164.00

Total cost not to exceed **\$1,287,164.00** and total payback time frame of seven (6.89) years.

If you have any questions or concerns, please feel free to contact me at (517) 242-3599.

Sincerely,

MICHIGAN DEPARTMENT OF CORRECTIONS


Gerald Elmlad, Assistant Manager
Physical Plant Division
Bureau of Fiscal Management

Enclosures

cc: Barry Wickman, Administrator, Bureau of Fiscal Management
David M. Flack, Manager, Physical Plant Division



Contract No. 071B0200275



EXHIBIT B

Notice of Acceptance of Technical Energy Audit Report

Notice of Acceptance

Date of Notice September 2, 2010

Notice is hereby given that DIMB and Department of Corrections accept the Technical Energy Audit and Project Development Proposal by Contractor, as contemplated in **Section 2 of the Technical Energy Audit and Project Proposal Contract** dated July 20, 2010.

Department of Corrections

By 

Date September 2, 2010

When completely executed, this form is to be sent by certified mail to the Contractor by Department of Corrections.



**EXHIBIT II (ii) - RESERVED FOR CERTIFICATE OF ACCEPTANCE—INSTALLED
EQUIPMENT**



EXHIBIT III - EQUIPMENT WARRANTIES

Johnson Controls Inc. /G. Robert Cotton Project Warranty Info

The following list summarizes the warranties associated with specific energy conservation measures proposed for the G. Robert Cotton energy project.

ECM L-1: Lighting Upgrade

- New fixture warranty: 11" CFL Cylinder (1 year), 10" LGFV Down light (1 year), ZZZ OS WDT (5 years)
- Lamp warranty: 14W CFL (1 year), 15W CFL (1 year), 20W CFL (1 year), 4W CFL (1 year), 1.5W MR11 (3 years), 11" CFL Cylinder (1 year), 10" LGFV Down light (1 year), R 1L[T8-1-32-IS-LP] (3 years), R 1L3'[T8-1-32-IS-LP] (3 years), R 2L[T8-2-32-IS-LP] (3 years), R 2L2'[T8-2-32-IS-LP] (3 years), R 2L3'[T8-2-32-IS-LP] (3 years), R 2LHO[T8HO-2-86-IS-SP] (3 years), R 2L-SB[T8-2-32-IS-HP] (3 years), R 2L-SB[T8-2-32-IS-SP] (3 years), R 4L[T8-4-32-IS-LP] (3 years), RF 3LR-WHT[T8-3-32-IS-SP] (3 years)
- Ballast Warranty: R 1L[T8-1-32-IS-LP] (5 years), R 1L3'[T8-1-32-IS-LP] (5 years), R 2L[T8-2-32-IS-LP] (5 years), R 2L2'[T8-2-32-IS-LP] (5 years), R 2L3'[T8-2-32-IS-LP] (5 years), R 2LHO[T8HO-2-86-IS-SP] (5 years), R 2L-SB[T8-2-32-IS-HP] (5 years), R 2L-SB[T8-2-32-IS-SP] (5 years), R 4L[T8-4-32-IS-LP] (5 years), RF 3LR-WHT[T8-3-32-IS-SP] (5 years)

ECM M-1: Greffen M2G Boiler Controller

Warranty is 3 years for labor and material.

ECM M-9: Building 100 Envelope Improvements

Warranty is 1 year for all material parts and labor to fix.

Note: Covers any malfunction, or manufacturers/installers defects.

Does not cover customer induced breakage, removal, etc.

ECM W-1: Water Conservation Upgrade

All products have a 5 year warranty.

ICON

All I-CON products carry a 1 year warranty.



APPENDICES

APPENDIX A - RFP FOR ESCO SOLICITATION

Refer to RFP No. 071I0200107 dated April 22, 2010.



APPENDIX B - ESCO PROPOSAL

Refer to Johnson Controls, Inc. Proposal dated June 3, 2010.



APPENDIX C - TECHNICAL ENERGY AUDIT REPORT

Refer to Johnson Controls, Inc. Technical Energy Audit Report dated August 18, 2010.



PRE-EXISTING SERVICE CONTRACTS – Deleted, Not Applicable

ENERGY SAVINGS PROJECTIONS

Refer to **Schedule R – Annual Reporting Requirements** for the entire facility.

FACILITY CHANGES CHECKLIST

Refer to **Section 17.2 - Reported Material Changes; Notice by Agency**

CURRENT AND KNOWN CAPITAL PROJECTS AT FACILITY– Deleted, Not Applicable



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DEFINITIONS

“Days” means calendar days unless otherwise specified.

“24x7x365” means 24 hours a day, seven days a week, and 365 days a year (including the 366th day in a leap year).

“Additional Service” means any Services/Deliverables within the scope of the Contract, but not specifically provided under any Statement of Work, that once added will result in the need to provide the Contractor with additional consideration.

“Audit Period” means the seven year period following Contractor’s provision of any work under the Contract.

“Bidder(s)” are those companies that submit a proposal in response to this RFP.

“Business Day,” whether capitalized or not, shall mean any day other than a Saturday, Sunday, Office of State **Employer mandated furlough day**, or State-recognized legal holiday (as identified in the Collective Bargaining Agreement for State employees) from 8:00am EST through 5:00pm EST unless otherwise stated.

“Blanket Purchase Order” is an alternate term for Contract and is used in the States computer system.

“Business Critical” means any function identified in any Statement of Work as Business Critical.

“Chronic Failure” is defined in any applicable Service Level Agreements.

“Deleted – Not Applicable” means that section is not applicable or included in this RFP. This is used as a placeholder to maintain consistent numbering.

“Deliverable” means physical goods and/or commodities as required or identified by a Statement of Work

“DMB” means the Michigan Department of Management and Budget

“Environmentally preferable products” means a product or service that has a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. Such products or services may include, but are not limited to, those which contain recycled content, minimize waste, conserve energy or water, and reduce the amount of toxics either disposed of or consumed.

“Excusable Failure” has the meaning given in **Section 2.244**.

“Hazardous material” means any material defined as hazardous under the latest version of federal Emergency Planning and Community Right-to-Know Act of 1986 (including revisions adopted during the term of the Contract).

“Incident” means any interruption in Services.

“ITB” is a generic term used to describe an Invitation to Bid. The ITB serves as the document for transmitting the RFP to potential Bidders

“Key Personnel” means any Personnel designated in **Section 1.031** as Key Personnel.

“New Work” means any Services/Deliverables outside the scope of the Contract and not specifically provided under any Statement of Work, that once added will result in the need to provide the Contractor with additional consideration.



“Ozone-depleting substance” means any substance the Environmental Protection Agency designates in 40 CFR part 82 as: (1) Class I, including, but not limited to, chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or (2) Class II, including, but not limited to, hydrochlorofluorocarbons.

“Post-Consumer Waste” means any product generated by a business or consumer which has served its intended end use, and which has been separated or diverted from solid waste for the purpose of recycling into a usable commodity or product, and which does not include post-industrial waste.

“Post-Industrial Waste” means industrial by-products which would otherwise go to disposal and wastes generated after completion of a manufacturing process, but does not include internally generated scrap commonly returned to industrial or manufacturing processes.

“Recycling” means the series of activities by which materials that are no longer useful to the generator are collected, sorted, processed, and converted into raw materials and used in the production of new products. This definition excludes the use of these materials as a fuel substitute or for energy production.

“Reuse” means using a product or component of municipal solid waste in its original form more than once.

“RFP” means a Request for Proposal designed to solicit proposals for services.

“Services” means any function performed for the benefit of the State.

“Source reduction” means any practice that reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment prior to recycling, energy recovery, treatment, or disposal.

“State Location” means any physical location where the State performs work. State Location may include state-owned, leased, or rented space.

“Subcontractor” means a company Contractor delegates performance of a portion of the Services to, but does not include independent contractors engaged by Contractor solely in a staff augmentation role.

“Unauthorized Removal” means the Contractor’s removal of Key Personnel without the prior written consent of the State.

“Waste prevention” means source reduction and reuse, but not recycling.

“Waste reduction”, or “pollution prevention” means the practice of minimizing the generation of waste at the source and, when wastes cannot be prevented, utilizing environmentally sound on-site or off-site reuse and recycling. The term includes equipment or technology modifications, process or procedure modifications, product reformulation or redesign, and raw material substitutions. Waste treatment, control, management, and disposal are not considered pollution prevention, per the definitions under Part 143, Waste Minimization, of the Natural Resources and Environmental Protection Act (NREPA), 1994 PA 451, as amended.

“Work in Progress” means a Deliverable that has been partially prepared, but has not been presented to the State for Approval.

“Work Product” refers to any data compilations, reports, and other media, materials, or other objects or works of authorship created or produced by the Contractor as a result of an in furtherance of performing the services required by this Contract.



Article 2. Terms and Conditions

2.000 Contract Structure and Term

2.001 Contract Term

This Contract is for a period of **two years and five months** beginning **September 30, 2010** through **March 1, 2013**. All outstanding Purchase Orders must also expire upon the termination (cancellation for any of the reasons listed in **Section 2.150**) of the Contract, unless otherwise extended under the Contract. Absent an early termination for any reason, 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.

2.002 Options to Renew – Deleted, Not Applicable

2.003 Legal Effect

Contractor shall show acceptance of this Contract by signing two copies of the Contract and returning them to the Contract Administrator. The Contractor shall not proceed with the performance of the work to be done under the Contract, including the purchase of necessary materials, until both parties have signed the Contract to show acceptance of its terms, and the Contractor receives a contract release/purchase order that authorizes and defines specific performance requirements.

