

STATE OF MICHIGAN  
 DEPARTMENT OF MANAGEMENT AND BUDGET  
 OFFICE OF PURCHASING  
 P.O. BOX 30026, LANSING, MICHIGAN 48909

CONTRACT AGREEMENT NO. 0144  
 between  
 THE STATE OF MICHIGAN  
 and

NAME & ADDRESS OF CONTRACTOR <b>Integrated Systems Solutions Corp. (56222)</b> <b>One Michigan Avenue</b> <b>P. O. Box 30116</b> <b>Lansing, MI 48909</b>		TELEPHONE <b>(517) 377-3900</b>
		FEDERAL I.D. NUMBER
		BUYER Unit 9 <i>M. Tanner</i> <b>Michael Tanner</b>
COMMODITY #7099-0000 <b>MICHIGAN ADMINISTRATIVE INFORMATION NETWORK (MAIN) TECHNOLOGY SERVICES</b> <b>DEPARTMENT OF MANAGEMENT AND BUDGET</b>		BID LIST #9893
CONTRACT PERIOD 22 Months From: <b>December 1, 1993</b>		To: <b>September 30, 1995</b>
TERMS <b>Net 30 Days</b>	SHIPMENT <b>As Required</b>	
F.O.B. <b>Delivered</b>	SHIPPED FROM <b>N/A</b>	
MINIMUM DELIVERY REQUIREMENTS <b>N/A</b>		
MISCELLANEOUS INFORMATION:  <b>Estimated Value: \$69,213,188.00</b> <b>Extended Purchasing: No</b>  <b>Contract for Michigan Administrative Information Network (MAIN) Technology Services for the Department of Management and Budget in accordance with the attached terms, conditions, schedules and attachments.</b>		

THIS IS NOT AN ORDER: This contract agreement is awarded on the basis of our inquiry bearing the Bid No. 93-AR0044. A Purchase Order Form will be issued only as the requirements of the State Departments are submitted to the Office of Purchasing. Orders for delivery may be issued directly by the State Departments through the issuance of a Departmental Purchase Order/Contract Release Form.

All terms and conditions of the request for quotation or request for proposal are made a part hereof.

FOR THE CONTRACTOR:

FOR THE STATE:

*Signed at Red Tab - Page 77*

\_\_\_\_\_  
 Firm Name

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

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

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 Signature

\_\_\_\_\_  
 Name

\_\_\_\_\_  
 Title

\_\_\_\_\_  
 Date



Contract Number: 0144

Contract For Technology Services  
for the MICHIGAN ADMINISTRATIVE INFORMATION NETWORK

Between

The State of Michigan  
Department of Management and Budget

and

Integrated Systems Solutions Corporation

\* \* \* \* \*

December 1, 1993



## Contract for Technology Services

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Contract No. 0144

**CONTRACT FOR TECHNOLOGY SERVICES**

This Contract for Technology Services ("Contract"), effective as of December 1, 1993, is entered into by and between Integrated Systems Solutions Corporation, a Delaware corporation dba ISSC, Inc., with its principal place of business located at 44 South Broadway, White Plains, New York 10601 ("ISSC"), and the Office of Purchasing of the State of Michigan Department of Management and Budget, having an office on the second floor of the Steven T. Mason Building in Lansing, Michigan 48909 (the "State," as defined in Article 4). ISSC is a wholly-owned subsidiary of International Business Machines Corporation, a New York corporation, which has provided the Guaranty attached as Schedule H.

As used in this Contract, "Party" means either ISSC or the State, as appropriate, and the "Parties" means both ISSC and the State. All capitalized terms used in this Contract have the meanings specified in Article 4. The Parties agree that the following terms and conditions will apply to the Services to be provided by ISSC under this Contract in consideration of certain payments to be made by the State:

**RECITALS**

- (A) The State desires to acquire certain data processing, communications, database management and other technology capabilities and services to implement and support Project MAIN. Accordingly, the State has solicited proposals for such services by issuance of the Technology RFP.
- (B) ISSC is a large well-known provider of information and technology services to the private and public sectors. ISSC provides to its customers data center and facilities management; systems development, integration and operations; telecommunications services; database



design and operations; and other information technology services.

- (C) In response to the Technology RFP, ISSC has submitted a proposal to provide the products and services requested by the State in the Technology RFP.
- (D) ISSC represents that, by skill and experience, it is qualified to perform the Services covered by this Contract in an efficient, cost-effective manner, with a high degree of quality and responsiveness, and that it has performed such services for customers similar to the State in size and volume of business. ISSC has further committed to follow a careful and prudent implementation process to support commencement of the Operations Services in an orderly and smooth manner that will not disrupt the delivery of other services to, or systems of, the State.
- (E) In reliance on the foregoing, and after examination of competitive proposals submitted to the State by ISSC and other vendors, the State has selected ISSC to provide the Services to the State.

## **ARTICLE 1. CATEGORIES OF SERVICES, OBJECTIVES AND DEFINITIONS**

### **1.1 Categories of Services.**

- (a) Overview. In general, the Services will be comprised of three different categories of Services, as described below: (i) the Processing Services; (ii) the Internetwork Services; and (iii) the MIDB Services. Each category of Services has two components: first, a Development Project component, and second, after completion of the Development Project, an Operations Services component. The three categories of services, their components and the terminology used in this Contract to refer to them are depicted in the following table.



Service Category	Component	
	Development Project	Operations Services
1. Processing Services	Processing Facilities Set-up	Processing Operations
2. Internetwork Services	Internetwork Development	Internetwork Operations
3. MIDB Services	MIDB Development	MIDB Operations

(b) Processing Services. The "Processing Services" will consist generally of the provision by ISSC to the State of all central Hardware, certain associated peripheral equipment, and the Operating Software for processing the MAIN Application Software, including providing dedicated communications facilities to the Internetwork in Lansing and, until the Internetwork is operational on or about May 1, 1994, to the MAIN Project Facility in downtown Lansing. ISSC will be responsible for all aspects of systems operation and management for the MAIN Application Software, including Workload Scheduling, Print Management, Performance Management, Capacity Management, Change Management, Problem Management, Service Level Management, Data Management, Resource Accounting, and Security Management, as such functions are described in Schedule K and the documents referred to in Schedule A. ISSC must also prepare an overall Disaster Recovery Plan, Disaster Recovery Manual and Disaster Recovery Test Plan. ISSC will perform the Processing Services according to the terms and conditions of this Contract, including Schedule A. ISSC specifically agrees to perform the Processing Operations component of the Processing Services in accordance with the Performance Standards set forth in Schedule B that are applicable to the Processing Services.

(c) Internetwork Services. The "Internetwork Services" will consist generally of ISSC providing all equipment and services to design and establish the Internetwork, and operating the Internetwork through at least September 30, 1995, and thereafter at the option of the



State. The Internetwork will link various departmental and State agency networks and serve as the primary gateway to MAIN, the Personnel Payroll Information System for Michigan (PPRISM) and the Management Information Database (MIDB). The Internetwork Control Center for the Internetwork will be located on State facilities in Lansing. ISSC will also prepare a design of alternative methods for agencies to link to the Internetwork and recommend the best methods. Agencies will be responsible for connecting to the Internetwork and will have the option to contract with ISSC to install all or a portion of the Hardware and Software necessary to achieve such connections. Components of the Internetwork Services include Project Management, the Internetwork, Integrated Network Management System, optional E-Mail Backbone and Software, Dial-Up Facility, State Agency Connections, Security Services, Disaster Recovery and Internetwork Operational Support. Such components are described in the documents referred to in Schedule A and in the Work Plans. ISSC will perform the Internetwork Services according to the terms and conditions of this Contract, including Schedule A. ISSC specifically agrees to perform the Internetwork Operations component of the Internetwork Services in accordance with the Performance Standards set forth in Schedule B that are applicable to the Internetwork Services.

- (d) MIDB Services. The "MIDB Services" will consist generally of ISSC providing the Hardware and Software for a complete Management Information Database to serve as an integral component of MAIN. ISSC will operate and maintain the MIDB at least through September 30, 1995, and for up to three (3) additional two-year extension periods thereafter at the option and election of the State. ISSC may also, on a Change Authorization Order basis, provide assistance to individual State agencies and departments in the design of departmental Executive Information Systems. Components of the MIDB Services include MIDB Server, Relational Database Management System, Management Information Database, Information Access Tools, EIS Development Tools and Executive Information System. Such components are described in the documents referred to in Schedule A



and in the Work Plans. ISSC will perform the MIDB Services in accordance with the terms and conditions of this Contract, including Schedule A. ISSC specifically agrees to perform the MIDB Operations component of the MIDB Services in accordance with the Performance Standards set forth in Schedule B that are applicable to the MIDB Services.

**1.2 Objectives.** The mission of Project MAIN is to develop, implement and operate a fully integrated, automated financial management system for the State. In order to achieve this mission, the State and ISSC have agreed to the following specific goals and objectives for the Services:

- (a) ISSC will design the Services based on open systems industry standards in a manner conducive to instituting changes, enhancements and modifications with a minimum of disruption. Each of the components of the Services will be designed or chosen to meet or exceed the State's requirements specified in the Technology RFP.
- (b) ISSC will use its best efforts to commence the Operations Services component of each category of Services in a manner that will not disrupt the delivery of other services to, or the operation of the other systems of, the State. As of each Commencement Date, ISSC will have taken all necessary and appropriate steps within its control to plan and execute a smooth and orderly commencement of the Operations Services component of each category of Services.
- (c) ISSC will provide and manage the Services for the prices stated in Schedule C and its Attachments in a manner that the State expects will significantly control the State's costs and in a manner that will improve the State's ability to respond to rapidly changing technological environments. ISSC will provide the State with the financial and technological flexibility to allow for material changes in volumes, technology base and services. Specifically, ISSC represents that its solution will meet the following pricing objectives of the State:



- (1) Deliver significant, long-term operational savings to the State;
- (2) Provide predictable charges and easily understood invoices, with no unanticipated price increases over time;
- (3) Be sufficiently flexible to adapt to changing technology and business needs;
- (4) Assure that factors affecting charges to the State will remain within the State's control;
- (5) Be fair and desirable to both Parties;
- (6) Preserve the original economics of this Contract over time;
- (7) Facilitate simple and easy administration and auditing by the State;
- (8) Avoid the need to renegotiate pricing;
- (9) Reflect an appropriate relationship between fixed and variable charges;
- (10) Provide pricing advantages to the State due to economies of scale;
- (11) Provide ISSC with incentives to:
  - (i) use resources efficiently;
  - (ii) implement new technology which will lower charges to the State over time;
  - (iii) continuously improve quality of the Services; and
  - (iv) implement technology that facilitates, rather than constrains, the State's decisions and strategy;



- (12) Provide an equitable allocation between the State and ISSC with respect to cost savings and increased costs resulting from changes in technology and the State's business needs; and
  - (13) Protect the State in the event of unsatisfactory performance by ISSC.
- (d) At all times, ISSC's Services to the State will be of the highest professional caliber, will be performed and delivered through the use of proven and efficient technology, and will employ cost-effective solutions and high quality product offerings. ISSC's performance of the Services will meet or exceed each of the Performance Standards specified in Schedule B. The Parties expect that the Services provided by ISSC will improve over time during the Term based on advances in technology, economies of scale and efficiencies arising from the use of ISSC as a service provider.
- (e) ISSC will work closely and cooperate fully with the State, the Software Contractor and other service or equipment providers of the State to ensure coordination of the Services, including the Hardware platforms and Software operated by ISSC, with other State technology, administrative or management initiatives.
- (f) Upon the expiration or termination of this Contract with respect to any Service for any reason, ISSC will cooperate with and assist the State in transferring responsibility for the Services provided by ISSC relating to such Service to the State or to another vendor selected by the State, with ISSC using its best efforts to avoid disruption in service or degradation in the quality, completeness or responsiveness of the Services during the transition.



**1.3 Construction.** The above provisions of this Article 1 are intended to be a general introduction to this Contract and are not intended to expand the scope of the Parties' obligations under this Contract or to alter the plain meaning of the terms and conditions of this Contract. However, to the extent the terms and conditions of this Contract do not address a particular circumstance or are otherwise unclear or ambiguous, such terms and conditions are to be interpreted and construed so as to give full effect to the goals and objectives set forth in this Article 1.

## **ARTICLE 2. GENERAL TERMS, CONDITIONS AND PROVISIONS**

The following terms, conditions and provisions shall apply to ISSC's (and its Approved Subcontractors') performance of the Services.

### **2.1 Change Requests.**

#### (a) Requests

The State reserves the right to request from time to time any changes to the requirements and specifications of this Contract and the Services to be performed by ISSC under this Contract, including the timing of Deliverables. Examples of change requests include the following:

- (1) System enhancements requested by the State Contract Administrator, including those resulting from the planned study of State agency connection requirements.
- (2) Changes mandated by federal or State legislation.
- (3) Changes in project scope resulting from the design of the Internetwork or the MIDB, or as deemed necessary by the State.
- (4) Requests for specific assistance to be provided to State departments or agencies, generally to be



paid for with funds provided by the requesting department or agency.

- (5) Requests by the State for additional assistance in Project MAIN-related activities.
- (6) Orders by the State for additional Hardware, Software or other products and services consistent with the general scope of this Contract.
- (7) Changes recommended by ISSC and approved by the State.

(b) Procedures

(1) ISSC's Proposal in Response to a Change Request.

- (i) Proposals. Within fifteen (15) days after (A) receipt of a request by the State for any such change with respect to any Development Project, and within forty-five (45) days with respect to any Operations Services, or such other period of time as the Parties may mutually agree to in writing, or (B) ISSC providing notice to the State of any event or condition which ISSC knew or should have known may result in additional compensation for lost efforts pursuant to Section 2.1(d), ISSC shall submit to the State a proposal describing any changes in products, services, timing of delivery, assignment of personnel, and the like, and any associated price adjustment. The price adjustment shall be based on a good faith determination and calculation by ISSC of the additional cost to ISSC in implementing the change request less any savings realized by ISSC as a result of implementing the change request. ISSC's proposal shall describe in reasonable detail the basis for ISSC's proposed price adjustment, including the estimated number of hours by labor category, and the charges for



any materials or products required to implement the change request.

- (ii) Change Authorization Order Rates. To the extent that additional costs or cost savings result from an increased or decreased number of labor hours, ISSC shall use the appropriate rates as provided in Schedule C in proposing the price adjustment or, if a labor rate is not specified in this Contract for a particular labor category applicable to the change request, ISSC shall use the contract hourly rate specified in Attachment C-6 to Schedule C for that labor category listed in Attachment C-6 which is most nearly equivalent to the labor category being used.
- (iii) Products and Materials. To the extent that additional cost or cost savings result from a change in required products and materials, ISSC shall obtain any additional products and materials and provide them to the State at:
- (A) the price set forth in the Attachments to Schedules D and E in the case of Hardware and Software listed therein, or
  - (B) in the case of products and materials not listed in the Attachments to Schedules D and E:
    - (1) for items for which ISSC is an authorized reseller, the lowest price at which ISSC sells such products and materials to any customer buying a similar quantity; or
    - (2) for items for which ISSC is not an authorized reseller, the lowest Direct Cost available to ISSC in its own right and not as an agent for another customer, plus a mark-up not to exceed seven percent (7%), except as otherwise specified in this Contract.

Similarly, if the change request is expected to result in a reduction in materials or



products required to perform the services, ISSC's charges shall be reduced by the cost savings resulting from the materials or products eliminated by the change request, determined using the prices at which such materials or products were to have been provided to the State pursuant to the applicable Attachment(s) to Schedule(s) D and/or E.

- (2) If the State accepts ISSC's proposal, it will issue a change authorization order substantially in the form attached as Schedule L referencing ISSC's proposal and signed by the Purchasing Director (a "Change Authorization Order"), and ISSC will implement the change request described therein. ISSC will not implement any change request until a Change Authorization Order has been validly issued. ISSC shall not be entitled to any compensation for implementing any change request or Change Authorization Order except as explicitly provided in an approved Change Authorization Order.
- (3) If the State does not accept ISSC's proposal, the State may:
  - (i) withdraw its change request;
  - (ii) modify its change request, in which case the procedures set forth above will apply to ISSC's response to the modified change request; or
  - (iii) issue a unilateral Change Authorization Order signed by the Purchasing Director, which sets forth what the State considers to be the appropriate price adjustment and schedule for performance for the change request (a "Unilateral Change Authorization Order").
- (4) The price adjustment and schedule for performance set forth in a Unilateral Change Authorization Order will be final and binding unless ISSC initiates the dispute resolution procedures set



forth in Section 2.24 below within thirty (30) days after issuance of the Unilateral Change Authorization Order, in which case the matters in dispute will be resolved in accordance with such dispute resolution procedures. ISSC will be required to use all commercially reasonable efforts to implement a change request described in a Unilateral Change Authorization Order in accordance with the terms of such Unilateral Change Authorization Order, even if the price adjustment and schedule for performance have not been finally determined under the dispute resolution procedures by the requested implementation date.