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

2.004 Attachments & Exhibits

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

2.005 Ordering

The State will issue a written Purchase Order, Blanket Purchase Order, Direct Voucher or Procurement Card Order, which must be approved by the Contract Administrator or the Contract Administrator's designee, to order any Services/Deliverables under this Contract. All orders are subject to the terms and conditions of this Contract. No additional terms and conditions contained on either a Purchase Order or Blanket Purchase Order apply unless they are also specifically contained in that Purchase Order's or Blanket Purchase Order's accompanying Statement of Work. Exact quantities to be purchased are unknown, however, the Contractor will be required to furnish all such materials and services as may be ordered during the CONTRACT period. Quantities specified, if any, are estimates based on prior purchases, and the State is not obligated to purchase in these or any other quantities.

2.006 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 the subject matter and as additional terms and conditions on the purchase order must apply as limited by **Section 2.005**.

(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 the Contract, which may be modified or amended only by a formal Contract amendment.

2.007 Headings

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

**2.008 Form, Function & Utility**

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

2.009 Reformation and Severability

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

2.010 Consents and Approvals

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

2.011 No Waiver of Default

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

2.012 Survival

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

2.020 Contract Administration**2.021 Issuing Office**

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

Sue Ciecwa, Buyer Specialist
Purchasing Operations
Department of Management and Budget
Mason Bldg, 2nd Floor
PO Box 30026
Lansing, MI 48909
Ciecwas@michigan.gov
Phone: (517) 373-0301
Fax: (517) 335-0046

2.022 Contract Compliance Inspector (CCI)

After DMB-PurchOps receives the properly executed Contract, it is anticipated that the Director of Purchasing Operations, in consultation with Department of Energy, Labor and Economic Growth, will direct the person named below, or any other person so designated, 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 the Contract as that authority is retained by DMB Purchasing Operations.** The Contract Compliance Inspector for this Contract is:



Jerry Elmlad
Assistant Manager
Physical Plant Division
Michigan Department of Corrections
Grandview Plaza
P.O. Box 30003
Lansing, MI 48909
elmlajr@michigan.gov
Phone: (517) 373-4471
Fax: (517) 241-5129

2.023 Project Manager

The following individual will oversee the project:

Eames Groenleer
MDOC Regional Physical Plant Superintendent, Parnall & Cotton
Michigan Department of Corrections
4000 Cooper St.
Jackson, MI 49210
Groenlee@michigan.gov
Phone: (517) 780-6445
Fax: (517) 780-6599

2.024 Change Requests

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

If the Contractor does not so notify the State, the Contractor has no right to claim thereafter that it is entitled to additional compensation for performing that service or providing that deliverable.

Change Requests:

- (a) By giving Contractor written notice within a reasonable time, the State must be entitled to accept a Contractor proposal for Change, to reject it, or to reach another agreement with Contractor. Should the parties agree on carrying out a Change, a written Contract Change Notice must 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").
- (b) No proposed Change must be performed until the proposed Change has been specified in a duly executed Contract Change Notice issued by the Department of Management and Budget, Purchasing Operations.
- (c) If the State requests or directs the Contractor to perform any activities that Contractor believes constitute a Change, the Contractor must notify the State that it believes the requested activities are a Change before beginning to work on the requested activities. If the Contractor fails to notify the State before beginning to work on the requested activities, then the Contractor waives any right to assert any claim for additional compensation or time for performing the requested activities. If the Contractor commences performing work outside the scope of this Contract and then ceases performing that work, the Contractor must, at the request of the State, retract any out-of-scope work that would adversely affect the Contract.

2.025 Notices

Any notice given to a party under the Contract must be deemed effective, if addressed to the party as addressed below, upon: (i) delivery, if hand delivered; (ii) receipt of a confirmed transmission by facsimile if



a copy of the notice is sent by another means specified in this Section; (iii) the third Business Day after being sent by U.S. mail, postage pre-paid, return receipt requested; or (iv) the next Business Day after being sent by a nationally recognized overnight express courier with a reliable tracking system.

State:
State of Michigan
Purchasing Operations
Attention: Sue Cieciva
PO Box 30026
530 West Allegan
Lansing, Michigan 48909

Contractor:
Johnson Controls, Inc.
Attention Stephen Anderson
3007 Malmo Drive
Arlington Heights, IL 60005-4727

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

2.026 Binding Commitments

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

2.027 Relationship of the Parties

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

2.028 Covenant of Good Faith

Each party must 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.

2.029 Assignments

(a) Neither party may assign the Contract, or assign or delegate any of its duties or obligations under the Contract, to any other party (whether by operation of law or otherwise), without the prior written consent of the other party; provided, however, that the State may assign the Contract to any other State agency, department, division or department without the prior consent of Contractor and Contractor may assign the Contract to an affiliate so long as the affiliate is adequately capitalized and can provide adequate assurances that the affiliate can perform the Contract. The State may withhold consent from proposed assignments, subcontracts, or novations when the transfer of responsibility would operate to decrease the State's likelihood of receiving performance on the Contract or the State's ability to recover damages.

(b) Contractor may not, without the prior written approval of the State, assign its right to receive payments due under the Contract. If the State permits an assignment, the Contractor is not relieved of its responsibility to perform any of its contractual duties, and the requirement under the Contract that all payments must be made to one entity continues.

(c) If the Contractor intends to assign the contract or any of the Contractor's rights or duties under the Contract, the Contractor must notify the State in writing at least 90 days before the assignment. The Contractor also must provide the State with adequate information about the assignee within a reasonable amount of time before the assignment for the State to determine whether to approve the assignment.



2.030 General Provisions

2.031 Media Releases

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

2.032 Contract Distribution

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

2.033 Permits

Contractor must 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 must pay for all costs and expenses incurred in obtaining and maintaining any necessary easements or right of way.

2.034 Website Incorporation

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

2.035 Future Bidding Preclusion

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

2.036 Freedom of Information

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

2.037 Disaster Recovery

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

2.040 Financial Provisions

2.041 Fixed Prices for Services/Deliverables

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

2.042 Adjustments for Reductions in Scope of Services/Deliverables

If the scope of the Services/Deliverables under any Statement of Work issued under this Contract is subsequently reduced by the State, the parties shall negotiate an equitable reduction in Contractor's charges under such Statement of Work commensurate with the reduction in scope.



2.043 Services/Deliverables Covered

For all Services/Deliverables to be provided by Contractor (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.

2.044 Invoicing and Payment – In General

- (a) 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.
- (b) Each Contractor invoice will show details as to charges by Service/Deliverable component and location at a level of detail reasonably necessary to satisfy the State's accounting and charge-back requirements. Invoices for Services performed on a time and materials basis will show, for each individual, the number of hours of Services performed during the billing period, the billable skill/labor category for such person and the applicable hourly billing rate. Prompt payment by the State is contingent on the Contractor's invoices showing the amount owed by the State minus any holdback amount to be retained by the State in accordance with **Section 1.064**.
- (c) 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 45 days after receipt, provided the State determines that the invoice was properly rendered.
- (d) Contract Payment Schedule
 - 1. Contractor request for performance-based payment.
The Contractor may submit requests for payment of performance-based payments not more frequently than monthly, in a form and manner acceptable to the Contract Administrator. Unless otherwise authorized by the Contract Administrator, all performance-based payments in any period for which payment is being requested shall be included in a single request, appropriately itemized and totaled.
 - 2. Approval and payment of requests.
 - a) The Contractor shall not be entitled to payment of a request for performance-based payment prior to successful accomplishment of the event or performance criterion for which payment is requested. The Contract Administrator shall determine whether the event or performance criterion for which payment is requested has been successfully accomplished in accordance with the terms of the contract. The Contract Administrator may, at any time, require the Contractor to substantiate the successful performance of any event or performance criterion, which has been or is represented as being payable.
 - b) A payment under this performance-based payment clause is a contract financing payment under the Quick Payment Terms in **Section 1.061** of this Contract.
 - c) The approval by the Contract Administrator of a request for performance-based payment does not constitute an acceptance by the Government and does not excuse the Contractor from performance of obligations under this Contract.

2.045 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.

2.046 Antitrust Assignment

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

2.047 Final Payment

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



known until after acceptance to be defective or substandard. Contractor's acceptance of final payment by the State under this Contract shall constitute a waiver of all claims by Contractor against the State for payment under this Contract, other than those claims previously filed in writing on a timely basis and still unsettled.

2.048 Electronic Payment Requirement

Electronic transfer of funds is required for payments on State Contracts. Contractors are required to register with the State electronically at <http://www.cpexpress.state.mi.us>. As stated in Public Act 431 of 1984, all contracts that the State enters into for the purchase of goods and services shall provide that payment will be made by electronic fund transfer (EFT).

2.050 Taxes

2.051 Employment Taxes

Contractors are expected to collect and pay all applicable federal, state, and local employment taxes, including the taxes.

2.052 Sales and Use Taxes

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

2.060 Contract Management

2.061 Contractor Personnel Qualifications

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

2.062 Contractor Key Personnel

- (a) The Contractor must provide the Contract Compliance Inspector with the names of the Key Personnel.
- (b) Key Personnel must be dedicated as defined in the Statement of Work to the Project for its duration in the applicable Statement of Work with respect to other individuals designated as Key Personnel for that Statement of Work.
- (c) The State will have the right to recommend and approve in writing the initial assignment, as well as any proposed reassignment or replacement, of any Key Personnel. Before assigning an individual to any Key Personnel position, Contractor will notify the State of the proposed assignment, will introduce the individual to the appropriate State representatives, and will provide the State with a resume and any other information about the individual reasonably requested by the State. The State reserves the right to interview the individual before granting written approval. In the event the State finds a proposed individual unacceptable, the State will provide a written explanation including reasonable detail outlining the reasons for the rejection.
- (d) Contractor must not remove any Key Personnel from their assigned roles on the Contract without the prior written consent of the State. The Contractor's removal of Key Personnel without the prior written



consent of the State is an unauthorized removal ("Unauthorized Removal"). Unauthorized Removals does not include replacing Key Personnel for reasons beyond the reasonable control of Contractor, including illness, disability, leave of absence, personal emergency circumstances, resignation or for cause termination of the Key Personnel's employment. Unauthorized Removals does not include replacing Key Personnel because of promotions or other job movements allowed by Contractor personnel policies or Collective Bargaining Agreement(s) as long as the State receives prior written notice before shadowing occurs and Contractor provides 30 days of shadowing unless parties agree to a different time period. The Contractor with the State must review any Key Personnel replacements, and appropriate transition planning will be established. Any Unauthorized Removal may be considered by the State to be a material breach of the Contract, in respect of which the State may elect to exercise its termination and cancellation rights.

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

2.063 Re-assignment of Personnel at the State's Request

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

2.064 Contractor Personnel Location

All staff assigned by Contractor to work on the Contract will perform their duties either primarily at Contractor's offices and facilities or at State facilities. Without limiting the generality of the foregoing, Key Personnel will, at a minimum, spend at least the amount of time on-site at State facilities as indicated

in the applicable Statement of Work. Subject to availability, selected Contractor personnel may be assigned office space to be shared with State personnel.

2.065 Contractor Identification

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

2.066 Cooperation with Third Parties

Contractor agrees to cause its personnel and the personnel of any Subcontractors to cooperate with the State and its agents and other contractors including the State's Quality Assurance personnel. As reasonably requested by the State in writing, the Contractor will provide to the State's agents and other contractors reasonable access to Contractor's Project personnel, systems and facilities to the extent the access relates to activities specifically associated with this Contract and will not interfere or jeopardize the safety or operation of the systems or facilities. The State acknowledges that Contractor's time schedule for the Contract is very specific and agrees not to unnecessarily or unreasonably interfere with, delay or otherwise impede Contractor's performance under this Contract with the requests for access.

2.067 Contract Management Responsibilities

The Contractor will be required to assume responsibility for all contractual activities, whether or not that Contractor performs them. Further, the State will consider the Contractor to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the anticipated Contract. If any part of the work is to be subcontracted, the Contract must include a list of Subcontractors, including firm name and address, contact person and a complete description of work to be subcontracted. The State reserves the right to approve Subcontractors and to require the Contractor to replace Subcontractors found to be unacceptable. The Contractor is totally responsible for adherence by the



Subcontractor to all provisions of the Contract. Any change in Subcontractors must be approved by the State, in writing, prior to such change.

2.068 Contractor Return of State Equipment/Resources

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

2.070 Subcontracting by Contractor

2.071 Contractor full Responsibility

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

2.072 State Consent to delegation

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

2.073 Subcontractor bound to Contract

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

2.074 Flow Down

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

2.075 Competitive Selection

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

2.080 State Responsibilities

**2.081 Equipment**

The State will provide only the equipment and resources identified in the Statements of Work and other Contract Exhibits.

2.082 Facilities

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

2.090 Security**2.091 Background Checks**

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

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

See Attachment I - Special Working Rules Department of Corrections Inside and Outside Prisons.

2.092 Security Breach Notification

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

2.093 PCI Data Security Requirements – Deleted, Not Applicable**2.100 Confidentiality****2.101 Confidentiality**

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



or with a similar designation by the State. "Confidential Information" excludes any information (including this Contract) that is publicly available under the Michigan FOIA.

2.102 Protection and Destruction of Confidential Information

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

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

2.103 Exclusions

Notwithstanding the foregoing, the provisions of **Section 2.100** will not apply to any particular information which the State or Contractor can demonstrate (i) was, at the time of disclosure to it, in the public domain; (ii) after disclosure to it, is published or otherwise becomes part of the public domain through no fault of the receiving party; (iii) was in the possession of the receiving party at the time of disclosure to it without an obligation of confidentiality; (iv) was received after disclosure to it from a third party who had a lawful right to disclose the information to it without any obligation to restrict its further disclosure; or (v) was independently developed by the receiving party without reference to Confidential Information of the furnishing party. Further, the provisions of **Section 2.100** will not apply to any particular Confidential Information to the extent the receiving party is required by law to disclose the Confidential Information, provided that the receiving party (i) promptly provides the furnishing party with notice of the legal request, and (ii) assists the furnishing party in resisting or limiting the scope of the disclosure as reasonably requested by the furnishing party.

2.104 No Implied Rights

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

2.105 Respective Obligations

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

2.110 Records and Inspections

2.111 Inspection of Work Performed

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



2.112 Examination of Records

For seven years after the Contractor provides any work under this Contract (the "Audit Period"), the State may examine and copy any of Contractor's books, records, documents and papers pertinent to establishing Contractor's compliance with the Contract and with applicable laws and rules. The State must notify the Contractor 20 days before examining the Contractor's books and records. The State does not have the right to review any information deemed confidential by the Contractor to the extent access would require the confidential information to become publicly available. 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 Contractor, or any Subcontractor of Contractor performing services in connection with the Contract.

2.113 Retention of Records

Contractor must 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 according to generally accepted accounting principles and other procedures specified in this Section. Financial and accounting records must be made available, upon request, to the State at any time during the Audit Period. If an audit, litigation, or other action involving Contractor's records is initiated before the end of the Audit Period, the records 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.

2.114 Audit Resolution

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

2.115 Errors

- (a) If the audit demonstrates any errors in the documents provided to the State, then the amount in error must be reflected as a credit or debit on the next invoice and in subsequent invoices until the amount is paid or refunded in full. However, a credit or debit may not be carried for more than four invoices. If a balance remains after four invoices, then the remaining amount will be due as a payment or refund within 45 days of the last quarterly invoice that the balance appeared on or termination of the contract, whichever is earlier.
- (b) In addition to other available remedies, the difference between the payment received and the correct payment amount is greater than 10%, then the Contractor must pay all of the reasonable costs of the audit.

2.120 Warranties

2.121 Warranties and Representations

The Contractor represents and warrants:

- (a) It is capable in all respects of fulfilling and must fulfill all of its obligations under this Contract. The performance of all obligations under this Contract must be provided in a timely, professional, and workman-like manner and must meet the performance and operational standards required under this Contract.
- (b) The Contract Appendices, Attachments and Exhibits identify the equipment and software and services necessary for the Deliverable(s) to perform and Services to operate in compliance with the Contract's requirements and other standards of performance.
- (c) It is the lawful owner or licensee of any Deliverable licensed or sold to the State by Contractor or developed by Contractor under this Contract, and Contractor has all of the rights necessary to convey to the State the ownership rights or licensed use, as applicable, of any and all Deliverables. None of the Deliverables provided by Contractor to the State under this Contract, nor their use by the State, will infringe the patent, copyright, trade secret, or other proprietary rights of any third party.



- (d) If, under this Contract, Contractor procures any equipment, software or other Deliverable for the State (including equipment, software and other Deliverables manufactured, re-marketed or otherwise sold by Contractor under Contractor's name), then in addition to Contractor's other responsibilities with respect to the items in this Contract, Contractor must assign or otherwise transfer to the State or its designees, or afford the State the benefits of, any manufacturer's warranty for the Deliverable.
- (e) The contract signatory has the power and authority, including any necessary corporate authorizations, necessary to enter into this Contract, on behalf of Contractor.
- (f) It is qualified and registered to transact business in all locations where required.
- (g) Neither the Contractor nor any Affiliates, nor any employee of either, has, must have, or must acquire, any contractual, financial, business, or other interest, direct or indirect, that would conflict in any manner or degree with Contractor's performance of its duties and responsibilities to the State under this Contract or otherwise create an appearance of impropriety with respect to the award or performance of this Agreement. Contractor must notify the State about the nature of the conflict or appearance of impropriety within two days of learning about it.
- (h) Neither Contractor nor any Affiliates, nor any employee of either has accepted or must accept anything of value based on an understanding that the actions of the Contractor or Affiliates or employee on behalf of the State would be influenced. Contractor must not attempt to influence any State employee by the direct or indirect offer of anything of value.
- (i) Neither Contractor nor any Affiliates, nor any employee of either has paid or agreed to pay any person, other than bona fide employees and consultants working solely for Contractor or the Affiliate, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract.
- (j) The prices proposed by Contractor were arrived at independently, without consultation, communication, or agreement with any other Bidder for the purpose of restricting competition; the prices quoted were not knowingly disclosed by Contractor to any other Bidder; and no attempt was made by Contractor to induce any other person to submit or not submit a proposal for the purpose of restricting competition.
- (k) All financial statements, reports, and other information furnished by Contractor to the State as part of its response to the RFP or otherwise in connection with the award of this Contract fairly and accurately represent the business, properties, financial condition, and results of operations of Contractor as of the respective dates, or for the respective periods, covered by the financial statements, reports, other information. Since the respective dates or periods covered by the financial statements, reports, or other information, there have been no material adverse change in the business, properties, financial condition, or results of operations of Contractor.
- (l) All written information furnished to the State by or for the Contractor in connection with this Contract, including its bid, is true, accurate, and complete, and contains no untrue statement of material fact or omits any material fact necessary to make the information not misleading.
- (m) It is not in material default or breach of any other contract or agreement that it may have with the State or any of its departments, commissions, boards, or agencies. Contractor further represents and warrants that it has not been a party to any contract with the State or any of its departments that was terminated by the State or the department within the previous five years for the reason that Contractor failed to perform or otherwise breached an obligation of the contract.
- (n) If any of the certifications, representations, or disclosures made in the Contractor's original bid response change after contract award, the Contractor is required to report those changes immediately to the Department of Management and Budget, Purchasing Operations.