(c) Additional Services

If the State requests or directs ISSC to perform any service or function that is consistent with and similar to the Services, but which ISSC reasonably and in good faith believes is not included within the scope of ISSC's responsibilities and charges as set forth in this Contract, then, prior to performing such service or function, ISSC shall promptly notify the State in writing that it considers such service or function to be an "Additional Service" for which ISSC should receive additional compensation, specifying the basis for such claim. If ISSC does not so notify the State, ISSC shall have no right to claim thereafter that it is entitled to additional compensation for performing such service or function. If ISSC does so notify the State, then such service or function shall be governed by the change request procedure set forth in Subsection 2.1(b) above.

(d) Compensation for Lost Efforts

If ISSC seeks to claim compensation from the State for additional unanticipated costs incurred by it as a result of providing substantial lost efforts in support of fulfilling its contractual obligations because of the State's failure to perform its material responsibilities under this Contract (such responsibilities to include, but not necessarily to be limited to, performing the obligations listed or described in



Attachment A-2 to Schedule A), then ISSC shall first provide to the State written notice of any such claim of performance failure by the State promptly after the occurrence of the event (performance failure) giving rise to the claim and prior to ISSC incurring any additional costs for substantial lost efforts for which additional recompense from the State will be sought. If ISSC does not timely notify the State, ISSC shall have no right or entitlement to additional compensation from the State for any such unproductive, wasted or Additional Services, functions or the like arising out of or resulting from lost efforts or incurred prior to the submission of such notice. To the extent such notice is provided by ISSC as required herein, any such compensation claim shall be made and governed by the change request procedure set forth in this Section 2.1.

## **2.2 Management, Control, Security and Reporting.**

ISSC agrees that it will perform the Services in accordance with and subject to the terms and conditions set forth in Schedule K relating to management, control, security and reporting in respect of the Services.

## **2.3 Invoicing and Payment.**

### **(a) Introduction**

This Section contains general terms applicable to invoicing and payment for the Services. Schedule C and its Attachments contain specific information about the charges payable to ISSC for performing the Services, and Schedules D, E and F and their Attachments contain prices for certain Hardware, Software and professional services.

### **(b) Development Project Charges**

Specific Payment Deliverables and associated milestone payment installments of the fixed prices for the Internetwork and MIDB Development Projects are set forth in Attachments C-1 and C-2 to Schedule C. Invoices must reflect completed Payment Deliverables,



less any liquidated damages or other set-offs against charges accrued by the invoice date.

(c) Operations Services Charges

The State shall pay ISSC a monthly fee for performing the Operations Services component of each Service category. The monthly fee shall consist of three components: a monthly base charge, an incremental volume charge or credit, as applicable, and a deduction for Service Credits when applicable, all as provided in Schedule C and Attachments C-3 through C-5.

(d) Invoicing and Payment

- (1) ISSC shall invoice the State for milestone payment installments of the fixed prices for the Internetwork and MIDB Development Projects upon the completion and acceptance by the State of each Payment Deliverable listed in Attachment C-1 or C-2, as applicable, contingent on full and complete performance of all obligations of ISSC with respect to such Payment Deliverable and delivery and acceptance by the State of all associated Service Deliverables. Each such invoice shall be accompanied by documentation, in a form and with content satisfactory to the State, evidencing the completion and acceptance by the State of the Payment Deliverable and all associated Service Deliverables.
- (2) ISSC shall invoice the State for each category of Operations Services monthly in arrears (i.e., during the month following the month in which such Operations Services are provided). Each ISSC invoice for Operations Services shall contain or be accompanied by a report in a form and with a content approved by the State (a "Payment Deliverable"), showing the number of units of Operations Services provided by ISSC during the month, the positive or negative difference from each applicable Baseline Range specified in Attachment C-3 to Schedule C, the unit charges or credits, as the case may be, any applicable Ser-



vice Credits and the resulting net increase or reduction, as applicable, to the Monthly Base Charge.

- (3) Properly submitted invoices will be due and payable by the State, in accordance with Michigan law, within forty-five (45) days after receipt, provided the State determines that the Payment Deliverables and associated Service Deliverables covered by the invoice have been properly completed and accepted by the State. The making of payment for such invoices does not constitute a waiver by the State of any right or claim it may otherwise have for latent defects in any Service Deliverables or the Services that were not reasonably discoverable at the time of payment.

(e) Out-of-Pocket Expenses

ISSC acknowledges that the out-of-pocket expenses that ISSC expects to incur in performing the Services (such as, but not limited to, travel and lodging, document reproduction and shipping, and long distance telephone) are included in ISSC's charges and rates set forth in this Contract. Accordingly, ISSC's out-of-pocket expenses are not separately reimbursable by the State unless, on a case-by-case basis for unusual expenses, such as ISSC travel specifically requested by the State, the State has agreed in advance and in writing to reimburse ISSC for such an expense. Such reimbursement will be limited as provided by State travel regulations and guidelines.

(f) Billing Format

Invoices must be submitted by ISSC in the form specified by the State. The invoice will show details as to charges by service component and location at a level of detail specified by the State, which level of detail shall be as reasonably necessary to satisfy the State's accounting and chargeback requirements. At the State's option, and in addition to, and not in lieu of, printed invoices, ISSC may be required by the



State to render invoices via electronic media (e.g., computer tapes, disks or diskettes) ..

(g) Proration

Any periodic charges under this Contract are to be computed on a calendar month basis, and will be prorated for any partial month.

(h) Set-Off

With respect to any amount to be paid to the State by ISSC pursuant to this Contract, the State may, at its option, set-off that amount as a credit against the charges payable to ISSC.

(i) Disputed Charges

The State will pay when due, in accordance with State law, all undisputed charges properly invoiced in accordance with the Contract, but may withhold payment of any particular charges that the State disputes in good faith. The State will notify ISSC in writing of any disputed charges for which the State is withholding payment.

(j) Final Payment

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

(k) Services Covered



For all Services, functions and items provided or to be provided by ISSC (and its subcontractors, if any) under this Contract, the State shall not be obligated to pay any amounts in addition to the charges payable to ISSC under this Contract.

#### **2.4 Most Favored Customer.**

In the event that ISSC's charges to any commercial customer, or to any other federal, state or local governmental entity, which purchases similar levels and types of services on similar terms and conditions from ISSC are more favorable to such commercial customer or other governmental entity than ISSC's charges to the State under this Contract (other than those charges included in the fixed prices that apply to the Internetwork and MIDB Development Projects), ISSC shall immediately notify the State of the same and reduce its charges to the same level as the charges to such commercial customer or other governmental entity. Such reduction in charges shall be retroactive to the date on which the more favorable charges to such commercial customer or other governmental entity became effective. Any failure by ISSC to comply with this Section shall be considered to be a material breach of this Contract. ISSC must furnish the State annually, on or before February 15 of each year of the Term, with a certification of its compliance with this Section, which certification shall be signed by an officer of ISSC.

#### **2.5 Retainage.**

In order to provide assurance that ISSC performs the Internetwork and MIDB Development Projects as promised, the State shall withhold a retainage based on a percentage of each milestone payment due under this Contract for such Development Projects (a "Retainage Pool"). Retainage Pool amounts shall generally be as follows:

- (a) For the Internetwork Development Project

The State shall establish a Retainage Pool of \$200,000 for the performance of the Internetwork Development Project to be funded by withholding twenty percent



(20%) of each milestone payment due under this Contract for such work until the balance is achieved. The Retainage Pool for the Internetwork Development Project will be released upon final acceptance of the fully operational Internetwork as provided in Attachment C-1 to Schedule C.

(b) For the MIDB Development Project

The State shall establish a Retainage Pool of \$200,000 for the performance of the MIDB Development Project to be funded by withholding twenty percent (20%) of each milestone payment due under this Contract for such work until the balance is achieved. The Retainage Pool for the MIDB Development Project will be released upon final acceptance of the fully operational MIDB as provided in Attachment C-2 to Schedule C.

(c) Other Projects

The State will have the right as part of the change request process under Section 2.1 to establish Retainage Pools for any other Development Projects performed by ISSC during the Term of this Contract in such amounts as the State deems appropriate in its reasonable judgment in the context of the project, considering the risks associated with the project.

(d) The amount of any Retainage Pool described in Subsections 2.5(a)-(c) above shall be in addition to, and not in lieu of, any amounts otherwise held by the State pursuant to other terms of this Contract.

## **2.6 Elliott-Larsen Civil Rights Act Fee.**

Public Act 258 of 1992 amends the Elliott-Larsen Civil Rights Act, P.A. 453 of 1976, by requiring the Michigan Department of Civil Rights, in order to defray costs of monitoring businesses for equal employment practices, to assess a fee of 1/20th of one percent (0.0005) of the amount of an award if the contract is \$100,000 or more in value. By signing this Contract, ISSC agrees to pay to the State an amount equal to 1/20th of one percent (0.0005) of ISSC's charges for the applicable payment period prior to any



deductions for liquidated damages or other set-offs against such charges in accordance with procedures established by the State.

## 2.7 Liquidated Damages.

### (a) General

- (1) ISSC acknowledges that it is critical to the overall success of Project MAIN that ISSC meet the Deliverables schedules set forth in this Contract. ISSC also acknowledges that certain work to be performed by third parties and/or by individual State agencies on Project MAIN depends on ISSC furnishing Deliverables on time. Thus, delays by ISSC at any stage of a Development Project could result in substantial delays to the overall project and additional cost to the State even if ISSC were able to furnish subsequent Deliverables on schedule.
- (2) ISSC acknowledges that it is also critical to the overall success of Project MAIN that no Software or Hardware provided by ISSC to the State during the Term of this Contract contains or introduces a software Virus that results in contamination or damage to the State's equipment or its mainframe, network, personal computing or other operating environments, including the hardware or software of any contractor authorized to be connected to the State's computing environments.
- (3) Set forth in Subsection 2.7(b) below are liquidated damages for:
  - (i) failures by ISSC to make timely delivery of certain Deliverables relating to the Development Projects (any such failure being referred to below as a "Late Delivery"),
  - (ii) the removal or reassignment by ISSC, without the State's prior written approval, of any Key Personnel (any such removal or reassign-



ment of Key Personnel being referred to below as an "Unauthorized Removal"), and

- (iii) ISSC introducing a Virus to any software.
- (4) In most cases it would be impractical and extremely difficult to fix the actual amount of damages sustained by the State as a result of any such Late Delivery, Unauthorized Removal or Virus. Therefore, ISSC and the State presume and agree that, in the event of any such Late Delivery, Unauthorized Removal or Virus, the liquidated damages amounts specified below will be a reasonable approximation of the damages that will be suffered by the State as a result thereof. Accordingly, in the event of any such Late Delivery, Unauthorized Removal or Virus, ISSC shall, at the written direction of the State, pay the amount set forth in Section 2.7(b) to the State as liquidated damages, and not as a penalty. Liquidated damages shall be payable within fifteen (15) days after notification of assessment by the State. In its discretion, the State may deduct any liquidated damages assessed by the State from any charges payable to ISSC pursuant to this Contract. No delay by the State in assessing or collecting liquidated damages shall be construed as a waiver of such right.
- (5) For the purpose of determining when liquidated damages are due the State under this Section, the date on which ISSC shall be considered to have delivered a Deliverable to the State is the date on which ISSC delivers the Deliverable to the State in a form that is subsequently determined by the State to meet the acceptance criteria for such Deliverable.
- (6) The State agrees to promptly notify ISSC of any circumstances of which the State becomes aware that the State believes are likely to result in the imposition of liquidated damages against ISSC.



(b) Liquidated Damages Amounts

- (1) ISSC shall pay the State, as liquidated damages, the applicable amount set forth below for each day, up to but not exceeding 180 days, after the applicable delivery date that ISSC fails to deliver any Deliverable set forth below in conformance in all material respects with the specifications therefor. Any delivery date set forth below is subject to change upon mutual written agreement of the Parties.

Processing Services Deliverables		
Deliverable	Delivery Date	Daily Liquidated Damages Amount
Development and Testing Environments	1/1/94, or 45 days after Contract execution, whichever is later	\$ 2,000
Training Environment	4/1/94	\$ 2,000
Production Environment	6/1/94	\$ 2,000



Internetwork Services Deliverables		
Deliverable	Delivery Date	Daily Liquidated Damages Amount
Design Report and Implementation Plan	60 days after Contract Execution	\$10,000
MAIN Internetwork	Within 60 days after approval of Design Report	\$10,000
Individual agency connections, if authorized	Within 15 days after completion dates agreed to in Change Authorization Order	\$ 1,000

MIDB Services Deliverables		
Deliverable	Delivery Date	Daily Liquidated Damages Amount
MIDB ready for preliminary use	5/15/94 or two weeks after scheduled delivery of the Internetwork, whichever is later	\$ 1,000

- (2) ISSC will not commit an Unauthorized Removal of any Key Personnel until the completion and acceptance by the State of all Deliverables to which such Key Personnel are assigned or for which they are responsible, nor shall ISSC fail to make any such Key Personnel available to the State as reasonably requested by the State during the 90-day period immediately following the completion of the Development Project assignment of such person. Removal of Key Personnel for termination of employment with ISSC, for serious illness of the person or a member of his or her family or other reasons beyond the direct control of both the



employee and ISSC shall not be deemed to be an Unauthorized Removal and shall not result in the imposition of liquidated damages. ISSC will pay the State, as liquidated damages, \$100,000 for each occurrence of any such Unauthorized Removal. Such amount shall be in addition to any liquidated damages set forth above for Late Deliveries and shall be payable regardless of whether ISSC meets or fails to meet Deliverables schedules.

- (3) If ISSC introduces a Virus, ISSC will pay the State, as liquidated damages, the following amounts:
  - (i) \$4,000 for each hour of regularly planned and scheduled mainframe computer operation or fraction of an hour in excess of one (1) hour that any mainframe computer function or operation available prior to the introduction of the Virus is unavailable to any significant segment of the State's user community; provided, however, that the liability of ISSC under this Subparagraph (i) for each incidence of a Virus shall not exceed \$250,000 per mainframe affected by such Virus.
  - (ii) \$100 for each hour or any fraction of an hour in excess of one (1) hour for each piece of equipment in the State's network or personal computing environment unable to perform any function or operation which it was able to perform prior to the introduction of the Virus; provided, however, that the liability of ISSC under this Subparagraph (ii) for each introduction of a Virus shall not exceed \$250,000.

The liquidated damages set forth in this Subsection 2.7(b)(3) shall be in addition to ISSC's obligation to remove the Virus from all of the State's operating environments, to restore all operations and functionality in all such operating environments, and to recover or recreate all damaged files, all at no additional charge to the



State. The State may, however, at its option, elect to restore or recreate damaged or lost data files at ISSC's expense, in which event ISSC shall pay the State \$40 for each hour or fraction of an hour multiplied by the total number of staff hours that State's personnel reasonably expend to recover or recreate damaged State data files.

(c) Other Remedies

The assessment and collection of liquidated damages for any Late Delivery, Unauthorized Removal or Virus described above shall not be construed to limit in any way any other legal or equitable remedies of the State for such Late Delivery, Unauthorized Removal or Virus (including, without limitation, the right to terminate this Contract for Cause), except that the State's right to seek actual damages shall be limited as set forth below. The State may seek actual damages for any Late Delivery, Unauthorized Removal or Virus described above (regardless of whether the State terminates this Contract), if in the State's judgment it is possible to fix actual damages for such Late Delivery, Unauthorized Removal or Virus; provided, however, that if the State commences an action or proceeding seeking actual damages for any such Late Delivery, Unauthorized Removal or Virus, the State will be entitled to receive only the amount of actual damages awarded in such action or proceeding (after the exhaustion of all appeals) or agreed to by the State and ISSC in a written settlement agreement. The State may retain any liquidated damages collected for such Late Delivery, Unauthorized Removal or Virus pending final determination in such action or proceeding of the amount of actual damages to which the State is entitled. Such liquidated damages will be applied by the State as a credit against the amount of actual damages to which the State becomes entitled. If the amount of actual damages to which the State becomes entitled is less than the liquidated damages collected by the State for such Late Delivery, Unauthorized Removal or Virus, the State will promptly refund the difference to ISSC.



## **2.8 Accounting Records.**

ISSC will be required to maintain all pertinent financial and accounting records (including time sheets and payroll records, and information pertaining to this Contract and to the services, equipment and commodities provided under this Contract) in accordance with generally accepted accounting principles and other procedures specified by the State. All such financial and accounting records that are necessary to substantiate compliance with the terms and conditions of this Contract shall be made available, upon request, to the Michigan Department of Management and Budget, the State Office of the Auditor General, or any State agency that is receiving any of the Services, or any of their respective designees, at any time during the Contract Term and any extension thereof, and for three (3) years from the expiration or termination date of, and final payment under, this Contract or any extension thereof.

## **2.9 Acceptance of Deliverables.**

### **(a) Acceptance of Written Deliverables**

Within the applicable number of Business Days specified below after receipt of a written Deliverable (other than Software), the State shall review and evaluate such Deliverable, including, when appropriate, presenting the same to the Management Committee, and shall provide ISSC either a written notice of acceptance of the Deliverable or a notice of non-acceptance citing the reasons for non-acceptance and examples of the deficiencies that must be corrected. In instances of a pattern of deficiencies identified by the State, ISSC is responsible for identifying all deficiencies without regard to whether they have been specifically identified by the State. ISSC shall promptly correct all indicated and other deficiencies and resubmit the Deliverable for approval by the State no later than five (5) Business Days after receiving the State's notice. The evaluation period for written Deliverables shall be as follows: (i) five (5) Business Days after delivery to the State by ISSC in the case of a Minor Deliverable; (ii) ten (10) Business Days after delivery to the State by ISSC in the case



of a Major Deliverable; or (iii) fifteen (15) Business Days after delivery to the State by ISSC in the case of a Payment Deliverable.

(b) Acceptance Testing of Hardware and Software Deliverables

Software and Hardware Deliverables to be provided by ISSC under this Contract will require testing and acceptance by the State before the Commencement Date of the applicable Operations Services using such Deliverables. Such Deliverables shall be mutually identified by the Parties in the Work Plans for the Development Projects. The Work Plans will also specify the acceptance test criteria (or the procedures for developing mutually agreed-upon acceptance test criteria that will verify that the Deliverable meets the State's requirements), procedures and acceptance test periods for those Deliverables. Such Deliverables shall undergo acceptance testing in accordance with the applicable Work Plan.

(c) Nonconformance

In the event that an acceptance test for a Deliverable establishes that the Deliverable does not meet the criteria for acceptance, ISSC shall promptly make all necessary corrections to the Deliverable so that it does meet the criteria for acceptance. Upon completion of such corrections, the Deliverable will be subject to retesting to determine whether the previously reported deficiency has been corrected and the whether Deliverable meets the criteria for acceptance. This process will be repeated as necessary until all deficiencies are corrected. If ISSC fails to cause the Deliverable to meet the criteria for acceptance within fifteen (15) calendar days after receiving the State's notification of deficiencies for such Deliverable, or such longer period as the State and ISSC may mutually agree to, the State, at its option, may do any one or more of the following:

- (1) Extend the period of time for ISSC to make corrections.



- (2) Directly or by use of a third party contractor make the necessary corrections or otherwise furnish the Deliverable, and charge to ISSC an amount equal to (A) the costs incurred by the State in making such correction or furnishing the Deliverable itself or through a third party contractor, plus (B) the amount, if any, paid or payable to ISSC for the Deliverable (notwithstanding its deficiencies), less (C) the total amount the State would have been required to pay ISSC for the Deliverable if the Deliverable had conformed in all material respects to its specifications. ISSC shall, at no additional charge to the State, provide all necessary cooperation and assistance in connection with the State or any third party contractor engaged by the State making the necessary corrections to, or otherwise furnishing, the Deliverable.
- (3) Accept the Deliverable with its deficiencies and reduce ISSC's charges for the Deliverable by an amount which the State, in its reasonable judgment, determines reflects the reduced value of the Deliverable.
- (4) Terminate this Contract for Cause, in whole or in part, as of a date specified in a written notice of termination from the State to ISSC with no obligation to provide ISSC any further opportunity to cure.

The remedies set forth above shall be in addition to all other legal and equitable remedies available to the State, including liquidated damages provided for above.

#### **2.10 ISSC Personnel.**

(a) Key Personnel

The State will have the right to approve the assignment and replacement by ISSC of all Key Personnel (listed in Schedule J). Before assigning an individu-



al to any Key Personnel position, ISSC 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 approval.

(b) Replacement of Personnel at the State's Request

The State reserves the right to require ISSC to replace ISSC or ISSC subcontractor employees who the State in the exercise of its reasonable judgment determines to be incompetent, careless, unsuitable or otherwise objectionable, or whose continued use is deemed contrary to the best interests of the State. Before a written request for replacement personnel is issued, it will be discussed by authorized representatives of the State and ISSC. Upon receipt of a written request from an authorized representative of the State, ISSC shall be required to proceed with the replacement. The replacement request will include the desired replacement date and the reason for the request. ISSC shall use its best efforts to effect the replacement in a manner that does not degrade Service quality. This provision will not be deemed to give the State the right to require ISSC to terminate any ISSC employee's employment; it is intended to give the State only the right to require that ISSC discontinue using an employee in the performance of the Services.

(c) Replacement Personnel

Any replacement personnel assigned by ISSC or an ISSC subcontractor to perform the Services shall have qualifications for the assigned position that equal or exceed those of the person being replaced.

**2.11 Assignment.**

- (a) ISSC shall not have the right to assign this Contract, or any of its duties or obligations under this Contract, to any other party (whether by operation of law or otherwise), without the prior written consent of



the State. Any purported assignment in violation of this Section shall be null and void and shall constitute a material breach of this Contract. No permitted assignment shall become effective until the assignee has agreed in writing to be bound by this Contract and to assume the assignor's duties and obligations under this Contract. In the event of such an assignment, the assignor shall remain obligated to the State on this Contract.

- (b) ISSC may not assign the right to receive money due under this Contract without the prior written consent of the Purchasing Director.

## **2.12 Subcontracting.**

- (a) ISSC shall have full responsibility for all of the Services. The State will consider ISSC to be the sole point of contact with regard to all contractual matters, including payment of any and all charges, under this Contract.
- (b) ISSC shall not delegate any duties under this Contract to a subcontractor unless the State Contract Administrator has given written consent to such delegation. Notwithstanding the foregoing, the State expressly initially consents to the Contractor's use of the subcontractors designated in Schedule I as "Approved Subcontractors" in providing the specified Services. The State shall have the right to prior approval of all other subcontractors and to require ISSC to replace Approved Subcontractors found, in the reasonable judgment of the State, to be unacceptable. In any subcontracts entered into by ISSC for the performance of the Services, ISSC shall require the subcontractor, to the extent of the Services to be performed by the subcontractor, to be bound to ISSC by the terms of this Contract and to assume toward ISSC all of the obligations and responsibilities that ISSC, by this Contract, assumes toward the State. The State reserves the right to receive copies of and review all subcontracts, although ISSC may delete or mask any proprietary pricing information contained in such contracts prior to providing them to the State. The



contract management of any subcontractor will be the responsibility of ISSC. All payments to subcontractors or suppliers shall be made by ISSC. The State will not be obligated to direct payments for the Services or products acquired in connection with this Contract other than to ISSC, nor will ISSC be released from having to perform any obligations under this Contract, notwithstanding the fact that a subcontractor may have been engaged by ISSC to perform those obligations.

### **2.13 Audit Rights.**

#### **(a) Access**

ISSC will provide to the State, its auditors (including the State's internal audit staff and the State Auditor), and the State's authorized designees and other representatives, within twenty-four (24) hours after a request made by the State at any time, access to any facility or part of a facility which is used to provide the Services, to ISSC's (and its subcontractors' and agents') personnel, and to all data and records relating to the Services under this Contract. Such access shall be for the purpose of performing audits and inspections of the State's account and its business, to verify the integrity of data owned by the State, to examine the systems that support and transmit that data, and to verify the accuracy of ISSC's billings to the State, including without limitation, to the extent applicable to the Services, audits of (i) practices and procedures, (ii) systems, (iii) general control and security practices and procedures, (iv) disaster recovery and back-up procedures, (v) the efficiency of ISSC's operations, (vi) ISSC's financial and accounting records, and (vii) the performance levels, and the accuracy in reporting performance levels, achieved by ISSC. Notwithstanding anything to the contrary in this Subsection 2.13(a), in the case of audits pertaining primarily to ISSC's billings to the State, access shall be provided not later than the start of the second Business Day after ISSC's receipt of the State's request, and the State shall conduct the audit during business hours. ISSC will provide to



such auditors, inspectors and regulators any assistance that they reasonably require, including installing and operating audit software.

(b) Audit Conference

ISSC will cooperate fully with the State or its designee in connection with the State's audit functions. Following any audit or examination, the State may conduct (in the case of an internal audit), or request its external auditors or examiners to conduct, an exit conference with ISSC to obtain factual concurrence with any issues identified in the review. The State and ISSC agree to develop mutually acceptable operating procedures for the sharing of audit and regulatory findings and reports related to ISSC's operating practices and procedures produced by auditors of the State or ISSC.

**2.14 Compliance with Laws.**

ISSC shall comply with all applicable state, federal, and local laws and ordinances in providing the Services. Without limiting the generality of the foregoing, ISSC must be able to demonstrate compliance with the Federal Tax Reform Act of 1986, Section 1706, amending Section 530 of the Revenue Act of 1978, dealing with issuance of W-2s to common law employees. ISSC is responsible for both federal and State unemployment insurance coverage and standard workers' compensation insurance coverage. ISSC must comply with all federal and state tax laws and withholding requirements. The State will not be liable to ISSC or its employees or subcontractors for any unemployment insurance or workers' compensation coverage or federal or state tax withholding requirements with respect to ISSC's or its Approved Subcontractors' employees. ISSC may be required to demonstrate compliance with such laws at the written request of the Purchasing Director or the State Contract Administrator from time to time.



## **2.15 Disclosure of Litigation.**

### (a) Disclosure

ISSC shall promptly notify the State of any criminal litigation, investigations or proceedings which arise during the Term involving ISSC, or any of ISSC's subcontractors, or any of the foregoing entities' then-current officers or directors. In addition, ISSC shall promptly notify the State of any civil litigation, arbitration or proceeding which arises during the Term, to which ISSC (or any subcontractor hereunder) is a party, and which involves: (i) products and/or services similar to those to be provided to the State under this Contract and which either relates to an amount in excess of \$1,000,000 or might reasonably be expected to adversely affect the viability or financial stability of ISSC or any subcontractor hereunder; (ii) a claim or written allegation of fraud against ISSC or any subcontractor hereunder arising out of their business activities; (iii) a claim or written allegation that ISSC or any subcontractor hereunder violated any federal, state or local statute, regulation or ordinance; or (iv) a dispute between ISSC and another of its clients, or between ISSC and any of ISSC's subcontractors, on a systems development or integration project for which the total price is \$1,000,000 or more. All notices under this Subsection 2.15(a) must be provided to the State within fifteen (15) Business Days of the commencement of any such litigation, investigation, arbitration or other proceeding (collectively, a "Proceeding"). Details of settlements which are prevented from disclosure by the terms of the settlement may be annotated as such. Annually during the Term, on or before February 15 of each year, ISSC shall, after investigation, certify that it is in compliance with this Subsection 2.15(a). With respect to such certification, ISSC may rely on similar good faith certifications of its subcontractors, which certifications shall be available for inspection at the option of the State.



(b) Assurances

In the event that any such Proceeding disclosed to the State pursuant to this Section, or of which the State otherwise becomes aware, during the Term causes the State to be concerned about:

- (1) the ability of ISSC (or a subcontractor hereunder) to continue to perform this Contract in accordance with its terms and conditions, or
- (2) whether ISSC (or a subcontractor hereunder) in performing services for the State is engaged in conduct which is similar in nature to conduct alleged in such Proceeding, which conduct would constitute a breach of this Contract or a violation of Michigan law, regulations or public policy,

then ISSC shall be required to provide the State all reasonable assurances requested by the State to demonstrate that: (A) ISSC and/or its subcontractors hereunder will be able to continue to perform this Contract in accordance with its terms and conditions, and (B) ISSC and/or its subcontractors hereunder have not and will not engage in conduct in performing the Services which is similar in nature to the conduct alleged in such Proceeding.

(c) Failure to Comply

Failure by ISSC to comply with the terms of this Section may constitute a material breach of this Contract.

**2.16 Representations and Warranties.**

- (a) ISSC will perform all of the Services in accordance with high professional standards in the industry.
- (b) ISSC will use adequate numbers of qualified individuals with suitable training, education, experience and skill to perform the Services.



- (c) ISSC will maintain all equipment and software for which it has maintenance responsibilities in good operating condition and will undertake all repairs and preventive maintenance in accordance with the applicable manufacturer's recommendations, and in accordance with the applicable software specifications, as appropriate.
- (d) ISSC will use its best efforts to use efficiently any resources or services necessary to provide any of the Services that are separately chargeable to the State.
- (e) ISSC will use its best efforts to perform the Services in the most cost-effective manner consistent with the required level of quality and performance.
- (f) ISSC will perform the Services in a manner that does not infringe the proprietary rights of any third party.
- (g) ISSC will perform the Services in a manner that complies with all applicable laws and regulations.
- (h) ISSC has duly authorized the execution, delivery and performance of this Contract.
- (i) ISSC has not provided any gifts, payments or other inducements to any officer, employee or agent of the State.
- (j) ISSC will use its best efforts to ensure that no Virus is coded or introduced into the systems used to provide the Services.
- (k) THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.



## 2.17 Insurance.

### (a) Coverage

ISSC shall purchase and maintain insurance at ISSC's expense, or alternatively provide evidence satisfactory to the State of ISSC's ability to self-insure for, at least the following types and amounts of insurance coverage:

- (1) Commercial General Liability Insurance (including premises/operations liability, independent contractors liability, contractual liability, products liability, completed operations liability, broad form property damage liability, personal injury liability and extended bodily injury and death coverage) in a minimum amount of \$5,000,000 per occurrence and \$10,000,000 aggregate combined single limit for bodily injury or death, personal injury or property damage. Such policy shall include a waiver of subrogation endorsement in favor of the State in a form acceptable to the State.
- (2) Workers Compensation Insurance covering ISSC's employees in an amount not less than the limits required by law and Employers Liability Insurance covering ISSC's employees in an amount not less than \$500,000 per occurrence. Such policy shall include a waiver of subrogation endorsement in favor of the State in a form acceptable to the State.
- (3) Professional Liability Insurance issued to and covering the liability of ISSC for any and all errors or omissions committed by ISSC, its subcontractors, agents and employees, in the performance of this Contract. The policy shall have limits of liability of not less than \$10,000,000 per occurrence.
- (4) Fidelity Employee Insurance, including Computer Crime Insurance naming the State as 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 ISSC or its subcontractors, acting alone or in collusion with others, in a minimum amount of \$10,000,000 with a maximum deductible of \$1,000,000.

- (5) Commercial Automobile Liability Insurance including coverage for owned, hired and nonowned vehicles with a combined single limit of \$5,000,000 per occurrence for bodily injury, personal injury and property damage.
- (6) Umbrella Liability Insurance in a minimum amount of \$25,000,000.
- (7) Fire and Personal Property Insurance covering against any loss or damage to the office space used by ISSC for any reason under this Contract, and the equipment, software and other contents of such office space, including without limitation, those contents used by ISSC to provide the Services to the State, up to the replacement value thereof, where such office space and its contents are under the care, custody and control of ISSC. Such policy shall cover all risks of direct physical loss or damage, including without limitation, flood and earthquake coverage and coverage for computer hardware and software. The State shall be endorsed on the policy as a loss payee as its interests appear.

(b) Subcontractors

At the State's request at any time, ISSC shall require any one or more of its subcontractors hereunder to purchase and maintain some or all of the insurance coverage described in Subsection 2.17(a) above in connection with the performance of work by the subcontractors.

(c) Certificates of Insurance and Other Requirements



Before starting to provide the Services, ISSC must furnish to the Purchasing Director certificate(s) of insurance verifying insurance coverage or providing satisfactory evidence of self-insurance as required above (the "Certificates"). The contract number must be shown on each Certificate of insurance. The Certificates of insurance shall contain a provision providing that such insurance shall respond as primary insurance to any insurance carried by the State, shall contain a waiver of subrogation where required above, and shall provide further that the Director of Purchasing shall be given at least twenty (20) days prior written notice (bearing the contract number) of cancellation, nonrenewal or reduction in limit or in scope of coverage of such policies. Each commercial general liability, commercial automobile liability and the first \$25,000,000 of umbrella liability coverage shall include as additional insureds the State and its agents, officers and employees. ISSC shall maintain all required insurance coverage throughout the Term and, in the case of claims made policies, for at least three (3) years following the expiration or termination for any reason of this Contract. The minimum limits of coverage specified above are not intended, and shall not be construed, to limit any liability or indemnity of ISSC under this Contract to any indemnified party or other persons. ISSC shall be responsible for all deductibles with regard to such insurance. If ISSC fails to pay any premium for required insurance as specified herein, or if any insurer cancels or significantly reduces any required insurance without the State's written consent, at the State's election (but without any obligation to do so), the State may pay such premium or procure similar insurance coverage from another company or companies; and at the State's election, the State may deduct the entire cost (or part thereof) from any payment due ISSC, or ISSC shall pay the entire cost (or any part thereof) upon demand by the State.

## **2.18 Indemnification.**

- (a) Patent/Copyright Infringement Indemnity



ISSC shall indemnify, defend and hold harmless the State, its officers, employees and agents from and against all losses, liabilities, damages (including taxes), and all related costs and expenses (including reasonable attorneys' fees and disbursements and costs of investigation, litigation, settlement, judgments, interest and penalties), incurred in connection with any claim, action or proceeding brought against the State by any third party to the extent that such claim, action or proceeding is based on a claim that any Hardware or Software, or the operation of such Hardware or Software, or the use or reproduction of any documentation provided with such Hardware or Software, infringes any United States or foreign patent, copyright, trade secret or other proprietary right of any person or entity, which right is enforceable under the laws of the United States. In addition, should any Hardware or Software, or the operation thereof, become, or in ISSC's opinion be likely to become, the subject of a claim of infringement, ISSC shall, at ISSC's expense, (i) procure for the State the right to continue using such Hardware or Software; or (ii) if such option is not reasonably available to ISSC, replace or modify the same with Hardware or Software, as the case may be, of equivalent function and performance so that it becomes non-infringing; or (iii) if either of the foregoing options is not reasonably available to ISSC, accept the return of such Hardware or Software by the State with appropriate credits to the State against ISSC's charges under this Contract.