2.122 Warranty of Merchantability

Goods provided by Contractor under this agreement shall be merchantable. All goods provided under this Contract shall be of good quality within the description given by the State, shall be fit for their ordinary



purpose, shall be adequately contained and packaged within the description given by the State, shall conform to the agreed upon specifications, and shall conform to the affirmations of fact made by the Contractor or on the container or label.

2.123 Warranty of Fitness for a Particular Purpose

When the Contractor has reason to know or knows any particular purpose for which the goods are required, and the State is relying on the Contractor's skill or judgment to select or furnish suitable goods, there is a warranty that the goods are fit for such purpose.

2.124 Warranty of Title

Contractor shall, in providing goods to the State, convey good title in those goods, whose transfer is right and lawful. All goods provided by Contractor shall be delivered free from any security interest, lien, or encumbrance of which the State, at the time of contracting, has no knowledge. Goods provided by Contractor, under this Contract, shall be delivered free of any rightful claim of any third person by of infringement or the like.

2.125 Equipment Warranty

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

The Contractor represents and warrants that the equipment/system(s) are in good operating condition and 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 year commencing upon the first day following Final Acceptance.

Within one business day of notification from the State, the Contractor must adjust, repair or replace all equipment that is defective or not performing in compliance with the Contract. The Contractor must assume all costs for replacing parts or units and their installation including transportation and delivery fees, if any.

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

The Contractor agrees that all warranty service it provides under this Contract must be performed by Original Equipment Manufacturer (OEM) trained, certified and authorized technicians.

The Contractor is the sole point of contact for warranty service. The Contractor warrants that it will pass through to the State any warranties obtained or available from the original equipment manufacturer, including any replacement, upgraded, or additional equipment warranties.

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

2.126 Equipment to be New

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

2.127 Prohibited Products

The State will not accept salvage, distressed, outdated or discontinued merchandise. Shipping of such merchandise to any State agency, as a result of an order placed against the Contract, shall be considered default by the Contractor of the terms and conditions of the Contract and may result in cancellation of the Contract by the State. The brand and product number offered for all items shall remain consistent for the



term of the Contract, unless Purchasing Operations has approved a change order pursuant to **Section 2.024**.

2.128 Consequences For Breach

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

2.130 Insurance

2.131 Liability Insurance

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

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

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

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

See www.michigan.gov/dleg.

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

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

- ☒ 1. Commercial General Liability with the following minimum coverage:

\$2,000,000 General Aggregate Limit other than Products/Completed Operations
 \$2,000,000 Products/Completed Operations Aggregate Limit
 \$1,000,000 Personal & Advertising Injury Limit
 \$1,000,000 Each Occurrence Limit

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

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

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



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

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

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

- ☒ 4. Employers liability insurance with the following minimum limits:

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

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

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

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

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

2.132 Subcontractor Insurance Coverage

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

2.133 Certificates of Insurance and Other Requirements

Contractor must furnish to DMB-PurchOps, certificate(s) of insurance verifying insurance coverage or providing satisfactory evidence of self-insurance as required in this Section (the "Certificates"). The Certificate must be on the standard "accord" form or equivalent. **THE CONTRACT 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) must contain a provision indicating that coverages afforded under the policies WILL NOT BE CANCELLED, MATERIALLY CHANGED, OR NOT RENEWED without 30 days prior written notice, except for 10 days for non-payment of premium, having been given to the Director of Purchasing Operations, Department of Management and Budget. The notice must include the Contract or Purchase Order number affected. Before the Contract is signed, and not less than 20 days before the insurance expiration date every year thereafter, the Contractor must provide evidence that the State and its agents, officers and employees are listed as additional 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.

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



2.140 Indemnification

2.141 General Indemnification

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

2.142 Code Indemnification

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

2.143 Employee Indemnification

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

2.144 Patent/Copyright Infringement Indemnification

To the extent permitted by law, the Contractor must indemnify, defend and hold harmless the State from and against all losses, liabilities, damages (including taxes), and all related costs and expenses (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 the action or proceeding is based on a claim that any piece of equipment, software, commodity or service supplied by the Contractor or its Subcontractors, or the operation of the equipment, software, commodity or service, or the use or reproduction of any documentation provided with the equipment, software, commodity or service infringes any United States patent, copyright, trademark or trade secret of any person or entity, which is enforceable under the laws of the United States.

In addition, should the equipment, software, commodity, or service, or its operation, become or in the State's or Contractor's opinion be likely to become the subject of a claim of infringement, the Contractor must at the Contractor's sole expense (i) procure for the State the right to continue using the equipment, software, commodity or service or, if the option is not reasonably available to the Contractor, (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 the option is not reasonably available to Contractor, (iii) accept its return by the State with appropriate credits to the State against the Contractor's charges 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 Contractor has 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; (ii) use of the equipment in a configuration other than implemented or approved in writing by the Contractor, including, but not limited to, any modification of the equipment by the State; or (iii) the combination, operation, or use of the equipment with equipment or software not supplied by the Contractor under this Contract.

2.145 Continuation of Indemnification Obligations

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



2.146 Indemnification Procedures

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

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

(b) If Contractor delivers a Notice of Election relating to any claim: (i) the State is entitled to participate in the defense of the claim and to employ counsel at its own expense to assist in the handling of the claim and to monitor and advise the State about the status and progress of the defense; (ii) the Contractor must, at the request of the State, demonstrate to the reasonable satisfaction of the State, the Contractor's financial ability to carry out its defense and indemnity obligations under this Contract; (iii) the Contractor must periodically advise the State about the status and progress of the defense and must obtain the prior written approval of the State before entering into any settlement of the claim or ceasing to defend against the claim and (iv) to the extent that any principles of Michigan governmental or public law may be involved or challenged, the State has the right, at its own expense, to control the defense of that portion of the claim involving the principles of Michigan governmental or public law. But the State may retain control of the defense and settlement of a claim by notifying the Contractor in writing within 10 days after the State's receipt of Contractor's information requested by the State under clause (ii) of this paragraph if the State determines that the Contractor has failed to demonstrate to the reasonable satisfaction of the State the Contractor's financial ability to carry out its defense and indemnity obligations under this Section. Any litigation activity on behalf of the State, or any of its subdivisions under this Section, must be coordinated with the Department of Attorney General. In the event the insurer's attorney represents the State under this Section, the insurer's attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.

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

2.150 Termination/Cancellation

2.151 Notice and Right to Cure

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

2.152 Termination for Cause

(a) The State may terminate this contract, for cause, by notifying the Contractor in writing, if the Contractor (i) breaches any of its material duties or obligations under this Contract (including a Chronic Failure to meet any particular SLA), or (ii) fails to cure a breach within the time period specified in the written notice of breach provided by the State



(b) If this Contract is terminated for cause, the Contractor must pay 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 are not consequential, indirect or incidental damages, and cannot be excluded by any other terms otherwise included in this Contract, provided the costs are not in excess of 50% more than the prices for the Service/Deliverables provided under this Contract.

(c) If 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 must 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 must cease on the effective date of the termination.

(d) If the State terminates this Contract for cause under this Section, and it is determined, for any reason, that Contractor was not in breach of contract under the provisions of this section, that termination for cause must be deemed to have been a termination for convenience, effective as of the same date, and the rights and obligations of the parties must be limited to that otherwise provided in this Contract for a termination for convenience.

2.153 Termination for Convenience

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

2.154 Termination for Non-Appropriation

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

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

(c) If the State terminates this Contract, eliminates certain Deliverables, or reduces the level of Services to be provided by Contractor under this Section, the State must pay Contractor for 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. This Section will not preclude Contractor from reducing or stopping Services/Deliverables or raising against the State in a court of competent jurisdiction, any claim for a shortfall in payment for Services performed or Deliverables finally accepted before the effective date of termination.



2.155 Termination for Criminal Conviction

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

2.156 Termination for Approvals Rescinded

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

2.157 Rights and Obligations upon Termination

(a) If the State terminates this Contract for any reason, the Contractor must (a) stop all work as specified in the notice of termination, (b) take any action that may be necessary, or that the State may direct, for preservation and protection of Deliverables or other property derived or resulting from this Contract that may be in Contractor's possession, (c) return all materials and property provided directly or indirectly to Contractor by any entity, agent or employee of the State, (d) 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 must be provided to the State on an "As-Is" basis except to the extent the amounts paid by the State in respect of the items included compensation to Contractor for the provision of warranty services in respect of the materials), and (e) take any action to mitigate and limit any potential damages, or requests for Contractor adjustment or termination settlement costs, to the maximum practical extent, including terminating or limiting as otherwise applicable those subcontracts and outstanding orders for material and supplies resulting from the terminated Contract.

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

(c) Upon a good faith termination, the State may assume, at its option, any 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.

2.158 Reservation of Rights

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

2.160 Termination by Contractor

2.161 Termination by Contractor

If the State breaches the Contract, and the Contractor in its sole discretion determines that the breach is curable, then the Contractor will provide the State with written notice of the breach and a time period (not less than 30 days) to cure the breach. The Notice of Breach and opportunity to cure is inapplicable for successive and repeated breaches.

The Contractor may terminate this Contract if the State (i) materially breaches its obligation to pay the Contractor undisputed amounts due and owing under this Contract, (ii) breaches its other obligations under this Contract to an extent that makes it impossible or commercially impractical for the Contractor to perform



the Services, or (iii) does not cure the breach within the time period specified in a written notice of breach. But the Contractor must discharge its obligations under **Section 2.160** before it terminates the Contract.

2.170 Transition Responsibilities

2.171 Contractor Transition Responsibilities

If the State terminates this contract, for convenience or cause, or if the Contract is otherwise dissolved, voided, rescinded, nullified, expires or rendered unenforceable, the Contractor 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. If this Contract expires or terminates, the Contractor agrees to make all reasonable efforts to effect an orderly transition of services within a reasonable period of time that in no event will exceed **30** days. These efforts must include, but are not limited to, those listed in **Sections 2.141, 2.142, 2.143, 2.144, and 2.145.**

2.172 Contractor Personnel Transition

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

2.173 Contractor Information Transition

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

2.174 Contractor Software Transition

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

2.175 Transition Payments

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

2.176 State Transition Responsibilities

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

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



2.180 Stop Work

2.181 Stop Work Orders

The State may, at any time, by written stop work order to Contractor, require that Contractor stop all, or any part, of the work called for by the Contract for a period of up to 90 calendar days after the stop work order is delivered to Contractor, and for any further period to which the parties may agree. The stop work order must be identified as a stop work order and must indicate that it is issued under **Section 2.180**. Upon receipt of the stop work order, Contractor must immediately comply with its terms and take all reasonable steps to minimize incurring costs allocable to the work covered by the stop work order during the period of work stoppage. Within the period of the stop work order, the State must either: (a) cancel the stop work order; or (b) terminate the work covered by the stop work order as provided in **Section 2.150**.

2.182 Cancellation or Expiration of Stop Work Order

The Contractor must resume work if the State cancels a Stop Work Order or if it expires. The parties will agree upon an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract must be modified, in writing, accordingly, if: (a) the stop work order results in an increase in the time required for, or in Contractor's costs properly allocable to, the performance of any part of the Contract; and (b) Contractor asserts its right to an equitable adjustment within 30 calendar days after the end of the period of work stoppage; provided that, if the State decides the facts justify the action, the State may receive and act upon a Contractor proposal submitted at any time before final payment under the Contract. Any adjustment will conform to the requirements of **Section 2.024**.

2.183 Allowance of Contractor Costs

If the stop work order is not canceled and the work covered by the stop work order is terminated for reasons other than material breach, the termination must be deemed to be a termination for convenience under **Section 2.153**, and the State will pay reasonable costs resulting from the stop work order in arriving at the termination settlement. For the avoidance of doubt, the State is not be liable to Contractor for loss of profits because of a stop work order issued under this **Section 2.180**.

2.190 Dispute Resolution

2.191 In General

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

2.192 Informal Dispute Resolution

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

- (i) The representatives of Contractor and the State must meet as often as the parties reasonably deem necessary to gather and furnish to each other all information with respect to the matter in issue which the parties believe to be appropriate and germane in connection with its resolution. The representatives must discuss the problem and negotiate in good faith in an effort to resolve the dispute without the necessity of any formal proceeding.
- (ii) During the course of negotiations, all reasonable requests made by one party to another for non-privileged information reasonably related to the Contract will be honored in order that each of the parties may be fully advised of the other's position.
- (iii) The specific format for the discussions will be left to the discretion of the designated State and Contractor representatives, but may include the preparation of agreed upon statements of fact or written statements of position.



- (iv) Following the completion of this process within 60 calendar days, the Director of Purchasing Operations, DMB, or designee, must issue a written opinion regarding the issue(s) in dispute within 30 calendar days. The opinion regarding the dispute must be considered the State's final action and the exhaustion of administrative remedies.
- (b) This Section 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 under **Section 2.193**.
- (c) The State will not mediate disputes between the Contractor and any other entity, except state agencies, concerning responsibility for performance of work under the Contract.

2.193 Injunctive Relief

The only circumstance in which disputes between the State and Contractor will not be subject to the provisions of **Section 2.192** is where a party makes a good faith determination that a breach of the terms of the Contract by the other party is the that the damages to the 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.

2.194 Continued Performance

Each party agrees to continue performing its obligations under the Contract while a dispute is being resolved except to the extent the issue in dispute precludes performance (dispute over payment must not be deemed to preclude performance) and without limiting either party's right to terminate the Contract as provided in **Section 2.150**, as the case may be.

2.200 Federal and State Contract Requirements

2.201 Nondiscrimination

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

2.202 Unfair Labor Practices

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

2.203 Workplace Safety and Discriminatory Harassment

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

2.204 Prevailing Wage

The rates of wages and fringe benefits to be paid each class of individuals employed by the Contractor, its Subcontractors, their Subcontractors, and all persons involved with the performance of this Contract in privity of contract with the Contractor shall not be less than the wage rates and fringe benefits established by the Michigan Department of Labor and Economic Development, Wage and Hour Bureau, schedule of occupational classification and wage rates and fringe benefits for the local where the work is to be



performed. The term Contractor shall include all general contractors, prime contractors, project managers, trade contractors, and all of their contractors or Subcontractors and persons in privity of contract with them.

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

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

2.210 Governing Law

2.211 Governing Law

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

2.212 Compliance with Laws

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

2.213 Jurisdiction

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

2.220 Limitation of Liability

2.221 Limitation of Liability

Neither the Contractor nor the State is liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages. This limitation of liability does not apply to claims for infringement of United States patent, copyright, trademark or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; 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.

2.230 Disclosure Responsibilities

2.231 Disclosure of Litigation

(a) Disclosure. Contractor must disclose any material criminal litigation, investigations or proceedings involving the Contractor (and each Subcontractor) or any of its officers or directors or any litigation, investigations or proceedings under the Sarbanes-Oxley Act. In addition, each Contractor (and each Subcontractor) must notify the State of any material civil litigation, arbitration or proceeding which

arises during the term of the Contract and extensions, to which Contractor (or, to the extent Contractor is aware, any Subcontractor) is a party, and which involves: (i) disputes that might reasonably be expected to adversely affect the viability or financial stability of Contractor or any Subcontractor; or (ii) a claim or written allegation of fraud against Contractor or, to the extent Contractor is aware, any Subcontractor by a governmental or public entity arising out of their business dealings with governmental or public entities. The



Contractor must disclose in writing to the Contract Administrator any litigation, investigation, arbitration or other proceeding (collectively, "Proceeding") within 30 days of its occurrence. Details of settlements which are prevented from disclosure by the terms of the settlement may be annotated. Information provided to the State from Contractor's publicly filed documents referencing its material litigation will be deemed to satisfy the requirements of this Section.

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

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

(a) Contractor and its Subcontractors will be able to continue to perform this Contract and any Statements of Work according to its terms and conditions, and

(b) Contractor and its Subcontractors have not and will not engage in conduct in performing the Services which is similar in nature to the conduct alleged in the Proceeding.

(c) Contractor must make the following notifications in writing:

- (1) Within 30 days of Contractor becoming aware that a change in its ownership or officers has occurred, or is certain to occur, or a change that could result in changes in the valuation of its capitalized assets in the accounting records, Contractor must notify DMB PurchOps.
- (2) Contractor must also notify DMB PurchOps within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership or officers.
- (3) Contractor must also notify DMB PurchOps within 30 days whenever changes to company affiliations occur.

2.232 Call Center Disclosure – Deleted, Not Applicable

2.233 Bankruptcy

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 the Works in Process by whatever appropriate method the State may deem expedient if:

- (a) the Contractor files for protection under the bankruptcy laws;
- (b) an involuntary petition is filed against the Contractor and not removed within 30 days;
- (c) the Contractor becomes insolvent or if a receiver is appointed due to the Contractor's insolvency;
- (d) the Contractor makes a general assignment for the benefit of creditors; or

(e) the Contractor or its affiliates are unable to provide reasonable assurances that the Contractor or its affiliates can deliver the services under this Contract.

Contractor will fix appropriate notices or labels on the Work in Process to indicate ownership by the State. To the extent reasonably possible, materials and Work in Process must be stored separately from other stock and marked conspicuously with labels indicating ownership by the State.

2.240 Performance

2.241 Time of Performance

- (a) Contractor must use commercially reasonable efforts to provide the resources necessary to complete all Services and Deliverables according to the time schedules contained in the Statements of Work and other Exhibits governing the work, and with professional quality.
- (b) Without limiting the generality of **Section 2.241(a)**, Contractor must notify the State in a timely manner upon becoming aware of any circumstances that may reasonably be expected to jeopardize the



timely and successful completion of any Deliverables/Services on the scheduled due dates in the latest State-approved delivery schedule and must inform the State of the projected actual delivery date.

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

(d) Should the State of Michigan issue an Executive Order thru the Office of State Employer mandating furlough days, the furlough days will not be considered a Business Day. The Contractor will not seek additional costs from the State for project schedule extensions to the extent such extensions are needed due to Contractor's inability to complete deliverables and milestones in accordance with the project schedule as a result of the above mentioned furlough days.

2.242 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 been determined; Incident means any interruption in Services.

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

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

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

1. Time period(s) will not apply where Contractor 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 Contractor 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 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 30 day period. Chronic Failure will result in the State's option to terminate the effected individual Service(s) and procure them from a different vendor for the chronic location(s) with Contractor to pay the difference in charges for up to three additional months. The termination of the Service will not affect any tiered pricing levels.

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

(d) All decimals must be rounded to two decimal places with five and greater rounding up and four and less rounding down unless otherwise specified.

2.243 Liquidated Damages

The parties acknowledge that late or improper completion of the Work will cause loss and damage to the State, and that it would be impracticable and extremely difficult to fix the actual damage sustained by the State as a result. Therefore, Contractor and the State agree that if there is late or improper completion of the Work and the State does not elect to exercise its rights under **Section 2.141**, the State is entitled to collect liquidated damages in the amount of \$5,000.00 and an additional \$100.00 per day for each day Contractor fails to remedy the late or improper completion of the Work.