(b) Other Indemnities

ISSC shall indemnify, defend and hold harmless the State, its officers, employees and agents from and against all losses, liabilities, damages and claims (including taxes), and all related costs and expenses (including reasonable attorneys' fees and disbursements and costs of investigation, litigation, settlement, judgments, interest and penalties), arising from or in connection with any of the following:

- (1) any claim, action or proceeding brought against the State, by any third party with respect to or



as a result of the breach by ISSC of any representation or warranty made by ISSC in this Contract;

- (2) occurrences that ISSC is required to insure against under Section 2.17 that do not involve a claim, action or proceeding brought against the State by a third party, in an amount equal to the greater of (i) the amount of insurance coverage ISSC is required to provide under Section 2.17 or (ii) the maximum amount of damages recoverable by the State from ISSC under Section 2.19; and any claim, action or proceeding brought against the State by any third party (including, without limitation, employees of the State) with respect to or as a result of any occurrences that ISSC is required to insure against under Section 2.17, without limitation as to amount;
- (3) any claim, action or proceeding brought against the State by any third party (including, without limitation, employees of the State) with respect to or as a result of the death or bodily injury of any person, or the damage, loss or destruction of any real or tangible personal property, in connection with the performance of Services by ISSC, by any of its subcontractors, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable; provided, however, that this indemnification obligation shall not apply to the extent, if any, that such death, bodily injury or property damage is caused solely by the negligence, or reckless or intentional conduct, of the State;
- (4) any claim or proceeding brought against the State by any third party with respect to or as a result of an act or omission of ISSC or any of its subcontractors in its or their capacity as an employer of a person; and
- (5) any breach of ISSC's confidentiality obligations set forth in this Contract.



In any and all claims against the State, or any of its agents or employees, by any employee of ISSC or any of its subcontractors, the indemnification obligation under this Contract shall not be limited in any way by the amount or type of damages, compensation or benefits payable by or for ISSC or any of its subcontractors under worker's disability compensation acts, disability benefits acts, or other employee benefits acts.

(c) Indemnification Procedures

- (1) The procedures set forth below shall apply to all indemnity obligations under this Contract.
- (2) After receipt by the State of notice of the commencement or threatened commencement of any civil, criminal, administrative or investigative action or proceeding involving a claim in respect of which it will seek indemnification, the State shall notify ISSC of such claim in writing. No failure to so notify ISSC shall relieve ISSC of its indemnification obligations except to the extent that ISSC can demonstrate damages attributable to such failure. Within fifteen (15) days following receipt of written notice from the State relating to any claim, but no later than ten (10) days before the date on which any response to a complaint or summons is due, ISSC shall notify the State in writing if ISSC elects to assume control of the defense and settlement of that claim (a "Notice of Election").
- (3) If ISSC delivers a Notice of Election relating to any claim within the required notice period, ISSC shall be entitled to have sole control over the defense and settlement of such claim; provided, however, that: (i) ISSC shall not be so entitled until the Michigan Attorney General provides to ISSC written notice permitting ISSC to have such control; (ii) the State shall be entitled to participate in the defense of such claim and to employ counsel at its own expense to assist in the handling of such claim and to monitor and advise



the State about the status and progress of the Defense; (iii) ISSC shall, at the request of the State, demonstrate to the reasonable satisfaction of the State ISSC's financial ability to carry-out its defense and indemnity obligations under this Contract; (iv) ISSC shall periodically advise the State about the status and progress of the defense and shall obtain the prior written approval of the State before entering into any settlement of such claim or ceasing to defend against such claim, which approval shall not be unreasonably withheld; and (v) to the extent that any principles of Michigan governmental or public law may be involved or challenged, the State shall have the right, at its own expense, to control the defense of that portion of such claim involving the principles of Michigan governmental or public law. Notwithstanding the foregoing, the State may retain control of the defense and settlement of a claim if the State, in its sole discretion, determines that it is in the best interest of the State to do so. Any determination relinquishing to ISSC the control over the defense and settlement of a claim may be rescinded by the State at any time during the defense and settlement of such claim, at which point the State shall assume the control of the defense and settlement of such claim. The Contractor's indemnification obligations under this Section 2.18 shall not extend to any losses, liabilities, damages or claims (including taxes), and all related costs and expenses that the Contractor can reasonably demonstrate would not have been incurred but for the State's election to retain or retake control over the defense and settlement of a claim.

- (4) If ISSC does not deliver a Notice of Election relating to any claim of which it is notified by the State as provided above, the State shall have the right to defend the claim in such manner as it may deem appropriate, at the cost and expense of ISSC. ISSC shall promptly reimburse the State for all such costs and expenses.



## 2.19 Liability.

IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR INDIRECT OR CONSEQUENTIAL DAMAGES, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. For all other damages, a Party's maximum aggregate liability shall be limited as follows:

- (a) With regard to damages arising out of the Internetwork or MIDB Development Projects, each Party's maximum aggregate liability shall be limited to an amount equal to the total aggregate amount to be paid by the State for both such Development Projects; and
- (b) With regard to damages arising out of Operations Services and/or other work performed under this Contract which is not described in Subsection 2.19(a) above, each Party's maximum aggregate liability shall be limited to an amount equal to the total amount of ISSC's charges for all such Operations Services and other work for the twelve (12) calendar months immediately preceding the event that gives rise to such damages or, if the event giving rise to such damages occurs during the first twelve (12) months after the Commencement Date of any of the Operations Services, Five Million Dollars (\$5 million).
- (c) Notwithstanding the foregoing provisions of this Section 2.19, the foregoing limitations of liability, both with respect to claims for indirect or consequential damages, and as to a Party's maximum liability, shall not limit a Party's liability for claims arising out of its gross negligence or willful misconduct, its unlawful intentional termination without Cause of this Contract or its material breach of its obligation to provide continued performance in accordance with Section 2.24(d) or termination assistance in accordance with Section 2.22(f), and shall furthermore not limit ISSC's indemnification obligations, responsibilities and liabilities to the State, as set forth in Section 2.18, with respect to third party claims, actions and proceedings brought against the State.



## **2.20 Intellectual Property Rights.**

### **(a) Rights in Data**

Except with respect to any Third-Party Software, the State will be and remain the owner of all data (including the Work Product) provided to the State by ISSC or its agents, contractors or representatives pursuant to this Contract. ISSC will not use the data for any purpose other than providing the Services, nor will any part of the data be disclosed, sold, assigned, leased or otherwise disposed of to third parties or commercially exploited by or on behalf of ISSC. ISSC will not possess or assert any lien or other right against the data.

### **(b) Ownership of Work Product**

The State will own all Work Product developed by ISSC or any of ISSC's subcontractors under this Contract, all such Work Product being considered a work made for hire. If any Work Product is not considered a work made for hire under applicable law, ISSC irrevocably assigns to the State, without additional consideration, all of ISSC's right, title and interest in such Work Product, including all U.S. and foreign patents, copyrights and trade secrets. With regard to work performed by ISSC's subcontractors, ISSC will require that all agreements with its subcontractors provide for the irrevocable assignment of all rights in all Work Product of such subcontractors to the State, without additional consideration. ISSC shall give the State or its designee, without additional charge, all assistance reasonably requested by the State to perfect the State's ownership of all Work Product, including the execution and delivery of documents assigning title to such Work Product to the State. ISSC shall not publish or attempt to transfer to third parties any Work Product without the State's prior written approval.



(c) Preexisting Materials

Neither ISSC nor any of its subcontractors shall incorporate any preexisting materials into a Work Product that will be provided to the State or use any preexisting materials to produce a Work Product if such preexisting materials will be needed by the State in order to use the Work Product unless (i) such preexisting materials and their owners are identified to the State in writing and (ii) such preexisting materials are either readily commercially available products for which ISSC or its subcontractor, as the case may be, will obtain a license in the name of the State or are materials that ISSC or its subcontractor, as the case may be, has the right to license to the State and licenses to the State on terms and conditions acceptable to the State prior to using such preexisting materials to perform the Services.

(d) MAIN Application Software License

ISSC and its subcontractors will be granted a non-exclusive license during the Term of this Contract to use the MAIN Application Software solely for the purpose of providing the Services. ISSC and its subcontractors will not have any other rights to or interest in the MAIN Application Software.

(e) General Skills

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



(f) Software Terms

(1) Operating Software

All Operating Software shall be readily commercially available software used without modification by ISSC. ISSC may not use any Operating Software that does not meet this condition to perform the Services unless, prior to first using such Operating Software, ISSC grants to the State or its designee, at no additional charge, a perpetual, fully paid-up license to use such Operating Software solely for the purpose of conducting the State's business, subject to reasonable and customary license terms and conditions acceptable to the State in its reasonable discretion. If ISSC procures under this Contract a license for Operating Software to be used solely to perform the Services, ISSC agrees to obtain such license in the name of the State if the State is permitted to grant ISSC the right to use such Operating Software solely to provide Services to the State during the Term of this Contract. In such event, the State agrees to grant to ISSC, at no charge, but subject to customary confidentiality and other license terms and conditions, the right to use such Operating Software during the Term of this Contract solely to provide the Services to the State.

(2) Applications Software

(i) The State agrees to grant to ISSC at no charge, subject to customary confidentiality and other license terms and conditions, the right to use the MAIN Application Software and, to the extent the State is permitted to do so, any other application software which ISSC is not required to provide under this Contract but which the State requires ISSC to use in order to provide the Services, solely to provide such Services to the State during the Term of this Contract. ISSC acknowledges that in no event will it have the right to



make changes in the MAIN Application Software without the prior written authorization of the State.

- (ii) All Application Software provided by ISSC that is not owned by the State shall be readily commercially available software used without modification by ISSC. ISSC may not use any Application Software that does not meet this condition to perform the Services unless, prior to first using such Application Software, ISSC grants to the State or its designee, at no additional charge, a perpetual, fully paid-up license to use such Application Software solely for the purpose of conducting the State's business, subject to reasonable and customary license terms and conditions acceptable to the State in its reasonable discretion. If ISSC procures under this Contract a license for Application Software to be used solely to perform the Services, ISSC agrees to obtain such license in the name of the State if the State is permitted to grant ISSC the right to use such Application Software solely to provide Services to the State during the Term of this Contract. In such event, the State agrees to grant to ISSC, at no charge, but subject to customary confidentiality and other license terms and conditions, the right to use such Application Software during the Term of this Contract solely to provide the Services to the State.

(3) Third-Party Software

Before installing any Third-Party Software for use by the State in receiving the Services, ISSC must first provide a copy of each license agreement for such Third-Party Software to the State for its review and approval. ISSC shall not install any such Third-Party Software for use in providing the Services without first obtaining such State approval.



(4) Integrated Network Management System

The Integrated Network Management System that will be provided by ISSC as part of the Internetwork Development Project and used to monitor and manage the Internetwork shall be licensed in the name of the State on terms and conditions that permit the State to grant to ISSC, during the Term of this Contract, the right to use such Software solely to provide the Services to the State. The State agrees to grant to ISSC, at no charge, subject to customary confidentiality and other license terms and conditions, the right to use such Software solely to provide Services to the State during the Term of this Contract.

(5) Right to Reproduce Documentation

Except as otherwise provided in Schedule E, the State shall have the right to reproduce, at no charge (but at the State's cost for reproduction) and for use solely for the purpose of conducting the State's business, any documentation for any Software owned by ISSC or any of its Approved Subcontractors. To the extent ISSC has the right to do so, ISSC grants to the State the right to reproduce at no charge, but at the State's cost for reproduction, for use solely in conducting the State's business, any documentation for Software owned by third parties. If ISSC does not have the right to grant such rights to the State with respect to any particular Software, ISSC shall obtain and provide the State with the requested number of copies of the documentation for such Software and charge the State ISSC's Direct Cost for such copies plus a mark-up not to exceed seven percent (7%).

(6) Software Changes

ISSC acknowledges that it shall have no right to make changes to any MAIN Software without the prior written approval of the State, if the changes would require the State to incur costs to



modify or upgrade other software or equipment used by the State or for which the State is financially responsible.

## **2.21 Confidentiality.**

### (a) Confidential Information

ISSC and the State each acknowledge that the other possesses and will continue to possess information that has been developed or received by it. As used in this Section, "Confidential Information" of ISSC shall mean all information of ISSC (other than Confidential Information of the State as defined below) which is marked confidential, restricted, proprietary or with a similar designation. "Confidential Information" of the State shall mean (i) all Work Product, (ii) all information concerning Project MAIN, the business and affairs of the State, its financial affairs, and its relations with its citizens and employees, and (iii) any information which may be classified as confidential, proprietary or with a similar designation by the State.

### (b) Protection of Confidential Information

The State and ISSC 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 most confidential information. Neither ISSC 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) refuse for any reason (including a default or material breach of this Contract by the other Party) to promptly provide the other Party's Confidential Information to the other Party if requested to do so. ISSC will limit disclosure of Confidential Information of the State to ISSC's employees who must have access thereto in order for ISSC to perform the Services. Notwithstanding the foregoing, ISSC may disclose Confidential Information



of the State to a subcontractor of ISSC where (A) use of the subcontractor is authorized under this Contract, (B) such disclosure is necessary or otherwise naturally occurs in such subcontractor's scope of responsibility, and (C) ISSC assumes full responsibility for the acts or omissions of such subcontractor. At the State's request, ISSC and any subcontractor, and each of their respective employees assigned to work on or participate in performing the Services, or to review any Confidential Information of the State, may be required by the State to sign confidentiality statements as a condition to being granted access or continued access to such Confidential Information.

(c) Exclusions

Notwithstanding the foregoing, this Section will not apply to any particular information which the State or ISSC 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; (iv) was received after disclosure to it from a third party who had a lawful right to disclose such information to it without any obligation to restrict its further disclosure; or (v) was independently developed by the receiving Party without reference to Confidential Information of the furnishing Party. Further, this Section 2.21 will not apply to any particular information which the receiving Party is required by law to disclose.

(d) No Implied Rights

Nothing contained in this Section 2.21 shall be construed as obligating a Party to disclose any particular Confidential Information to the other Party, or as granting to or conferring on a Party, expressly or impliedly, any right or license to the Confidential Information of the other Party.



(e) Remedies

Each Party acknowledges that, if it breaches (or attempts or threatens to breach) its obligations under this Section 2.21, the other Party will be irreparably harmed. Accordingly, if a court of competent jurisdiction should find that a Party has breached (or attempted or threatened to breach) any such obligations, such Party will not oppose the entry of an appropriate order compelling performance by such Party and restraining it from any further breaches (or attempted or threatened breaches).

**2.22 Termination.**

(a) Termination by the State for Cause

(1) In the event that ISSC:

- (i) breaches any of its material duties or obligations under this Contract, which breach is not cured, or for which the State has not accepted a plan to cure, within the time period specified by the State in its reasonable judgment in a written notice of breach to ISSC, such time period to be (A) at least ten (10) Business Days for breaches of obligations in connection with Development Projects and (B) at least thirty (30) calendar days for breach of any other obligations under this Contract;
- (ii) breaches any particular material duty or obligation under this Contract on more than one occasion;
- (iii) commits numerous breaches of its duties or obligations which in the sole but good faith judgment of the State constitute in the aggregate a material breach under this Contract; or
- (iv) breaches any material duty under this Contract which is not capable of being cured,



including, without limitation, its confidentiality obligations set forth above;

(individually, a "Cause"), then the State may, by giving written notice to ISSC, terminate this Contract for Cause, in whole or in part, as of a date specified in the notice of termination. If the State chooses to terminate this Contract in part, the charges payable under this Contract will be equitably adjusted to reflect those Services that are terminated. In addition to any other legal and equitable remedies available to the State, ISSC will be liable for costs incurred by the State (including court costs and reasonable attorneys' fees) in terminating this Contract.

- (2) In the event this Contract is Terminated for Cause pursuant to this Subsection 2.22(a), and it is thereafter determined for any reason that ISSC was not in default under the provisions of this Subsection 2.22(a), that Termination for Cause shall be deemed to have been a Termination for Convenience effective as of the same date, and the rights and obligations of the Parties shall be limited to those determined in accordance with Subsection 2.22(d) below.

(b) Termination by ISSC for Nonpayment

In the event that the State fails to pay ISSC undisputed charges when due under the Contract totalling at least \$100,000 and fails to pay such overdue amounts within one hundred eighty (180) days after receipt of written notice from ISSC of the failure to make such payments, ISSC may, by giving another written notice to the State, terminate this Contract as of a date specified in the notice of termination.

(c) Termination for Lack of Funding

- (1) ISSC acknowledges that the Term of this Contract extends for several fiscal years and that continuation of this Contract is subject to appropriate



tion of funds for Project MAIN. If funds to enable the State to effect continued payment under this Contract are not appropriated or otherwise made available by law, the State shall have the right to terminate this Contract without penalty at the end of the last period for which funds have been appropriated or otherwise made available by law by giving written notice of termination to ISSC.

- (2) If funding for Project MAIN is reduced by law or funds to pay ISSC for the agreed-to level of the Services to be provided by ISSC are not appropriated or otherwise made available by law, the State may, upon thirty (30) days written notice to ISSC, reduce the level of the Services in such manner and for such periods of time as the State may elect. The charges payable under this Contract will be equitably adjusted to reflect such reduced level of Services.