It is acknowledged that an Unauthorized Removal will interfere with the timely and proper completion of the Contract, to the loss and damage of the State, and that it would be impracticable and extremely difficult to fix the actual damage sustained by the State as a result of any Unauthorized Removal. Therefore, Contractor and the State agree that in the case of any Unauthorized Removal in respect of which the State does not



elect to exercise its rights under **Section 2.141**, the State may assess liquidated damages against Contractor as specified below.

For the Unauthorized Removal of any Key Personnel designated in the applicable Statement of Work, the liquidated damages amount is \$25,000.00 per individual if the Contractor identifies a replacement approved by the State under **Section 2.060** and assigns the replacement to the Project to shadow the Key Personnel who is leaving for a period of at least 30 days before the Key Personnel's removal.

If Contractor fails to assign a replacement to shadow the removed Key Personnel for at least 30 days, in addition to the \$25,000.00 liquidated damages for an Unauthorized Removal, Contractor must pay the amount of \$833.33 per day for each day of the 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 30 days of shadowing must not exceed \$50,000.00 per individual.

2.244 Excusable Failure

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

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

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

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

2.250 Approval of Deliverables



2.251 Delivery Responsibilities

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

- (a) Shipment responsibilities - Services performed/Deliverables provided under this Contract must be delivered "F.O.B. Destination, within Government Premises." The Contractor must 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 must examine all packages. The quantity of packages delivered must be recorded and any obvious visible or suspected damage must be noted at time of delivery using the shipper's delivery document(s) and appropriate procedures to record the damage.

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 14 days of receipt. Any damage must be reported to the Contractor within five days of inspection.

2.252 Delivery of Deliverables

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

2.253 Testing

- (a) Before delivering any of the above-mentioned Statement of Work Physical Deliverables or Services to the State, Contractor will first perform all required quality assurance activities to verify that the Physical Deliverable or Service is complete and conforms with its specifications listed in the applicable Statement of Work or Purchase Order. Before delivering a Physical Deliverable or Service to the State, Contractor must certify to the State that (1) it has performed the quality assurance activities, (2) it has performed any applicable testing, (3) it has corrected all material deficiencies discovered during the quality assurance activities and testing, (4) the Deliverable or Service is in a suitable state of readiness for the State's review and approval, and (5) the Deliverable/Service has all Critical Security patches/updates applied.
- (b) If a Deliverable includes installation at a State Location, then Contractor must (1) perform any applicable testing, (2) correct all material deficiencies discovered during the 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 is entitled to observe or otherwise participate in testing.

2.254 Approval of Deliverables, In General

- (a) All Deliverables (Physical Deliverables and Written Deliverables) and Services require formal written approval by the State, according to the following procedures. Formal approval by the State requires the State to confirm in writing that the Deliverable meets its specifications. Formal approval may include the successful completion of Testing as applicable in **Section 2.253**, to be led by the State with the support and assistance of Contractor. The approval process will be facilitated by ongoing consultation between the parties, inspection 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) Before commencement of its review or testing of a Deliverable/Service, the State may inspect the Deliverable/Service to confirm that all components of the Deliverable/Service have been delivered without material deficiencies. If the State determines that the Deliverable/Service has material deficiencies, the State may refuse delivery of the Deliverable/Service without performing any further inspection or testing of



the Deliverable/Service. Otherwise, the review period will be deemed to have started on the day the State receives the Deliverable or the Service begins, and the State and Contractor agree that the Deliverable/Service is ready for use and, where applicable, certification by Contractor according to **Section 2.253**.

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

(e) If, after three opportunities (the original and two repeat efforts), the Contractor is unable to correct all deficiencies preventing Final Acceptance of a Deliverable/Service, the State may: (i) demand that the Contractor cure the failure and give the Contractor additional time to cure the failure at the sole expense of the Contractor; or (ii) keep the Contract in force and do, either itself or through other parties, whatever the Contractor has failed to do, and recover the difference between the cost to cure the deficiency and the contract price plus an additional sum equal to 10% of the cost to cure the deficiency to cover the State's general expenses provided the State can furnish proof of the general expenses; or (iii) terminate the particular Statement of Work for default, either in whole or in part by notice to Contractor provided Contractor is unable to cure the breach. Notwithstanding the foregoing, the State cannot 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 the process reveals deficiencies in or problems with a Deliverable/Service in a sufficient quantity or of a sufficient severity that renders continuing the process unproductive or unworkable. If that happens, the State may stop using the Service or return the applicable Deliverable to Contractor for correction and re-delivery before resuming the testing or approval process.

2.255 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 (and if the Statement of Work does not state the State Review Period, it is by default five Business Days for Written Deliverables of 100 pages or less and 10 Business Days for Written Deliverables of more than 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 before its submission to the State. The State agrees to notify Contractor in writing by the end of the State Review Period either stating that the Deliverable is approved in the form delivered by Contractor or describing any deficiencies that must be corrected before approval of the Deliverable (or at the State's election, after approval of the Deliverable). If the State notifies the Contractor about deficiencies, the Contractor will correct the described deficiencies and within 30 Business Days resubmit the Deliverable in a form that shows all revisions made to the original version delivered to the State. Contractor's correction efforts will be made at no additional charge. Upon receipt of a corrected Deliverable from Contractor, the State will have a reasonable additional period of time, not to exceed the length of the original State Review Period, to review the corrected Deliverable to confirm that the identified deficiencies have been corrected.

2.256 Process for Approval of Services

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



2.257 Process for Approval of Physical Deliverables

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

2.258 Final Acceptance

Unless otherwise stated in the Article 1, Statement of Work or Purchase Order, "Final Acceptance" of each Deliverable must occur when each Deliverable/Service has been approved by the State following the State Review Periods identified in **Sections 2.251-2.257**. 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.

2.260 Ownership

2.261 Ownership of Work Product by State

The State owns all Deliverables as they are works made for hire by the Contractor for the State. The State owns all United States and international copyrights, trademarks, patents or other proprietary rights in the Deliverables.

2.262 Vesting of Rights

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

2.263 Rights in Data

(a) The State is the owner of all data made available by the State to the Contractor or its agents, Subcontractors or representatives under the Contract. The Contractor will not use the State's data for any purpose other than providing the Services, nor will any part of the State's data be disclosed, sold, assigned, leased or otherwise disposed of to the general public or to specific third parties or commercially exploited by or on behalf of the Contractor. No employees of the Contractor, other than those on a strictly need-to-know basis, have access to the State's data. Contractor will not possess or assert any lien or other right against the State's data. Without limiting the generality of this Section, the Contractor must only use personally identifiable information as strictly necessary to provide the Services and must disclose the information only to its employees who have a strict need-to-know the information. The

Contractor must comply at all times with all laws and regulations applicable to the personally identifiable information.

(b) The State is the owner of all State-specific data under the Contract. The State may use the data provided by the Contractor for any purpose. The State will not possess or assert any lien or other right against the Contractor's data. Without limiting the generality of this Section, the State may use personally identifiable information only as strictly necessary to utilize the Services and must disclose the information only to its employees who have a strict need to know the information, except as provided by law. The State



must comply at all times with all laws and regulations applicable to the personally identifiable information. Other material developed and provided to the State remains the State's sole and exclusive property.

2.264 Ownership of Materials

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

2.270 State Standards

2.271 Existing Technology Standards

The Contractor will adhere to all existing standards as described within the comprehensive listing of the State's existing technology standards at <http://www.michigan.gov/dit>.

2.272 Acceptable Use Policy

To the extent that Contractor has access to the State computer system, Contractor must comply with the State's Acceptable Use Policy, see <http://www.michigan.gov/ditservice>. All Contractor employees must be required, in writing, to agree to the State's Acceptable Use Policy before accessing the State system. The State reserves the right to terminate Contractor's access to the State system if a violation occurs.

2.273 Systems Changes

Contractor is not responsible for and not authorized to make changes to any State systems without written authorization from the Project Manager. Any changes Contractor makes to State systems with the State's approval must be done according to applicable State procedures, including security, access and configuration management procedures.

2.280 Extended Purchasing- Deleted, Not Applicable

2.281 MiDEAL- Deleted, Not Applicable

2.282 State Employee Purchases – Deleted, Not Applicable

2.290 Environmental Provision

2.291 Environmental Provision

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

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

Hazardous Materials:

For the purposes of this Section, "Hazardous Materials" is a generic term used to describe asbestos, ACBMs, PCBs, petroleum products, construction materials including paint thinners, solvents, gasoline, oil, and any other material the manufacture, use, treatment, storage, transportation or disposal of which is regulated by the federal, state or local laws governing the protection of the public health, natural resources or



the environment. This includes, but is not limited to, materials the as batteries and circuit packs, and other materials that are regulated as (1) "Hazardous Materials" under the Hazardous Materials Transportation Act, (2) "chemical hazards" under the Occupational Safety and Health Administration standards, (3) "chemical substances or mixtures" under the Toxic Substances Control Act, (4) "pesticides" under the Federal Insecticide Fungicide and Rodenticide Act, and (5) "hazardous wastes" as defined or listed under the Resource Conservation and Recovery Act.

(a) The Contractor must use, handle, store, dispose of, process, transport and transfer any material considered a Hazardous Material according to all federal, State and local laws. The State must provide a safe and suitable environment for performance of Contractor's Work. Before the commencement of Work, the State must advise the Contractor of the presence at the work site of any Hazardous Material to the extent that the State is aware of the Hazardous Material. If the Contractor encounters material reasonably believed to be a Hazardous Material and which may present a substantial danger, the Contractor must immediately stop all affected Work, notify the State in writing about the conditions encountered, and take appropriate health and safety precautions.