(d) Termination for Convenience

The State may terminate this Contract, in whole or in part, at any time and for any reason without penalty (i.e., without liability for damages to ISSC or its subcontractors beyond the termination charges described in this paragraph) upon at least: (i) thirty (30) days prior written notice of termination to ISSC with respect to any of the Development Projects; (ii) ninety (90) days prior written notice to ISSC for a termination with respect to the Operations Services component of the Internetwork Services and/or the MIDB Services; and (iii) twelve (12) months prior written notice to ISSC with respect to the Processing Operations Services. If the State chooses to terminate this Contract in part, the charges payable under this Contract will be equitably adjusted to reflect those Services that are terminated. If the State terminates the term of the Processing Operations Services prior to its scheduled expiration, the State will reimburse ISSC for its reasonable and actual documented out-of-pocket expenses incurred as a result of such early termination, in an amount not to exceed in the agree-



gate the amount paid by the State to ISSC for the Processing Operations Services for the calendar month immediately preceding the effective date of termination.

(e) Extension of Termination Effective Date

The State may extend the effective date of termination for not more than one-hundred eighty (180) days upon written notice of not less than thirty (30) days prior to the then-scheduled termination of this Contract.

(f) Termination Assistance

If this Contract or the term of any category of Services is not renewed at the end of the initial or any renewal term, or is earlier terminated for any reason, ISSC must provide for up to one (1) year after the expiration or termination of this Contract or such term, as the case may be, all reasonable termination assistance requested by the State to allow the terminated or expired portion of the Services to continue without interruption or adverse effect and to facilitate the orderly transfer of such Services to the State or its designees. Such termination assistance is described in more detail in Schedule G and will be deemed by the Parties to be governed by the terms and conditions of this Contract (notwithstanding its termination or expiration) other than any terms or conditions that do not reasonably apply to such termination assistance. If and to the extent that such termination assistance is provided after the effective date of termination or expiration of this Contract, or otherwise requires resources in addition to those resources then being regularly utilized in performing the Services under this Contract, the State shall pay ISSC for the resources utilized in providing such termination assistance at the then current rates specified in Schedule C and its Attachments; provided, however, that if the State terminates this Contract for Cause, then the State will not be required to pay ISSC for the additional resources utilized in providing termination assistance prior to the



effective date of the termination or expiration of this Contract.

(g) Rights Upon Termination

- (1) In the event the State terminates this Contract or the term of a category of Services prior to its expiration, the State shall pay ISSC for (i) all partially completed Development Project Deliverables of the terminated category of Services, on a percentage of completion basis, in the case of Termination for Convenience, or (ii) all partially completed Development Project Deliverables of the terminated category of Services, on a percentage of completion basis, that the State desires to have ISSC turn over to the State in the case of termination of this Contract or a category of Services for any other reason; plus, in either case, the charges due under this Contract for any terminated Operations Services provided by ISSC prior to the termination date, prorated for any partial month; provided, however, that if such termination is for Cause, the State shall have the right to set-off, against any amounts due ISSC, the amount of any damages for which ISSC is liable to the State under this Contract. In no event shall the State be obligated to pay or otherwise compensate ISSC for any lost expected future profits, or costs or expenses incurred with respect to, Services not actually performed or Deliverables not actually provided to the State.
- (2) Upon termination, the State shall have the right to assume, at its option, any and all subcontracts for services and materials provided exclusively under this Contract, including, but not limited to, any contracts for maintenance services for the Hardware and/or Software, and may further pursue completion of the work under this Contract by replacement contract or otherwise as the State may in its sole judgment deem expedient.



- (3) All Software which is used by ISSC and its sub-contractors exclusively to perform the Services at the time of nonrenewal or expiration of this Contract and which is not already licensed in the name of the State will, at the State's option, be assigned or licensed to the State or its designees subject to normal ongoing charges and other license provisions. ISSC will be responsible for any transfer fees. For Software not generally available, ISSC will provide a mutually agreeable commercially available substitute, subject to reasonable ongoing license charges.
- (4) The State will have the right to make offers of employment to any or all employees of ISSC and its subcontractors who are performing the Services. ISSC will provide the State with the names, resumes and other information reasonably requested by the State for the purpose of exercising this right.
- (5) ISSC shall promptly deliver to the State, in a manner reasonably specified by the State, all documents and other tangible items furnished by, or owned, leased or licensed by, the State.

(h) Reservation of Rights

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

**2.23 State Performance Obligations.**

The State's failure to perform any of its obligations set forth in this Contract other than its payment obligations will not constitute a material breach of this Contract or grounds for termination by ISSC; provided, however, that ISSC's nonperformance of its obligations under this Contract will be excused if and to the extent:



- (a) that ISSC's nonperformance results from the State's failure to perform its obligations; and
- (b) ISSC uses commercially reasonable efforts to perform notwithstanding the State's failure to perform (with the State reimbursing ISSC for any additional Direct Costs for such efforts in accordance with Subsection 2.1(d)).

#### **2.24 Dispute Resolution.**

- (a) Informal Dispute Resolution
  - (1) Any claim, counterclaim, or dispute between the State and ISSC arising out of or relating to this Contract shall be resolved as set forth herein. Any claim not timely submitted by ISSC within the deadlines provided in this Contract or, if such deadline is not otherwise provided, more than sixty (60) days from the occurrence of the event which gives rise to the dispute, shall be deemed waived.
  - (2) A claim is a properly and timely written demand or assertion by the State or ISSC seeking an adjustment in the amounts payable to ISSC under this Contract, an extension or shortening of the time for ISSC's performance, the adjustment or interpretation of Contract terms, or any other relief arising under or relating to this Contract, which can only become a dispute after a determination by the State under the appropriate provision of this Contract.
  - (3) For all ISSC claims seeking an increase in the amounts payable to ISSC under this Contract, or the time for ISSC's performance, ISSC shall submit an affidavit executed by an officer of ISSC certifying that (i) the claim is made in good faith, (ii) the amount claimed accurately reflects the adjustments in the amounts payable to ISSC or the time for ISSC's performance for which ISSC believes the State is liable and covers all costs of every type to which ISSC is entitled



from the occurrence of the claimed event, and (iii) the supporting data provided with such an affidavit are current and complete to ISSC's best knowledge and belief.

- (4) If the ISSC Project Executive and the State Project Director are unable to resolve a dispute, then upon the written request of a Party, the ISSC Contract Administrator will meet with the State Project Director for the purpose of endeavoring to resolve such dispute.
- (5) If the State Project Director and the ISSC Contract Administrator are unable to resolve the dispute, ISSC's Contract Administrator will meet with the State Contract Administrator and with the State Purchasing Director, or their designees, for the purpose of endeavoring to resolve such dispute.
- (6) The representatives of ISSC and the State shall meet as often as the Parties reasonably deem necessary in order to gather and furnish to each other all information with respect to the matter in issue which the Parties believe to be appropriate and germane in connection with its resolution. The representatives shall discuss the problem and negotiate in good faith in an effort to resolve the dispute without the necessity of any formal proceeding.
- (7) During the course of negotiations, all reasonable requests made by one Party to another for nonprivileged information reasonably related to this Contract will be honored in order that each of the Parties may be fully advised of the other's position.
- (8) The specific format for the discussions will be left to the discretion of the designated State and ISSC representatives, but may include the preparation of agreed-upon statements of fact or written statements of position.



- (9) Formal proceedings for the resolution of a dispute may not be commenced until the earlier of:
- (i) the designated representatives concluding in good faith that amicable resolution through continued negotiation of the matter does not appear likely; or
  - (ii) thirty (30) days after the initial request to negotiate the dispute;

provided, however, that this provision will not be construed to prevent a Party from instituting formal proceedings earlier to avoid the expiration of any applicable limitations period, to preserve a superior position with respect to other creditors, or pursuant to Subsection 2.24(c) below.

(b) Formal Dispute Resolution

If the State and ISSC are unable to resolve any controversy relating to or arising under this Contract as contemplated by Subsection 2.24(a) above, then either Party shall have recourse in the Michigan state courts as set forth herein. In the case of an action initiated by ISSC against the State, such action shall be submitted to the Michigan Court of Claims; while in the case of an action by the State against ISSC, such action shall be initiated in the applicable Michigan District or Circuit Court; provided, however, that the State reserves, as its sole option, the right to require that any particular claim for damages, whether it is initiated by ISSC or the State, be submitted to mandatory and binding arbitration as provided below. Prior to commencing any action against the State in the Michigan Court of Claims, ISSC shall request the State to inform ISSC whether the controversy shall be resolved through litigation in the Court of Claims or by mandatory and binding arbitration. If the controversy is to be resolved by arbitration, then the following procedures shall apply:



(1) Selection of Arbitrator

The State shall notify the American Arbitration Association in Detroit, Michigan ("AAA") and ISSC in writing describing in reasonable detail the nature of the dispute (the "Dispute Notice"), and shall request that AAA furnish to the Parties a list of nine (9) possible arbitrators who shall be licensed to practice law in the United States, who shall not have any conflict of interest, and who shall have at least five (5) years of experience in data communications and data processing matters. Each Party shall have fifteen (15) days to reject three (3) of the proposed arbitrators. If three (3) individuals have not been so rejected, they shall serve as arbitrators; if four (4) or more individuals have not been so rejected, the AAA shall select three (3) arbitrators from those individuals.

(2) Conduct of Arbitration

Arbitration will be conducted by the arbitrators selected pursuant to above with respect to the dispute described in the Dispute Notice and any other disputes related to this Contract between the Parties which: (i) are pending at the inception of such arbitration and not otherwise being arbitrated under this Subsection 2.24(b), or (ii) arise during the pendency of such arbitration, in accordance with the Commercial Arbitration Rules of the AAA, except as specifically provided otherwise in this Subsection 2.24(b). The arbitrators will allow reasonable discovery pursuant to the Michigan Rules of Court, except that the arbitrators may limit or extend the time limits and/or extent of said discovery consistent with the purposes and nature of the specific arbitration at issue. The arbitrators will have no power or authority, under the Commercial Arbitration Rules of AAA or otherwise, to amend or disregard any provision of this Contract, except as provided in Section 2.32. The arbitration hearing shall be



limited to not more than ten (10) hearing days, with each of the Parties being allocated one-half of the time for the presentation of its case. Unless otherwise agreed to by the Parties, an arbitration hearing shall be conducted on consecutive Business Days.

(3) Replacement of Arbitrator

Should an arbitrator refuse or be unable to proceed with arbitration proceedings as called for by this Subsection 2.24(b), the arbitrator shall be replaced by an arbitrator who is selected from the other arbitrators originally proposed by AAA and is not rejected by the Parties, if any, or, if there are no remaining proposed arbitrators who have not been rejected, by repeating the process of selection described in Paragraph 2.24(b)(1) above. If an arbitrator is replaced pursuant to this Paragraph 2.24(b)(3), then a rehearing shall take place in accordance with the provisions of this Subsection 2.24(b) and the Commercial Arbitration Rules of the AAA.

(4) Findings and Conclusions

The arbitrator rendering judgment upon disputes between the Parties to this Contract shall, after reaching judgment and award, prepare and distribute to the Parties a writing describing the findings of fact and conclusions of law relevant to such judgment and award and containing an opinion setting forth the reasons for the giving or denial of any award. The Parties agree that the arbitrator's opinion shall be a confidentiality document subject to the confidentiality obligations contained in this Contract.

(5) Place of Arbitration Hearings

Arbitration hearings shall be held in Lansing, Michigan.



(6) Time of the Essence

The arbitrators are instructed that time is of the essence in the arbitration proceeding, and that the arbitrators shall have the right and authority to issue monetary sanctions against either of the Parties if, upon a showing of good cause, that Party is unreasonably delaying the proceeding. The arbitrators shall render their judgment or award within fifteen (15) days following the conclusion of the arbitration proceeding. The judgment or award of the arbitrators shall be final and binding on the Parties, and judgment thereon may be entered or enforced in any court having jurisdiction thereof or having jurisdiction over either of the Parties or their assets.

(c) Injunctive Relief

The only circumstance in which disputes between the State and ISSC will not be subject to the provisions of Subsections 2.24(a) and 2.24(b) above is where a Party makes a good faith determination that a breach of the terms of this Contract by the other Party is such that the damages to such Party resulting from the breach will be so immediate, so large or severe and so incapable of adequate redress after the fact that a temporary restraining order or other immediate injunctive relief is the only adequate remedy.

(d) Continued Performance

ISSC agrees to continue performing its obligations under this Contract while any dispute is being resolved unless and until such obligations are terminated by the termination or expiration of this Contract.



(e) Governing Law

The provisions of this Contract shall be construed in accordance with the substantive laws of Michigan without regard to its choice of law rules.

(f) Jurisdiction

ISSC irrevocably consents with respect to any claims it has against the State, arising out of or in connection with this Contract, to the exclusive jurisdiction of the Michigan Court of Claims (except as otherwise provided by law) and with respect to any claim between the Parties, to venue in Ingham County, Michigan, and irrevocably waives any objections it may have to such jurisdiction on the grounds of lack of personal jurisdiction of such court or the laying of venue of such court or on the basis of forum non conveniens or otherwise. ISSC agrees to appoint agents in the State to receive service of process.

**2.25 Excusable Failure.**

Neither Party will be liable for any default or delay in the performance of its obligations under this Contract if and to the extent such default or delay is caused, directly or indirectly, by: fire, flood, earthquake, elements of nature or acts of God; riots, civil disorders, rebellions or revolutions in any country; the failure of the State to perform its material responsibilities under this Contract (either itself or through another contractor); or any other cause beyond the reasonable control of such Party; provided the non-performing Party and its subcontractors are without fault in causing such default or delay, and such default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means, including disaster recovery plans. In such event, the non-performing Party will be excused from any further performance or observance of the obligation(s) so affected for as long as such circumstances prevail and such Party continues to use its best efforts to recommence performance or observance whenever and to whatever extent possible without delay provided such Party



promptly notifies the other Party in writing of the inception of the excusable failure occurrence, and also of its abatement or cessation. If any of the above-enumerated circumstances substantially prevent, hinder, or delay performance of the Services necessary for the performance of the State's functions for more than three (3) consecutive 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 such services from an alternate source, and ISSC will be liable for payment for such services for so long as the delay in performance shall continue; (b) the State may terminate any portion of this Contract so affected and the charges payable thereunder shall be equitably adjusted to reflect those terminated services; or (c) this Contract will terminate without liability of the State to ISSC as of a date specified by the State in a written notice of termination to ISSC. ISSC 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 as a result of the excusable failure condition. Defaults or delays in performance by ISSC which are caused by acts or omissions of its subcontractors will not relieve ISSC of its obligations under this Contract except to the extent that a subcontractor is itself subject to an excusable failure condition described above and ISSC 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.

## **2.26 State Exculpation.**

Except to the extent provided in Section 2.1(d), pursuant to which ISSC may be entitled to obtain compensation for lost efforts due to the State's failure to perform its material responsibilities under this Contract, which section shall apply whether or not the State has engaged a contractor to perform the responsibilities of the State under this Contract, ISSC acknowledges and agrees that the State shall not be responsible for or liable to ISSC or its subcontractors for any increased costs or expenses that may be incurred by ISSC, or for any other damages that may be suffered by ISSC,



as a result of any act or omission of any other contractor to the State.

**2.27 Minority/Women/Handicapper Subcontracting.**

To assist the State in monitoring the participation of certified minority/women/handicapper owned and operated firms in State contracts, ISSC will be required to submit a quarterly report outlining expenditures to such firms for the reporting period under subcontracts entered into for the purpose of performing Services under this Contract.

**2.28 Nondiscrimination Clause.**

In performing this Contract, ISSC 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, or weight. Subcontracts with each subcontractor will contain a provision requiring non-discrimination in employment, as herein specified. This covenant is required pursuant to Act 453 of the Public Acts of the State of 1976, as amended, and any breach thereof may be regarded as a material breach of this Contract.

**2.29 News Releases.**

ISSC will not make any news releases, public announcements or public disclosures, nor will it have any conversations with representatives of the news media, pertaining to the Technology RFP, this Contract, the Services, or the study, data or project to which the Technology RFP and this Contract relate, without the prior written approval of the State, and then only in accordance with explicit written instructions from the State.

**2.30 Independent Contractor Relationship.**

The relationship between the State and ISSC is that of client and independent contractor. No agent, employee, or servant of ISSC or any of its subcontractors shall be or shall be deemed to be an employee, agent or servant of the



State. ISSC will be solely and entirely responsible for its acts and the acts of its agents, employees, servants and subcontractors during the performance of this Contract.

### **2.31 No Third Party Beneficiaries.**

It is expressly understood and agreed by the Parties that this Contract and the Services provided hereunder are not intended to inure to the benefit or detriment of any third party, except in the case of a third party that is entitled to be indemnified under the terms of Section 2.18.

### **2.32 Severability.**

Whenever possible, each provision of this Contract will be interpreted in such a manner as to be effective and valid under applicable law. If any provision of this Contract, however, is held to be prohibited or invalid under applicable law, such provision will be deemed restated to reflect the original intentions of the Parties as nearly as possible in accordance with applicable law, and, if capable of substantial performance, the remaining provisions of this Contract shall be enforced as if this Contract was entered into without the invalid provision. If the ruling and/or controlling principle of law or equity leading to the ruling is subsequently overruled, modified or amended by legislative, judicial or administrative action, then the provision(s) in question as originally set forth in this Contract will be deemed valid and enforceable to the maximum extent permitted by the new controlling principle of law or equity.