(b) Upon receipt of a written notice, the State will investigate the conditions. If (a) the material is a Hazardous Material that may present a substantial danger, and (b) the Hazardous Material was not brought to the site by the Contractor, or does not result in whole or in part from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer

of Hazardous Materials, the State must order a suspension of Work in writing. The State must proceed to have the Hazardous Material removed or rendered harmless. In the alternative, the State must terminate the affected Work for the State's convenience.

(c) Once the Hazardous Material has been removed or rendered harmless by the State, the Contractor must resume Work as directed in writing by the State. Any determination by the Michigan Department of Community Health or the Michigan Department of Environmental Quality that the Hazardous Material has either been removed or rendered harmless is binding upon the State and Contractor for the purposes of resuming the Work. If any incident with Hazardous Material results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Work will not be counted in time as mutually agreed by the parties.

(d) If the Hazardous Material was brought to the site by the Contractor, or results in whole or in part from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Material, or from any other act or omission within the control of the Contractor, the Contractor must bear its proportionate share of the delay and costs involved in cleaning up the site and removing and rendering harmless the Hazardous Material according to Applicable Laws to the condition approved by applicable regulatory agency(ies).

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

Refrigeration and Air Conditioning:

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

Environmental Performance:

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

**2.300 Other Provisions****2.301 Forced Labor, Convict Labor, Forced or Indentured Child Labor, or Indentured Servitude Made Materials**

Equipment, materials, or supplies, that will be furnished to the State under the Contract must not be produced in whole or in part by forced labor, convict labor, forced or indentured child labor, or indentured servitude.

“Forced or indentured child labor” means all work or service: exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or performed by any person under the age of 18 under a contract the enforcement of which can be accomplished by process or penalties.



**Attachment I – Special Working Rules
DEPARTMENT OF CORRECTIONS - INSIDE PRISON**

The Work comprising this Project will be performed at a State Correctional Facility and the Contractor must comply with the following special working rules, adopted December 1, 1975, as amended by the Michigan Department of Corrections.

1. Contractor must submit a list of names, driver's license numbers, birth dates, and additional information when requested, on all persons to be employed on the Project site. Such list must be submitted directly to the Warden's office or to the Correctional Facility authority for approval before any person's appearance at the site for Work assignments. These employees will be required to watch an approximately 10-minute video.
2. Contractor will be allowed to work within or on Correctional Facility confines from 7:30 a.m. to 5:00 p.m. No Work must be performed on Saturdays or Sundays without written permission from the State Agency. The State Agency may set other time schedules as discussed during the pre-construction meeting. Consideration will be given to using two shifts to minimize the length of time an area is out of service.
3. All employees of the Contractor may be subject to individual body search each time they enter the Correctional Facility. Packages or containers of any kind may be opened for inspection. Lunch boxes are not permitted inside the security perimeter. All employees of the Contractor will be required to have legal picture identification card.
4. All trucks and other mobile equipment may be subject to inspection both on arrival and upon departure from the Correctional Facility. Absolutely no fraternization between inmates and Contractor's employees will be tolerated. Any attempts at same by inmates are to be reported immediately to Correctional officers.
5. No requests for visits with inmates will be granted to Contractor's employees except where such visiting originated prior to award of the Contract.
6. Contractor must follow rules pertaining to foot and vehicle traffic as established by the Correctional Facility. Contractor must observe all off-limit restricted areas beyond which no unauthorized personnel may trespass. The Contractor and their workers may not leave the assigned Work areas.
7. All heavy power tools and machinery such as air hammers, acetylene tanks, etc., must be removed from the inside of the security perimeter, through the assigned gate by 3:30 p.m., which is the closing time for the gate. Such heavy equipment as power shovels, compressors, welding machines, etc., can remain inside but must be immobilized in an acceptable manner. Cutting torches and cutting tools in general must be securely locked where and as directed by the Agency, and checked out as needed. No tools, small pipe, copper or wire must remain on the site overnight unless acceptably locked inside shanties or tool chests.
8. There will be no exchange, loaning or borrowing of tools, equipment or manpower between Correctional Facility personnel and the Contractor.
9. The assigned gate through which materials, equipment and vehicles must be transported will be opened upon request between the hours of 8:00 a.m. to 3:30 p.m., or as determined by agreement with facility operations.
10. Sanitary facilities will be assigned by the Correctional Facility authorities for the use of the Contractor's employees, unless noted otherwise in Section 01500 1.C.
11. Guards may be assigned to the working areas. They may inspect and search areas under construction at any time, including the Contractor's equipment.
12. Areas for employee parking, tool boxes, etc., must be assigned only by Correctional Facility authorities on the site. Remove all firearms, weapons, alcoholic beverages, drugs, medicines or explosives from vehicles before entering Facility property. Lock vehicles when not attended.
13. Accidents - The Correctional Facility infirmary is not available to Contractor's employees.
14. The Warden of this Correctional Facility retains the right to revise these "Special Working Conditions" as required to meet Facility needs.

*****NOTE TO THE PROFESSIONAL:** Contact the State agency with regard to available areas for storage of tools and materials and for the fabrication of components.



DEPARTMENT OF CORRECTIONS - OUTSIDE PRISON

The Work comprising this Project will be performed at a State Correctional Facility and the Contractor must comply with the following special working rules, adopted December 1, 1975, as amended by the Michigan Department of Corrections.

1. Contractor must submit a list of names, driver's license numbers, birth dates, and additional information when requested, on all persons expected to be employed on the Project site. Such list must be submitted directly to the Warden's office or to the Correctional Facility authorities for approval before any person's appearance at the site for Work assignments. These employees will be required to watch and approximately 10-minute video.
2. Contractor will be allowed to work within or on Correctional Facility confines from 7:00 a.m. to 5:00 p.m. No Work must be performed on Saturdays or Sundays without written permission from the State Agency. The State Agency may set other time schedules as discussed during the pre-construction meeting. Consideration will be given to using two shifts to minimize the length of time an area is out of service.
3. All truck and other mobile equipment may be subject to inspection both on arrival and upon departure from the Correctional Facility. Absolutely no fraternization between inmates and Contractor's employees will be tolerated. Any attempts at same by inmates are to be reported immediately to correctional officers.
4. No requests for visits with inmates will be granted to Contractor's employees except where such visiting originated before award of the Contract.
5. Contractor must follow rules pertaining to foot and vehicle traffic strictly in accordance with and as established by the Correctional Facility. Contractor must observe all off-limit restricted areas beyond which no unauthorized personnel may trespass. The Contractor and their workers may not leave the assigned Work areas.
6. Heavy equipment such as bulldozers and power shovels must be locked or be immobilized in an acceptable manner, when not in use. No tools, small pipe, copper or wire will be allowed to remain on the site overnight unless acceptably locked inside shanties or tool chests. There will be no exchange, loaning or borrowing of tools, equipment or manpower between Correctional Facility personnel and the Contractor.
7. Sanitary facilities will be assigned by the Correctional Facility authorities for the use of the Contractor's employees, unless noted in Section 01500 1.C.
8. Prison Guards may be assigned to the working areas. They may inspect and search areas under construction at any time, including the Contractor's equipment.
9. Areas for employee parking, tool boxes, etc., must be assigned only by Correctional Facility authorities on the site. Remove all firearms, weapons, alcoholic beverages, medicines or explosives from vehicles before entering Facility property. Lock vehicles when not attended.
10. Accidents - The Correctional Facility infirmary is not available to Contractor's employees.
11. The Warden of this Correctional Facility retains the right to revise these "Special Working Conditions" as required to meet Facility needs.
12. Cooperation with Owner will be required in establishing the sequencing of the work areas to minimize disruption of Facility operations.



Article 6 – ARRA Terms and Conditions

SOLICITATION & AWARD TERMS FOR ASSISTANCE AGREEMENTS THAT INCLUDE FUNDS UNDER THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009, PUBLIC LAW 111-5

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6.001 Definitions

Definitions:

ARRA means the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5.

6.010 Reporting & Registration Requirements (Section 1512)

These reporting requirements are a material obligation of the Contract. Contractor's failure to comply may be a material basis for termination under Section 2.150, Termination by the State.

On July 1, October 1, January 1, and April 1, Contractor must provide the following information to the State:

- (A) The name of the project or activity;
- (B) A description of the project or activity;
- (C) An evaluation of the completion status of the project or activity;
- (D) An estimate of the number of jobs created and the number of jobs retained by the project or activity; and
- (E) Detailed information on any subcontracts awarded by Contractor to include the data elements required to comply with the Federal Funding Accountability and Transparency Act of 2006 (P.L. 109-282), as prescribed by the Director of OMB as follows:

For all subcontracts that meet any of the following qualifications, Contractor must provide the total number and total monetary amount of subcontracts:

- (1) valued at less than \$25,000;
- (2) awarded to an individual; or
- (3) awarded to an entity other than an individual which had less than \$300,000 in gross income in the previous tax year.