### **2.33 Unfair Labor Practices.**

The State may void this Contract if ISSC or any subcontractor, manufacturer or supplier of ISSC appears in the register compiled by the Michigan Department of Labor, pursuant to Public Act No. 278 of 1983 (MCL 423.321(b); MSA 17,458(21)(b)).

### **2.34 Captions and Headings.**

Captions and headings presented throughout this 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 this Contract.

**2.35 Survival.**

Any provisions of this Contract that impose continuing obligations on the Parties including, but not limited to, the Parties' respective warranty, indemnity and confidentiality obligations, shall survive the expiration or termination of this Contract for any reason.

**2.36 Time of the Essence.**

Time shall be of the essence with respect to ISSC meeting the delivery dates set forth in this Contract for the Development Project Service Deliverables .

**2.37 Pass-Through of Manufacturers' Warranties.**

If, under this Contract, ISSC procures any materials or products (including the Hardware and Software) for the State, ISSC shall assign or otherwise transfer to the State or its designees, or afford the State the benefits of, any manufacturer's warranty for such materials or products.

**2.38 Non-solicitation.**

ISSC shall not, during the Term of this Contract and for a period of twelve (12) months thereafter, knowingly offer employment to or employ or solicit for employment any person who is a State employee or was a State employee during the previous six months with whom ISSC had substantial contact in the course of performing its obligations under this Contract.

**2.39 Taxes.**

The State is exempt from Federal Excise Tax, State and Local Sales Tax, and Use Tax with respect to the sale to and use by it of tangible personal property, and such taxes shall not be included in invoices submitted to the State under this Contract. Sales to the State are not exempt from the environmental protection regulatory fee imposed pursuant to Section 8 of Act 152 of the Public Acts of the State. Any



other taxes imposed on the Services, or on materials, or products provided by ISSC, or otherwise resulting from ISSC charges to the State are included in the ISSC charges and rates set forth in Schedule C and its Attachments, and will not be separately paid or reimbursed by the State.

### ARTICLE 3. MISCELLANEOUS PROVISIONS

- 3.1 **Service Terms and Renewal.** The term of each category of Services, and any provisions for the renewal of such a term, shall be as specified in Schedule C (and its Attachments) for such Service category.
- 3.2 **Notices.** Any notice given to a Party under this Contract shall be deemed effective, if addressed to such Party as addressed below, upon: (i) delivery, if hand delivered; (ii) receipt of a confirmed transmission by telefacsimile if a copy of the notice is sent by another means specified in this Section 3.2; (iii) the third (3rd) Business Day after being sent by U.S. mail, postage pre-paid, return receipt requested; or (iv) the next Business Day after being sent by a nationally recognized overnight express courier with a reliable tracking system.

ISSC if by courier or facsimile:

Mr. Anthony Grimaldi  
Integrated Systems Solutions Corporation  
c/o Project MAIN  
Knapp's Office Centre -- Lower Level  
300 So. Washington Street  
Lansing, Michigan 48933  
Fax: \_\_\_\_\_

ISSC if by mail:

Mr. Anthony Grimaldi  
Integrated Systems Solutions Corporation  
c/o Project MAIN  
PO Box 30026  
Lansing, Michigan 48909



State:

Ms. Kathryn Jones  
Acting Director of Purchasing  
Office of Purchasing  
Department of Management and Budget  
2nd Floor, Steven T. Mason Building  
P.O. Box 30026  
Lansing, Michigan 48909  
Fax: (517) 335-0046

Mr. Chris DeRose  
Deputy Director and MAIN Contract Administrator  
Department of Management and Budget  
2nd Floor, Steven T. Mason Building  
P.O. Box 30026  
Lansing, Michigan 48909  
Fax: (517) 373-7268

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

- 3.3 **Amendments.** This Contract may be modified or amended solely by a writing executed by authorized representatives of both Parties.
- 3.4 **Waivers.** Any waiver by a Party must be in writing and signed by the Party waiving its right(s) to be effective. No waiver shall operate as a waiver to a breach of any other provision, or any other breaches of the same provision, of this Contract.
- 3.5 **Covenant of Good Faith.** Each Party agrees that, in its dealings with the other Party or in connection with this Contract, it shall act reasonably and in good faith.
- 3.6 **Entire Agreement.** This Contract contains the entire agreement between the Parties with respect to its subject matter and supersedes all other prior or contemporaneous communications between the Parties, whether written or oral.
- 3.7 **Consents and Approvals.** Except as expressly provided otherwise in this Contract, if either Party requires the consent or approval of the other Party for the taking of any action



under this Contract, such consent or approval shall not be unreasonably withheld or delayed. An approval or consent given by a Party under this Contract shall not relieve the other Party from responsibility for complying with the requirements of this Contract, nor shall it be construed as a waiver of any rights under this Contract, unless otherwise expressly provided in such approval or consent.

- 3.8 State Facilities.** The State shall designate sufficient space in State premises from time to time to house the Internetwork Control Center, the Remote Tape and Print Center, and other space required by ISSC to perform the Services (collectively, the "State Facilities"). ISSC shall observe and comply with all rules and regulations relating to each of the State Facilities used by ISSC, in the course of providing the Services. ISSC agrees that it will not, without the prior written consent of the State, use any State Facilities provided for ISSC's use, or to which ISSC otherwise gains access in the course of performing the Services, for any purpose other than to provide the Services to the State.

#### **ARTICLE 4. DEFINITIONS**

As used in this Contract:

- (a) "Acceptance Testing" shall have the meaning specified in Subsection 2.9(a).
- (b) "Additional Service" shall have the meaning specified in Subsection 2.1(c).
- (c) "Affiliate" of a party shall mean any person or entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with such party.
- (d) "Approved Subcontractor" shall mean any ISSC subcontractor that the State has approved to perform certain of the Services, as indicated in Schedule I.
- (e) "Application Software" shall mean any Software that processes data for the end user.



- (f) "Baseline Range" shall have the meaning specified in Schedule C.
- (g) "Business Days" shall mean weekdays, Monday through Friday, inclusive, except for holidays observed by the State.
- (h) "Cause" shall have the meaning specified in Section 2.22(a)(1).
- (i) "Change Authorization Order" shall have the meaning specified in Subsection 2.1(b)(2).
- (j) "Change Order Labor Rates" shall mean the fully-loaded hourly labor rates specified in Attachment C-6 to Schedule C, which are to be charged to the State for Services performed under a Change Authorization Order pursuant to Subsection 2.1(b)(1).
- (k) "Commencement Date" shall mean, with respect to any category of Services, the date of commencement of the Operations Services component of such category of Services.
- (l) "Contract" shall mean this Contract for Technology Services, including the Schedules and their Attachments.
- (m) "Deliverable" means a discrete Work Product to be developed by ISSC and delivered to the State in accordance with this Contract. A Deliverable may be either a Service Deliverable or a Payment Deliverable, and a Service Deliverable may be either a Minor Deliverable or a Major Deliverable, as indicated in the applicable Work Plan.
- (n) "Development Project" shall mean the initial phase of each Service during which ISSC will develop the such Service's systems, install any necessary equipment, assemble and train staff, develop procedures and perform performance and acceptance testing, as applicable to such Service and as described in the applicable Statement of Work.



- (o) "Direct Cost" shall mean any direct out-of-pocket expense of ISSC for any equipment, materials, supplies, travel, lodging or third party services provided to or for the State under this Contract, but not including any of ISSC's overhead costs or administrative expenses.
- (p) "Effective Date" shall mean December 1, 1993.
- (q) "EIS" shall mean Executive Information System, which is part of the functionality of the MIDB.
- (r) "Hardware" shall mean all computers and related attachments, features, accessories, printers, peripheral devices and other computer hardware or equipment provided to the State by ISSC under this Contract. The Hardware which the Parties currently contemplate that ISSC will provide under this Contract, and the quantities that are included in ISSC's fixed prices for the Development Projects, are listed in Schedule D.
- (s) "Internetwork" shall mean the communications network to be provided by ISSC as part of the Internetwork Services, as described in the Internetwork Statement of Work.
- (t) "Internetwork Control Center" shall mean the State Facilities where the Internetwork monitoring, control and management systems and terminals, and the Internetwork operators, are located.
- (u) "Internetwork Operations" shall mean the phase of the Internetwork Services following the Internetwork Development Project during which ISSC will operate the Internetwork and provide the other ongoing services of the Internetwork Services, all as provided in the Internetwork Statement of Work.
- (v) "Internetwork Services" shall have the meaning specified in Subsection 1.1(b).
- (w) "Internetwork Services Term" shall have the meaning specified in the Internetwork Statement of Work.



- (x) "ISSC" shall have the meaning specified in the introductory paragraph of this Contract.
- (y) "ISSC Contract Administrator" shall mean ISSC's officer whom ISSC notifies the State is assigned to serve in such capacity.
- (z) "ISSC Project Executive" shall have the meaning given in Schedule K.
- (aa) "Key Personnel" shall mean the ISSC and subcontractor personnel listed in Schedule J.
- (ab) "Late Delivery" shall have the meaning specified in Subsection 2.7(a)(3).
- (ac) "MAIN" shall mean the Michigan Administrative Information Network.
- (ad) "MAIN Data Center" shall mean the ISSC information processing facility in Boulder, Colorado from which the Processing Services are to be provided by ISSC, or any replacement ISSC information processing facility approved by the State.
- (ae) "MAIN Application Software" shall mean the various financial and accounting applications that constitute part of MAIN.
- (af) "MAIN Platforms" shall mean the Operating Environments and the MIDB operating environment.
- (ag) "MAIN Project Facility" shall mean the State Facilities where most of the Development Project Services will be performed.
- (ah) "MAIN Software" shall mean the Software, the MAIN Application Software, and any other software which the State requests ISSC to operate.
- (ai) "Management Committee" shall have the meaning specified in Schedule K.



- (aj) "MIDB" shall mean the Management Information Database to be developed by ISSC as part of the MIDB Services.
- (ak) "MIDB Operations" shall mean the component of the MIDB Services following the MIDB Development Project during which ISSC will operate the MIDB and provide the ongoing services component of the MIDB Services.
- (al) "MIDB Services" shall have the meaning specified in Section 1.1(c).
- (am) "MIDB Services Term" shall have the meaning specified in the MIDB Work Plan.
- (an) "Minimum Performance Standards" shall have the meaning specified in Schedule B.
- (ao) "Monthly Base Charge" shall have the meaning specified in Schedule C.
- (ap) "Operating Environments" shall mean the following four separate mainframe computer environments to be provided by ISSC as part of the Processing Services: (i) Development Environment; (ii) Acceptance Testing Environment; (iii) Training Environment; and (iv) Production Environment; each as described in the Technology RFP.
- (aq) "Operating Software" shall mean any Software used to control computers and/or associated devices and run Application Software, including, but not limited to, compilers, utilities, CASE tools, database managers and other application-enabling Software.
- (ar) "Payment Deliverables" shall mean, in the case of the Internetwork and MIDB Development Projects, the items designated as Payment Deliverables in Attachments C-1 and C-2, respectively, to Schedule C, and in the case of the Operations Services, shall have the meaning specified in Subsection 2.3(b)(4).
- (as) "Performance Standards" shall have the meaning specified in Schedule B.



- (at) "Proceeding" shall have the meaning specified in Subsection 2.15(a).
- (au) "Processing Services" shall have the meaning specified in Subsection 1.1(a).
- (av) "Processing Services Term" shall have the meaning specified in the Processing Services Work Plan.
- (aw) "Project MAIN" shall mean the efforts to develop, implement and operate the systems, capabilities and functionality of the Michigan Administrative Information Network (MAIN) as contemplated by this Contract and the Software Contract.
- (ax) "Purchasing Director" shall mean the individual who is serving as the Purchasing Director of the Office of Purchasing, Michigan Department of Management and Budget.
- (ay) "Quality Assurance Contractor" shall mean Spectrum Consulting Group, Inc. of San Antonio, Texas, or its successor.
- (az) "Remote Tape and Print Facility" shall mean the State Facilities where the remote tape and print functions of the Processing Operations will be located.
- (ba) "Retainage Pool" shall have the meaning specified in Section 2.5.
- (bb) "Schedules" shall mean the Schedules attached to this Contract, including their Attachments, which are hereby incorporated as part of this Contract.
- (bc) "Service Credits" shall have the meaning specified in Schedule B.
- (bd) "Service Deliverable" shall mean any Deliverable that is not a Payment Deliverable.
- (be) "Services" shall mean the Processing Services, the Internetwork Services, the MIDB Services and any Additional Services provided or to be provided to the



State under this Contract, as such Services are described in this Contract and as such Services evolve, are enhanced and change over the Term as contemplated by this Contract.

- (bf) "Software" shall mean the computer programs, whether source or object code, and whether ISSC or subcontractor-owned or Third-Party Software, including all related documentation and materials, used by ISSC in performing the Services or provided to the State by ISSC under this Contract, including all related technical, user and development documentation and materials. The Software which the Parties currently contemplate that ISSC will provide to the State under this Contract is listed in Schedule E.
- (bg) "Software Contract" shall mean the Customized Package Software and Implementation Assistance Contract between the State and KPMG Peat Marwick, Contract Number 9934.
- (bh) "Software Contractor" shall mean the software developer who is developing the MAIN Application Software for the State pursuant to the Software Contract.
- (bi) "State" shall mean, for purposes of Contract administration and compliance, the Michigan Department of Management and Budget. Where actions are a combination of the Office of Purchasing and another department(s), "State" will include such other departments, which shall be, together with the Department of Management and Budget, a Party to the Contract with respect to such Change Authorization Order. With respect to Services to be received and/or the granting of licenses and rights pertaining thereto, "State" shall mean all agencies, departments, boards, commissions, authorities and other units and instrumentalities of the Michigan State government, with the exception of institutions of higher education. For purposes of applying the terms and conditions of the Contract to Change Authorization Orders signed by a unit of state government other than the Michigan Department of Management and Budget, "State" shall include the signing unit, but such



unit's obligations under the Contract shall be limited to the particular Services commissioned by it under the Change Authorization Order(s) to which it is a signatory.

- (bj) "State Contract Administrator" shall mean the State official whom the State notifies ISSC is assigned to serve in such capacity.
- (bk) "State Facilities" shall mean the MAIN Project Facility, the Internetwork Control Center, the Remote Tape and Print Facility, and any other State premises which the State makes available to ISSC to facilitate ISSC's performance of the Services.
- (bl) "State Project Director" shall mean the State official who the State notifies ISSC is assigned to serve in such capacity under Section 4.2.
- (bm) "Technology RFP" shall mean Request For Proposal #93-AR0044 -- Technology: Processing Facilities and Services, Internetwork Design, Equipment and Operations and Management Information Database for the Michigan Administrative Information Network issued by the State of Michigan Department of Management and Budget on June 17, 1993, as amended by Attachment A-1 to Schedule A.
- (bn) "Term" shall mean the time period from the Effective Date through the expiration or termination for any reason of the last category of Services hereunder.
- (bo) "Third-Party Software" shall mean any Software that is not owned by ISSC, any Affiliate of ISSC or the State.
- (bp) "Unauthorized Removal" shall have the meaning specified in Subsection 2.7(a)(3).
- (bq) "Unilateral Change Authorization Order" shall have the meaning specified in Subsection 2.1(b)(3)(iii).
- (br) "Virus" shall mean any destructive computer program or code that is intended to disrupt or interfere with normal computer operations, including, without limita-



tion, viruses, "worms," data disabling codes, "logic bombs" and "time bombs."

(bs) "Work Plans" shall have the meaning given in Schedule K.

(bt) "Work Product" shall mean all specifications, drawings, sketches, designs, documents, correspondence, diagrams, software, documentation, data and other materials and work products produced by ISSC and/or its subcontractors in the course of performing the Services and fixed in any tangible medium, together with all intellectual property rights embodied in or associated with the foregoing items.

IN WITNESS WHEREOF, the Parties have cause this Contract to be executed by their duly authorized representatives as of the Effective Date.

**State of Michigan**

By: *Kathryn Jones*

Name: Kathryn Jones

Title: Interim State Purchasing Director

Date: Dec 1, 1993

**Integrated Systems Solutions Corporation**

By: *Roger A. Downing*

Name: Roger A. Downing

Title: Client Solutions Executive

Date: 12/1/93

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## Schedule A

### SERVICES

#### I. INTRODUCTION.

- A. This Schedule A and its Attachments describe the scope and nature of the Services to be performed by ISSC under the Contract. Schedule K describes the procedures that will be used by ISSC in managing its performance of the Services, and by the State in managing ISSC's performance of the Services. Descriptions of the scope and nature of the Services come from two sources: (i) documents articulating the State's requirements, and (ii) documents describing ISSC's proposed approaches to meeting such requirements. All capitalized terms used in this Schedule A shall have the meanings given in this Schedule A or, if not defined in this Schedule A, shall have the meanings given in Article 4 of the Contract.
- B. The State's initial articulation of its requirements for the Services is contained in the Technology RFP, which was issued by the State to ISSC and other bidders. The requirements set forth in the Technology RFP were subsequently clarified and modified by the State in the following documents:
1. "Responses to the First Set of Vendor Questions, Request For Proposal #93-AR0044, Technology for the Michigan Administrative Information Network," issued by the State on or about July 7, 1993;
  2. "Responses to the Second Set of Vendor Questions, Technology Request For Proposal #93-AR0044 for the Michigan Administrative Information Network," dated July 20, 1993;
  3. Letter dated September 28, 1993 from Michael A. Tanner, Manager, Information Technology and Consultant Services Section, Office of Purchasing



to Mr. Roger A. Downing of ISSC Re: "Request for Best and Final Offer, RFP #93-AR0044";

4. Letter dated October 4, 1993 from Michael A. Tanner, Manager, Information Technology and Consultant Services Section, Office of Purchasing to Mr. Roger A. Downing of ISSC Re: "Request for Best and Final Offer, RFP #93-AR0044"; and
5. Letter dated October 7, 1993 from Michael A. Tanner, Manager, Information Technology and Consultant Services Section, Office of Purchasing to Mr. Roger A. Downing of ISSC Re: "Best and Final Offer, RFP #93-AR0044."