For all other subcontracts, Contractor must provide:

- (1) Subcontractor identifying information:
 - (a) Subcontractor's nine digit Data Universal Numbering System (DUNS) number; or
 - (b) U.S. Central Contractor Registration plus 4 extended DUNS number.
- (2) Award number or other identifying number assigned by Contractor.
- (3) Subcontractor's Legal Name as registered in the U.S. Central Contractor Registry.
- (4) Subcontractor's location, including:
 - (a) Physical location as listed in the Central Contractor Registry; and
 - (b) United States Congressional District (format of MI-002 where the Michigan 2nd Congressional District is the location).
- (5) Subcontractor's entity type (choose one):
 - (a) State government
 - (b) County government
 - (c) City or Township government
 - (d) Regional organization
 - (e) Independent School District
 - (f) Public/State-controlled institution of higher education
 - (g) Federally recognized Indian/Native American Tribal government
 - (h) Non-Federally recognized Indian/Native American Tribal government
 - (i) Indian/Native American Tribally designated organization
 - (j) Non-profit with 501(c)(3) IRS status (not institution of higher education)
 - (k) Non-profit without 501(c)(3) IRS status (not institution of higher education)
 - (l) Private institution of higher education
 - (m) Individual
 - (n) For-Profit organization (not small business)
 - (o) Small business
 - (p) Hispanic-serving institution
 - (q) Historically Black Colleges and Universities (HBCUs)
 - (r) Tribally Controlled Colleges and Universities (TCCUs)



- (s) Alaska Native and Native Hawaiian serving institutions
 - (t) Non-domestic (non-US) entity
 - (u) Other
- (6) Cumulative amount of cash disbursed to subcontractor as of reporting period end date.
 - (7) Total amount of cash to be disbursed by the end of the subcontract.
 - (8) Date that the subcontract was awarded.
 - (9) Date that the subcontractor's contract is scheduled to be completed.
 - (10) Primary performance location.
 - (11) The names and Total Compensation of the 5 most highly compensated officers of the entity if the public does not have access to information about the compensation of the senior executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 or section 6104 of the Internal Revenue Code of 1986, and the subcontractor in the preceding Federal fiscal year received:
 - (a) 80 percent of more of its annual gross revenues from Federal awards; and
 - (b) \$25,000,000 or more in annual gross revenues from Federal awards.

For the purposes of this provision, "Total Compensation" means the cash and non-cash dollar value earned by the executive during the subcontractor's past fiscal year, including the following:

- (a) Salary and bonus.
- (b) Awards of stock, stock options, stock appreciation rights. Use the dollar value used for financial statement reporting purposes with respect to the fiscal year.
- (c) Earnings for services under non-equity incentive plans. Do not include group life, health, hospitalization, medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
- (d) Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
- (e) Above-market earnings on deferred compensation which are not qualified.
- (f) Other compensation, including severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property if the value for the executive exceeds \$10,000.00.

6.020 Buy American Requirement (Section 1605)

Definitions as used in this section:

- (A) *Designated Country* means:
 - (1) a World Trade Organization Government Procurement Agreement country: Aruba, Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, and United Kingdom; or
 - (2) a Free Trade Agreement (FTA) country: Australia, Chile, and Singapore.
- (B) *Designated Country Good* is iron, Steel, or a Manufactured Good (other than construction-grade steel, motor vehicles, and coal) that:
 - (1) is wholly the growth, product or manufacture of a Designated Country; or
 - (2) in the case of a Manufactured Good that consists in whole or in part of materials from another country, has been substantially transformed in a Designated Country into a new and different Manufactured Good distinct from the materials from which it was transformed.
- (C) *Domestic Good* is iron, Steel, or a Manufactured Good that:
 - (1) is wholly the growth, product or manufacture of the United States; or
 - (2) in the case of a Manufactured Good that consists in whole or in part of materials from another country, has been substantially transformed in the United States into a new and different Manufactured Good distinct from the materials from which it was transformed. There is no



requirement with regard to the origin of components or subcomponents in Manufactured Goods or products, as long as the manufacture of goods occurs in the United States.

- (D) *Federal Agency* means the department or agency of the federal government that awarded funds to the State of Michigan from the ARRA which finances the project described in this RFP.
- (E) *Foreign Good* is iron, Steel, or a Manufactured Good that is not a Domestic or Designated Country Good.
- (F) *Manufactured Good* means a good brought to the construction site for incorporation into the building or work that has been--
 - (1) processed into a specific form and shape; or
 - (2) combined with other raw material to create a material that has different properties than the properties of the individual raw materials.
- (G) *Public Building* and *Public Work* means a public building of, and a public work of, a governmental entity (the United States; the District of Columbia; commonwealths, territories, and minor outlying islands of the United States; State and local governments; and multi-State, regional, or interstate entities which have governmental functions). These buildings and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.
- (H) *Steel* means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.
- (I) *United States* means the 50 States, the District of Columbia, and outlying areas.
- I. Required use of Domestic Goods
 - (A) Under ARRA section 1605, only Domestic Goods will be used in the construction, alteration, maintenance, or repair of a Public Building or Public Work, unless an exception applies. This requirement does not apply to the Domestic Goods listed:

None
 - (B) A Contractor requesting a determination regarding the inapplicability of ARRA section 1605 must submit the request to the Federal Agency with adequate time to allow a determination. A Contractor must provide a copy of this request to the DMB Buyer. The Federal Agency is the sole entity authorized to make determinations regarding the inapplicability of ARRA section 1605.
 - (C) The Federal Agency may except other iron, Steel, or Manufactured Goods (other than construction-grade steel, motor vehicles, and coal) if it determines that:
 - (1) the cost of Domestic Goods would be unreasonable. The cost of Domestic Goods used in the project is unreasonable when the cumulative cost of such material will increase the cost of the overall project by more than 25 percent;
 - (2) the iron, Steel, or Manufactured Good (other than construction-grade steel, motor vehicles, and coal) is not produced or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or
 - (3) the application of ARRA section 1605 would be inconsistent with the public interest.
 - (D) Regardless of the status of any determination request, any Contractor that requests to use non-Domestic Goods must include in its determination request:
 - (1) a description of the iron, Steel, or Manufactured Goods;
 - (2) unit of measure;
 - (3) quantity;



- (4) cost;
 - (5) time of delivery or availability;
 - (6) location of the construction project;
 - (7) name and address of the proposed supplier; and
 - (8) a detailed justification of the reason for use of non-Domestic Goods.
- (E) If the Contractor proposes the use of non-Domestic Goods, the Contractor must submit an alternate proposal based on the use of equivalent Domestic Goods. If an alternate proposal is submitted, the Contractor must submit a separate cost comparison table similar to the DOMESTIC AND NON-DOMESTIC GOODS COST COMPARISON table.
- (F) A request based on the unreasonable cost of a Domestic Good must include a survey of suppliers and a completed cost comparison table listed below for each item. The Contractor must list the name, address, telephone number, e-mail address, and contact person for each supplier surveyed. The Contractor must also attach a copy of each supplier's response; if the response is oral, the Contractor must attach a summary. The Contractor may include other supporting information.

DOMESTIC AND NON-DOMESTIC GOODS COST COMPARISON

Description of Goods	Unit of measure	Quantity	Cost (dollars)*
Item 1:			
Domestic Goods.....			
non-Domestic Goods.....			
Item 2:			
Domestic Goods.....			
non-Domestic Goods.....			

**Include all delivery costs to the construction site.*

- (G) If the Federal Agency denies an exception requested under ARRA section 1605, the State will pursue the Contractor's proposal based on the use of Domestic Goods.
- (H) Any request under subsection (b) submitted must explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before the contract was awarded. If the Contractor does not submit a satisfactory explanation, the Federal Agency does not need to make a determination.
- (I) If the Federal Agency determines after the contract award that an exception to ARRA section 1605 or the Buy American Act applies, and the agency and the Contractor negotiate adequate consideration, the agency will modify the contract to allow use of the non-Domestic Goods. However, when the basis for the exception is the unreasonable cost of a Domestic Good, adequate consideration must not be less than the differential established in the DOMESTIC AND NON-DOMESTIC GOODS COST COMPARISON table.
- (J) ARRA section 1605 does not apply to equipment or tools which are not incorporated into the building or work.

6.030 Prevailing Wages

Under ARRA section 1606, wages paid to all laborers and mechanics employed by the Contractor and each subcontractor on projects funded in whole or in part with funds available under ARRA must not be less than prevailing wages on projects of a similar character in the locality, as determined by the United States Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40 of the United States Code. The Secretary of Labor's determination regarding the prevailing wages applicable in Michigan is available at <http://www.gpo.gov/davisbacon/mi.html>. This provision supersedes section 2.204, Wage Rate Requirements.

6.040 Inspection & Audit of Records

In addition to the requirements of Article 2:

- (A) Contractor must permit both the United States Comptroller General or its representative and the United States Inspector General or its representative to:



- (1) examine any records that directly pertain to, or involve transactions relating to, this contract; and
- (2) interview any officer or employee of the Contractor or any of its subcontractors, regarding the activities funded with funds appropriated or otherwise made available by the ARRA.
- (B) This provision must be included in all subcontracts.
- (C) Failure to comply with subsection (a) or (b) is considered a material breach and may result in the termination of the Contract.

6.050 Whistle Blower Protection for Recipients of Funds

Contractor must post notice of an employee's rights and remedies for whistleblower protections under ARRA section 1553. Contractor must include this section in all subcontracts.

6.060 Funding of Programs

Under 2009 PA 7, Section 209, this Contract is supported with temporary federal funds made available by the ARRA. The programs supported with the temporary federal funds will not be continued with state financed appropriations once the temporary federal funds are expended.

6.070 Fixed Price- Competitively Bid

Contractor must, to the maximum extent possible, award subcontracts as fixed-price contracts through competitive bid procedures.

6.080 Reserved

6.090 Publication

Contractor must identify projects supported by the ARRA by including the appropriate emblems as the State may require.

6.100 Reserved

6.110 Non- Discrimination

In addition to the requirements of Article 2, Contractor must comply with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and other civil rights laws applicable to recipients of Federal financial assistance.

6.120 Prohibition on Use of Funds

Funds paid to the Contractor must not be used for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

6.130 False Claims Act

Contractor must promptly refer to an appropriate federal inspector general any credible evidence that a principal, employee, agent, contractor, sub-grantee, subcontractor, or other person has submitted a false claim under the False Claims Act, 31 U.S.C. 3729, or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving the ARRA.

6.140 Reserved

6.150 Job Opportunity Posting Requirements

Contractor shall post notice of job opportunities funded by this Contract in the Michigan Talent Bank, www.michworks.org/mtb.