The cumulative net changes made by the five documents listed above to the Technology RFP's requirements for the Services are set forth in, or incorporated by reference into, Attachment A-1 to this Schedule A, which supersedes and replaces those five documents (except to the extent any such document is specifically incorporated by reference into Attachment A-1).

- C. The main body of the Contract and its other Schedules and Attachments contain additional requirements applicable to the Services. Article 2 of the Contract sets forth the final, agreed-upon version of the "General Terms, Conditions and Provisions" initially set forth in Section I-W of the Technology RFP, all prior versions of which are superseded by Article 2 of the Contract.
- D. ISSC's proposed approaches to meeting the State's requirements for the Services are described in the following documents:
  1. ISSC "Technical Proposal" dated August 24, 1993 (Volumes I-IV);
  2. ISSC "Cost Proposal" dated August 24, 1993 (Volume V);
  3. ISSC "Best and Final Offer" dated October 18, 1993 (two volumes), one volume of which superseded and



replaced Volume III of ISSC's Technical Proposal in its entirety; and

4. ISSC "Best and Final Offer Revised Cost Proposal" dated October 18, 1993 (one volume), which superseded and replaced ISSC's original Cost Proposal in its entirety. The documents listed in this item 4 and in item 3 above are sometimes referred to collectively as ISSC's "BAFO."

For purposes of the Contract, ISSC's "Final Proposal" shall mean and consist of Volumes I, II and IV of ISSC's Technical Proposal, as supplemented and amended by Best and Final Offer and ISSC's Best and Final Offer Revised Cost Proposal; excluding, however, the section titled "Assumptions" in each volume of ISSC's Final Proposal (see Section II.D of this Schedule A, which sets forth the assumptions contained in those volumes that have been accepted by the State and which are therefore applicable to the Contract).

## **II. STATUS AND RELATIONSHIP OF DOCUMENTS AND ORDER OF PRECEDENCE.**

- A. The Technology RFP (as amended by Attachment A-1 to this Schedule A) and ISSC's Final Proposal are hereby incorporated as part of the Contract by this reference as if fully set forth in the text of the Contract.
- B. ISSC shall perform the Services in such a manner as to at least meet all of the State's requirements set forth or described in the Contract. Unless ISSC and the State mutually agree otherwise in writing, ISSC shall go about meeting the State's requirements by performing the Services in accordance with ISSC's Final Proposal. If ISSC's performance of the Services in accordance with its Final Proposal is insufficient to meet the State's requirements, ISSC shall be obligated to revise the scope and/or manner of performing the Services, at no additional charge to the State, as necessary to meet all of the State's requirements. If ISSC's proposed approach to performing the Services, as described in ISSC's Final Proposal, exceeds the State's stated requirements in any respects, ISSC shall perform such



components of the Services in the manner described in its Final Proposal.

- C. In the event of any inconsistency or conflict between the State's requirements as stated or described in any document forming a part of the Contract (other than ISSC's Final Proposal) and ISSC's proposed approaches to meeting such requirements as stated in ISSC's Final Proposal, the State's requirements shall govern.
- D. In oral discussions with ISSC and in the letter to ISSC from Mike Tanner dated September 28, 1993, the State specifically directed ISSC to include and identify separately in its BAFO any additional terms and conditions (whether or not previously set forth in ISSC's Technical Proposal or Cost Proposal) that ISSC proposed to be binding on the State beyond those set forth in the Technology RFP. The September 28 letter also advised ISSC that any such proposed additional terms and conditions would apply only to the extent that: "(1) they do not conflict with any of the General Terms, Conditions and Provisions set forth in the RFP, as revised by the State [the final version of which is set forth as Article 2 of the Contract]; (2) they do not conflict with the laws of the State of Michigan or any rules or regulations promulgated thereunder; and (3) they either will not impose additional costs or risks on the State, or if they will, the State is willing, in its sole discretion, to accept the additional costs and/or risks." All such additional terms and conditions proposed by ISSC in its BAFO and accepted by the State are set forth in Attachments A-2 and A-3 to this Schedule A. Accordingly, any other statements contained in ISSC's Final Proposal that would require the State to perform certain actions or provide certain resources to ISSC, or that would impose constraints or limitations on the Services that are not contained in the State's requirements and would have the effect of imposing additional costs or risks on the State, shall be deemed to be inapplicable to the Services and the Contract. For illustration purposes, following is an example of additional terms and conditions proposed by ISSC in its BAFO that shall be inapplicable because they are



inconsistent with the State's stated requirements and would impose additional costs or risks on the State that the State does not accept:

"ISSC will provide tape operations services on 20,000 application tape mounts for Case 1 and 27,500 application tape mounts for Case 10, with prorated volumes for other cases." (Source: ISSC's Best and Final Offer Revised Cost Proposal, Assumptions section, sixth assumption under the heading "PROCESSING FACILITIES.")

The proposed condition listed above is in direct conflict with the State's stated requirement that CPU hours and Gigabytes of DASD are the only measures of resource utilization that will be used to determine the charges payable by the State for the provision of Processing Operations Services by ISSC; subject, however, to the State's obligation to pay ISSC for any Additional Services requested by the State with respect to the Processing Operations Services. Such condition would, if accepted, impose additional costs on the State.



## Attachment A-1

### CUMULATIVE NET CHANGES TO THE TECHNOLOGY RFP

1. Changes with respect to the State's articulation of its General Terms, Conditions, and Provisions, the acceptance of which was otherwise required as part of the Technology RFP and accepted by ISSC, are reflected in and replaced and superseded by Article 2 of the Contract.

2. Changes accruing through the competitive bid negotiation process with respect to the State's articulation of its pricing requirements and the acceptance of same by ISSC, are reflected in and superseded and replaced by the Contract.

3. Technology RFP Section V-7(a)(45) [page V-74] has been modified by Answer 154 of the Response to Second Set of Vendor's Questions, dated July 20, 1993 (the "Second Response") to read as follows:

Provide the capability for automatic scheduling of queries, updates to application files, reports, graphics etc.

4. Technology RFP Section III-3(i)(2) has been modified by Answer 78 of the Second Response to provide that ISSC may provide products with equivalent functionality for the following software: RACF 1.9, CA-Scheduler, Data Expert, DB2 Expert Xpediter.

5. The general Technology RFP requirement with respect to the training of [State] staff personnel on the MAIN Application Software has been modified for greater specificity to state that the requirement to include training up to 4,200 trainees, using four (4) training centers, each containing sixteen (16) workstations, with such training centers to be used up to ten (10) hours per day, five (5) days per week between June 1, 1994 and October 31, 1994.

6. The general Technology RFP requirement of Section VI-F(8) relating to training has been modified by Answer 144 of the Second Response for greater specificity to state that ten (10)



individuals must be trained by ISSC as operations monitoring staff prior to June 11, 1994.

7. The changes specified in Attachments A and B to the letter from Mike Tanner to Roger Downing of ISSC dated September 18, 1993 ("Re: Request for Best and Final Offer RFP #93-AR0044") are incorporated by reference.



Attachment A-2

STATE OBLIGATIONS AND STATE-PROVIDED FACILITIES,  
EQUIPMENT AND OTHER RESOURCES

During the period required to complete the development and implementation Services contemplated by the Contract, the State shall perform the obligations described in this Attachment A-2.

1. **Project Facilities:** The State shall provide office space, work space, desks, telephones, copying machines, facsimile machines and supplies (other than for printers and computers outside the Remote Tape and Print Facility) and access to conference rooms. (ISSC shall reimburse the State for all long-distance calls not related to Project MAIN.)
2. **Training Facilities:** The State shall be responsible for providing four fully-equipped training facilities with the necessary technical support (e.g., overhead projector, projection palette, access to the mainframe system for hands-on exercises and the like).
3. **Equipment Facilities:** The State shall provide facility space for the equipment and personnel required to support the Remote Tape and Print Facility, the Integrated Network Management System (INMS) and network servers (Security, E-Mail, and INMS), and the MIDB equipment. The facility provided will also include space for all required supporting hardware, such as the UPS devices, printer paper and supplies, and tape library. ISSC will provide the State all electrical and environmental specifications for such equipment.
4. **MAIN Applications Access:** The State shall provide necessary access to the MAIN financial applications at the ISSC facilities and the Unisys system supporting the PPRISM applications required to perform the development work for the MIDB applications and database.
5. **LAN Access and Administration:** The State shall provide the access to the development LAN for the MAIN Project. The



State will provide building wiring and LAN Administration requirements as needed.

6. **Implementation Support:** In the implementation and development of the various components described in this Contract, the role of the State shall be limited to overall project management and liaison with the agencies, coordinating with the Software Contractor, providing the subject matter expertise and providing access to applicable State personnel for information gathering.
7. **Meetings:** State members of the combined MAIN project team will facilitate the scheduling of meetings. State staff will make a reasonable effort to attend meetings so that the progress of the projects is not impeded.



### Attachment A-3

#### AGREED-UPON ASSUMPTIONS

The Parties agree to the following assumptions as additional terms and conditions of the Contract:

##### Processing Services

- The State will provide the specific administrative information for job accounting and chargeback.
- The State will provide a suitable facility to serve as the Remote Tape and Print Facility, including the tape library and supplies.
- The State will provide security administration to MAIN Application Software end users.
- The first point of contact for State end users of the MAIN Application Software will be the State's help desk.
- If the State chooses to perform database management, there will be no impact on reliability or availability of the MAIN Application Software.

##### Internetwork Services

- The State will provide the fiber required to connect the fiber optic concentrators in the Mason Building with the concentrator to the Unisys A-17 in the Treasury Building, and to connect the server platforms in the Mason Building with the channel extender in the Knapps Building.
- The connection to State agencies is a V.35 port on a router in the Knapps Center to which the State Agency can connect. The actual type and quantity of such



connections will be determined during the development of the State Agency Connections report.

- The State will provide the unique environmental requirements necessary for installation of the UPS (*i.e.*, air conditioning or floor reinforcements) as specified by ISSC in its response to the State's document titled "Additional ISSC Internetwork Concerns," question #4.
- The State Security Administrator will be responsible for Internetwork security administration including user ID, logon, and password registration. The State will load and maintain the security server database of encrypted IDs and passwords for all users of the Internetwork. Each user will have an entry in the database that correlates his or her Internetwork ID to his or her encrypted MAIN, PPRISM and MIDB IDs and passwords.
- The State will provide a State Agency representative who will be available and responsive to ISSC. This representative will provide ISSC with any reasonably necessary information to complete the State Agency Connections report.
- ISSC will not be responsible for developing the print and RJE functions required for applications operating at the MAIN Data Center other than the MAIN Application Software. ISSC will cooperate in developing print and RJE functions for any other applications.

#### E-Mail

- Where State agencies listed multiple LAN protocols as being used and supported, the most common one supported by the E-mail product vendor was assumed.
- Where State agencies listed E-mail products as "other", these were not deemed critical for interconnection.
- All Hardware and Software required to connect individual State agencies will be detailed and priced in the State Agency Connections report. State agencies



will be responsible for these costs, which are not included in the prices specified in Schedule C.

- Naming conventions will be created with the State's assistance.
- "Absolutely reliable" is interpreted to mean fault tolerant processing.
- The State's requested list of objects to be transported across the E-mail backbone and the State's requested use of an open standards backbone (e.g., X.400) may not be compatible at this time. Many open standards have not addressed transported data types beyond text and files. The State's requested data types of voice and image will not be satisfied unless encapsulated and transported as a file.
- The State will appoint an E-mail administrator who will be responsible for systems administration, which includes loading databases, ongoing database maintenance, processing of billing and chargeable activities, and other related administrative activities.
- Directory definitions that go beyond the scope of the X.500 architecture will not be supported. ISSC will cooperate with the State on techniques and methods to accommodate all directory entry types. With the diverse range of E-mail products installed, many do not support the requested directory types and attributes that will be contained in the central directory.
- The State has not requested a contingency system for E-mail backbone in the Technology RFP. Therefore, there is no such provision in this Contract. Upon request, ISSC will propose a contingency design and system.
- The State will have the option of applications interfacing either directly into the backbone or through local State agency E-mail products. ISSC will provide Application Toolkits for both VM and MVS to facilitate both alternatives. Local main-enabled applications will be able to be created on [some] E-



mail products through the use of VIM and MAPI, which will be the responsibility of the State agencies to provide.

### Integrated Network Management System

- The Integrated Network Management System ("INMS") manages the Internetwork devices and circuits, including the devices (or boxes) that are on the State agencies' LANs where the Internetwork circuits connect. The INMS will not cover each State agency's LAN(s) and the workstations on such LAN(s). Although the State acknowledges that implementing such coverage is outside the scope of ISSC's responsibilities, the INMS must, however, have the capability to cover each State agency's LAN(s) and the workstations on such LAN(s).

### Operations

- Three (3) technical personnel will be provided by the State to work in the Internetwork Control Center under the direction of the ISSC Internetwork Control Center Manager. These State personnel will work jointly with ISSC personnel to prepare bi-weekly status reports as well as attend appropriate management reviews.

### Project Management

- The State will act in a timely manner on Deliverables (e.g., documentation, reports, test results) provided by ISSC for review and approval, and will respond with approval status and specific written comments.
- The State will attend design sessions to help ISSC understand State requirements, help design modifications and participate in design walk-throughs.
- The State will assist in the development of the training plan and schedule, and will resolve any conflicts with their staff.



- Early identification and revision of any faulty assumptions are essential to ensure the quality of the task plan and schedule. If a major program change occurs, ISSC and the State will jointly review the change in detail to determine its effect on the Services (including the Development Projects). From this review, any agreed upon needed schedule or resource changes will be made. ISSC will work closely with the State to avoid any negative impact on the Development Projects and implementation of the Operations Services.

#### MIDB

- ISSC will provide authorized vendor maintenance for all products during the Term of the Contract unless the State directs ISSC to cancel any such maintenance at any time during the Term of the Contract. This will include any extensions to the Contract which may be executed. Any such maintenance contracts in force as of the expiration or termination of the Contract will be transferred to the State, and, once all such transfers are completed, the State will relieve ISSC from any further responsibility for such maintenance.
- The first assumption in Section 5.D of ISSC's Best and Final Offer Revised Cost Proposal (the "Revised Cost Proposal") is corrected to read as follows:

ISSC assumes the State will allow ISSC developers to utilize the State's Unisys development environment at Central Systems Data Center or at another facility at no charge for purposes of coding, testing, and integrating the MIDB Data Extract and Conversion Programs, as well as implementing and testing Internetwork connectivity products.
- The following is a clarification of ISSC's last assumption on the eighth page of Section 5.D of the Revised Cost Proposal:



ISSC assumes the State will provide adequate disk storage space, and sufficient processor capacity to support up to four (4) programmers simultaneously with reasonable terminal response times.

- The State's data center personnel will make themselves reasonably available to facilitate access by ISSC employees and subcontractors to data center resources during normal business hours and during off-shift hours upon forty-eight (48) hours advance notice.
- The fifth assumption on the seventh page of Section 5.D of the Revised Cost Proposal is revised to read as follows: "The State will designate the following State personnel to participate in the initial EIS pilot:". In the third requirement, the reference to "A Project Manager" is with "A Project Coordinator". Similarly, in the sixth requirement, the reference to a "Development team leader" is replaced with "Development Coordinator".

#### Pricing Assumptions

- Prices for Millennium services assume system work will be performed predominantly at Millennium's offices. Work requiring user interface is intended to be done at the MAIN Project Facility.
- The cost of additional copies of documentation beyond the initial quantities proposed will be provided to the State at ISSC's costs with an administrative fee added not to exceed seven percent (7%).

#### Workstation Configurations

- The minimum configuration for Windows workstations are:
  - 100% IBM compatible Intel 80386
  - 33MHz minimum clock speed
  - Available hard disk space as follows:
    - 10 Mb for paging and swapping
    - 20 Mb for file space for MIBD applications



- 20 Mb free space for end user files
  - 4 Mb RAM
  - Ethernet network interface and appropriate LAN adaptors and cabling
  - Microsoft DOS 5.0 or higher
  - Microsoft Windows 3.1 or higher
- The minimum configuration for Macintosh workstations are:
    - Motorola 68030 or 68040 CPU
    - Available hard disk as follows:
      - 10 Mb for paging and swapping
      - 20 MB file space for MIDB applications
      - 10 Mb free space for end user files
    - 4 Mb RAM
    - System 7 OS release version 7.0 or higher
    - Ethernet network interface and appropriate LAN adaptors and cabling



## Schedule B

### SERVICE LEVEL AGREEMENT

#### I. INTRODUCTION.

- A. **General.** This Schedule B sets forth the quantitative standards applicable to ISSC's performance of the Services. Such standards consist of: (1) Performance Standards (defined below) which ISSC is required to meet during the Term of the Contract; (2) Minimum Performance Standards (defined below) in respect of which ISSC will pay the State Service Credits (defined below) if ISSC's performance of any covered Service falls below the applicable Minimum Performance Standard; and (3) Incentive Performance Standards (defined below) in respect of which ISSC may be entitled to Service Incentives (defined below) if ISSC's performance of the Services meets or exceeds the Incentive Performance Standards. The Performance Standards, Minimum Performance Standards and Incentive Performance Standards are referred to collectively as the "Standards."

Section II below contains definitions of terms used in this Schedule B. Section III of this Schedule B describes certain quantitative Performance Standards applicable to the Services. Section III also references the tables of Standards set forth in Attachments B-1 through B-3 to this Schedule with respect to each Service. Section IV of this Schedule B describes how Service Credits are assessed. Section V of this Schedule B describes how Service Incentives are earned and redeemed.

- B. **Reporting.** Accompanying its monthly invoice specified by the Contract, ISSC shall submit to the State a report or set of reports, in a form approved by the State, assessing ISSC's performance during the previous month against the Standards. ISSC shall also be responsible for reporting problems that reasonably could be expected to have a material adverse effect on



State operations within two (2) Business Days of ISSC becoming aware of any such problem.

- C. **Responsibilities.** ISSC shall promptly investigate and correct failures to meet Performance Standards by: (1) providing the State with daily performance reporting for the deficient Services; (2) initiating investigations of problems to identify root causes of failures; (3) making written recommendations to the State, including the actions proposed by ISSC and the State, for improvement in procedures; and (4) executing and reporting on such corrective actions. Furthermore, ISSC shall minimize recurrences of such failures for which it is responsible. The State shall use reasonable efforts to correct and minimize the recurrence of problems for which the State is responsible and which prevent ISSC from meeting the Performance Standards.
- D. **Validation Period.** During each Validation Period (defined below), ISSC will use standard measurement tools to monitor its performance of the Services relative to the Performance Standards set forth in this Schedule B. If any of the actual performance levels measured during a Validation Period, as represented by the average of the performance level results for each month of such Validation Period, are higher than the corresponding Performance Standards set forth in this Schedule B, the applicable Standards shall be revised as mutually agreed by the State and ISSC based on such actual performance levels. ISSC shall promptly respond to any appropriate adjustments to the Standards requested by the State pursuant to this Section I.D. ISSC shall not owe Service Credits to the State for ISSC's failure to meet any of the Minimum Performance Standards during the Validation Period, provided that, during each Validation Period, ISSC will use its best commercial efforts to minimize disruptions to the provision of the Services during the applicable hours of Scheduled Uptime (defined below) and to maintain as close conformance with the Performance Standards as is reasonably possible.



- E. **Force Majeure**. Notwithstanding the foregoing, ISSC shall not be obligated to pay any Service Credits to the State with respect to any failure to meet the Minimum Performance Standards to the extent that such failure is excused by a force majeure event under Section 2.25 of the Contract; provided, however, that ISSC shall not be excused for a force majeure event to the extent that it is due to ISSC's failure to exercise due care in performing the Services, including without limitation ISSC's obligation to provide proper preventive and remedial maintenance for the Hardware and Software.
- F. **Future Changes**. By May 1, 1994 and in each September thereafter (commencing with September 1994), the Parties shall mutually assess the need to make adjustments to the Standards. In the event that any MAIN Platform or the Internetwork (or any component of any of the foregoing) is changed, augmented or replaced during the Term of the Contract such that (1) any of the existing Standards become inapplicable or inappropriately low or high, or (2) new Standards would be applicable or more appropriate, ISSC and the State shall work together in good faith to agree upon such adjustments and/or replacement Standards as appropriate.
- G. **References to Time Periods**. Unless otherwise specified below in a particular instance, all references (i) to time shall be local time in Lansing, and (ii) to months shall be to calendar months during the Term (including any portions thereof).

II. **DEFINITIONS**. Any terms used but not defined in this Schedule B shall have the meanings assigned to them in the Contract. As used in this Schedule B, the following terms shall have the meanings given below:

- A. "Actual Uptime" means, of the Scheduled Hours, the aggregate amount of time, in any month, during which each MAIN Platform or the Internetwork is actually available for use by the State's end users.



- B. "Availability" means Actual Uptime plus Excusable Downtime during Scheduled Hours, divided by Scheduled Uptime. For purposes of determining whether ISSC's performance meets any availability Standard, ISSC's availability performance shall be measured on a monthly basis for each MAIN Platform and for the Internetwork during each month of the Term, to be calculated and reported as provided in Section I.B, above.
- C. "Environment" means the CICS Regions of the development Environment (and the TSO Region in the case of the development Environment), the testing and acceptance Environment, the training Environment, or the production Environment of the Processing Services, as applicable.
- D. "Excusable Downtime" means, of the Scheduled Uptime, the aggregate amount of time, in any month, during which each MAIN Platform or the Internetwork is down due to a force majeure event as specified in Section 2.25 of the Contract (which failure is not due to ISSC's failure to exercise due care including, without limitation, failure to provide proper preventive or remedial maintenance for the Software or Hardware).
- E. "Incentive Performance Standard" means the level of performance of the Services which, if met or surpassed by ISSC, may allow ISSC to receive a Service Incentive as provided in Section V of this Schedule B.
- F. "Mean Time To Repair" or "MTTR" means the average time it takes to repair a problem in a MAIN Platform or the Internetwork.
- G. "MIDB Transaction Response Time" means the amount of time required by the MIDB server to process a request for information from a State end user.
- H. "Minimum Performance Standard" means the level of performance of the Services, which, if not met by ISSC, shall cause ISSC to pay the State Service Credits.
- I. "Monthly Amount" means, with respect to any month during the Term of the Contract, an amount equal to the



sum of all charges and any other amounts payable to ISSC by the State for such month.

- J. "On-line Response Time" means the amount of time required by the CICS Region within an Environment (or TSO Region in the case of the Development Environment) to process a request for information from a State end user.
- K. "Performance Standard" means the required level of performance of the Services which, if not met by ISSC, shall constitute a breach of the Contract but shall not, in and of itself, cause ISSC to pay the State Service Credits.
- M. "Redeemable Service Credits" means, with respect to a month in which ISSC meets or surpasses the Incentive Performance Standard for a particular category of a Service, the aggregate amount of Service Credits paid for that category of Service in the most recent three (3) prior months for which Service Credits were assessed for that category of Service; provided, however, that any Service Credits assessed more than twelve (12) months prior to the month in which the Incentive Performance Standard for that category of Service was met or surpassed shall not be subject to redemption under this Schedule B.
- N. "Scheduled Downtime" means, of the Scheduled Hours, the aggregate amount of time in any month during which a MAIN Platform or the Internetwork is scheduled to be unavailable to the State's end users as required for systems maintenance and administration activities. Scheduled Downtime must be mutually agreed to by the Parties.
- O. "Scheduled Hours" means the days of the week and hours of each day that each MAIN Platform or the Internetwork is regularly scheduled to be available for use by the State's end users, prior to deducting any Scheduled Downtime.
- P. "Scheduled Uptime" means the aggregate number of Scheduled Hours in any month during which each MAIN



Platform or the Internetwork is scheduled to be available for use by the State's end users. The Scheduled Uptime is equal to Scheduled Hours minus Scheduled Downtime.

- Q. "Service Credits" are monetary credits in the form of a reduction in the amounts that would otherwise be payable by the State to ISSC under the Contract, as provided in Section IV below, to which the State becomes entitled upon ISSC's failure to meet any Minimum Performance Standard in a month.
- R. "Service Incentives" are incentive monetary amounts which ISSC may become eligible to receive, as provided in Section V of this Schedule B, for meeting or exceeding the Incentive Performance Standards.
- S. "Validation Period" means, with respect to each set of Operations Services, the first sixty (60) days after the Commencement Date of such Operations Services.

**III. QUANTITATIVE PERFORMANCE STANDARDS, MINIMUM PERFORMANCE STANDARDS AND INCENTIVE PERFORMANCE STANDARDS.**

- A. General. Set forth in this Schedule B and elsewhere throughout the Contract are Performance Standards for the Services which ISSC agrees to meet in performing the Services. ISSC acknowledges and agrees that its failure to meet any Performance Standard in any month shall constitute a breach of this Contract.

This Schedule B also sets forth the Minimum Performance Standards. If ISSC's performance of an applicable portion of the Services fails to meet or exceed the corresponding Minimum Performance Standard in a month, then, in addition to and not in lieu of any other rights and remedies available to the State for such breach by ISSC, ISSC shall pay the State Service Credits as provided under Section IV of this Exhibit B. The Service Credits methodology set forth in this Schedule B is intended by the Parties to reflect, to a certain extent, the reduced value to the State of



Services provided by ISSC that fall below the Performance Standards.

B. Processing Facilities Standards.

1. Environment Availability and Scheduled Hours. Environments shall be available for the Scheduled Hours listed in the table below. ISSC shall perform the Processing Services in accordance with the Availability Performance Standard for each Environment set forth in Attachment B-1 to this Schedule B.

<u>Environment</u>	<u>Scheduled Hours</u>
Development Environment CICS Region	6 a.m. - 12 midnight seven (7) days per week
TSO Region	24 hours per day seven (7) days per week
Testing and Accept. Env.	6 a.m. - 12 midnight seven (7) days per week
Training Environment	6 a.m. - 6 p.m. Business Days
Production Environment	7 a.m. - 6 p.m. Business Days

2. On-Line Response Time. ISSC shall perform the Processing Services in accordance with the On-line Response Time Performance Standard for each Environment set forth in Attachment B-1 of this Schedule B.
3. Off-Line Batch Processing and Throughput. ISSC shall perform the Processing Services in accordance with: (i) the off-line batch processing and throughput Performance Standards for each Environment set forth in Attachment B-1 of this Schedule B; and (ii) the following



Performance Standards which apply solely to the  
Production Environment:

- a) ISSC shall complete normal nightly batch processing of the MAIN Application Software within the batch processing window 6 p.m. - 7 a.m. Business Days. All scheduled output from normal nightly batch processing shall be delivered to the specified State end user in the manner elected by such end user. For the purposes of this Subsection III.B.3.a, the term "delivered" shall mean: (i) with respect to end users who are connected to the MAIN Application Software via the Internetwork and who elect to receive their output in electronic format, ISSC shall have such output available by 7 a.m. each Business Day; or (ii) ISSC shall have the appropriate reports printed and ready for pick-up at the Remote Print and Tape Facility by 9 a.m. each Business Day. Notwithstanding the foregoing, ISSC agrees to have all reports which are to be picked-up at the Remote Print and Tape Facility printed and available by 7 a.m. each Business Day, provided that the State furnishes (whether obtained from ISSC or otherwise) at its expense the additional levels of staffing resources reasonably necessary to support such an availability standard.
- b) Interface tapes and files received by 6 p.m. at the Remote Print and Tape Facility shall be included in that night's batch processing cycle, provided that the State furnishes (whether obtained from ISSC or otherwise) at its expense the additional levels of staffing resources reasonably necessary to support such an availability standard.
- c) ISSC shall initiate production "on-request" jobs within two (2) hours of receipt of a request, subject to the design limitations of the MAIN Application Software. Subject to



the design limitations of the MAIN Applications Software, in no case shall initiation of such processing be delayed beyond the current night's batch processing cycle.

C. Internetwork Standards.

1. Internetwork Availability. The Internetwork shall be available 24 hours per day, seven (7) days per week. For purposes of calculating the Performance Standard for Internetwork Availability, Scheduled Hours shall be deemed to be 6 a.m. - 6:30 p.m. Monday through Saturday, except for State recognized holidays. ISSC shall perform the Internetwork Services in accordance with the Availability Performance Standard for the Internetwork set forth in Attachment B-2 to this Schedule B.
2. Transaction Response Time. ISSC shall perform the Internetwork Services in accordance with the Internetwork transaction response time Performance Standards set forth in Attachment B-2 to this Schedule B. The Internetwork transaction response time Performance Standards (a) are applicable to all transactions between any MAIN Platform and a State agency connection through the Internetwork, and (b) will be enforced during peak load conditions.
3. Mean Time To Repair. ISSC shall perform the Internetwork Services in accordance with the Internetwork MTTR Performance Standard for Internetwork problems. The Internetwork MTTR Performance Standard is set forth in Attachment B-2 to this Schedule B.
4. Internetwork Control Center Help Desk. ISSC shall provide Internetwork Control Center help desk Services in accordance with the Contract, including the applicable portions of Schedule K. The key measurements for the Internetwork Control Center help desk are: (a) Availability (Scheduled



Hours for the Internetwork Control Center Help Desk are 6 a.m. - 6:30 p.m. Monday through Saturday, excluding official State holidays); (b) the amount of time following a trouble call until a trouble ticket is opened ("Time To Open Trouble Tickets"); and (c) the amount of time following a trouble call until commencement of problem determination and resolution ("Help Desk Response"). ISSC shall provide the Internetwork Control Center help desk Services in accordance with the Performance Standards for Internetwork Control Center help desk Availability, Time To Open Trouble Tickets, and Help Desk Response set forth in Exhibit B-2 to this Schedule B.

D. **MIDB Standards.**

1. **MIDB Availability.** The Scheduled Hours for the MIDB (including the EIS) shall be 6 a.m. - 8 p.m. Business Days, and 6 a.m. - 6 p.m. on all other days. ISSC shall perform the MIDB Services in accordance with the Availability Performance Standard for the MIDB set forth in Attachment B-3 to this Schedule B.
2. **Transaction Response Time.** ISSC shall perform the MIDB Services in accordance with the MIDB Transaction Response Time Performance Standard set forth in Attachment B-3 to this Schedule B.
3. **Mean Time To Repair Problems.** ISSC shall perform the MIDB Services in accordance with the MIDB MTTR Performance Standard for MIDB problems. The MIDB MTTR Performance Standard is set forth in Attachment B-3 to this Schedule B.

IV. **SERVICE CREDITS.**

- A. ISSC shall pay the State Service Credits in the event ISSC fails to meet the Minimum Performance Standards set forth in Attachments B-1 through B-3 to this Schedule B. For each month during the Term of the Contract, ISSC will provide the State



with reports of its actual performance in relation to the Minimum Performance Standards as provided in Section I.B above. ISSC and the State will then determine whether ISSC's performance of the applicable Services met the Performance Standards or Minimum Performance Standards in each such month.

- B. The aggregate amount of Service Credits for which ISSC shall be liable during any month, regardless of the number of Minimum Performance Standards ISSC fails to meet in such month, will be 10% of the Monthly Amount.
- C. Each type of Service for which a Minimum Performance Standard is specified shall initially be assigned a weighting factor by the State to reflect the relative importance to the State of that Service with respect to the other such Services. The sum of all the weighting factors will equal 1.00. Upon written notice (but no more than once per quarter), the State may adjust the weighting factors to reflect reasonable changes in the State's priorities.
- D. ISSC shall not be obligated to pay a Service Credit in respect of each Minimum Performance Standard for the first month in each fiscal year (October - September) of the Term in which ISSC's performance fails to meet such Minimum Performance Standard. ISSC's failure to meet any Minimum Performance Standard in any subsequent month in the same fiscal year of the Term shall result in a Service Credit to the State in an amount equal to the weighting factor for that category multiplied by ten percent (10%) of the Monthly Amount. For example, if the Monthly Amount is \$1,000,000 and ISSC has failed in two months of the same fiscal year to meet the Minimum Performance Standard for a category with a weighting factor of 0.20, the applicable Service Credit shall be:  $0.20 \times 0.10 \times \$1,000,000 = \$20,000$  for the second such month in which ISSC fails to meet the Minimum Performance Standard. (No Service Credit would be payable in



respect of ISSC's failure to meet the Minimum Performance Standard for the first month in such fiscal year).

- E. ISSC shall apply the total of the Service Credits paid to the State hereunder in respect of any month as a credit to reduce the amount payable by the State for amounts invoiced to the State by ISSC under the Contract.

**V. SERVICE INCENTIVES.**

- A. The State shall pay ISSC Service Incentives as provided in this Section V in the event ISSC meets or exceeds the Incentive Performance Standards specified in Attachments B-1 through B-3 to this Schedule B in a month. Following the delivery of ISSC's performance report under Section I.B of this Schedule B for a month, ISSC and the State shall determine whether ISSC's performance of the Services met or exceeded any Incentive Performance Standards in such month.
- B. Meeting or exceeding an Incentive Performance Standard in a month shall entitle ISSC to a Service Incentive equal to the Redeemable Service Credits, if any, for that Service category multiplied by one-third (1/3). For example, if the Redeemable Service Credits for a particular Service for a month equal \$10,000.00 and ISSC meets or exceeds the Incentive Performance Standard for such Service during that month, the applicable Service Incentive shall be:  $\$10,000/3 = \$3,333.33$ .
- C. Any Service Credits to which the State is entitled with respect to a month shall be offset against any Service Incentives due to ISSC, and any net balance owed to ISSC shall be invoiced to the State.