

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

CONTRACT AGREEMENT NO. 071B6000116  
 between  
 THE STATE OF MICHIGAN  
 and

NAME & ADDRESS OF CONTRACTOR		TELEPHONE Roger Downing	
Integrated Systems Solutions Corporation (ISSC) One Michigan Avenue, P.O. Box 30116 Lansing, MI 48909		[REDACTED]	
		BUYER Unit 9 <i>M. Tanner</i> Michael A. Tanner	
NIGP #920-23			
<b>MESC Mainframe Operations Contract</b>			
CONTRACT PERIOD		From: <b>October 26, 1995</b> To: <b>October 19, 2005</b>	
TERMS	Net 30 Days 18	SHIPMENT	As Required 17
F.O.B.	Delivered/Installed	SHIPPED FROM	N/A
MINIMUM DELIVERY REQUIREMENTS N/A			
MISCELLANEOUS INFORMATION: Contract for the Provision of Mainframe Operations and Support for the Michigan Employment Security Commission (MESC) in accordance with the attached Work Statement, Terms and Conditions and Cost Model.			
Estimated Contract Value: \$68,736,193.00			

*MAT  
RAH*

THIS IS NOT AN ORDER: This contract agreement is awarded on the basis of our inquiry bearing the Bid No. 94-LE0096. 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 Purchase Order Form.

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

**FOR THE CONTRACTOR:**

Integrated Systems Solutions Corporation

Firm Name

*Roger A. Downing*

Authorized Agent Signature

Roger A. Downing

Authorized Agent (Print or Type)

*10/18/95*

Date

**FOR THE STATE:**

*George Boersma*

Signature

George Boersma

Name

Director, Office of Purchasing

Title

*10/18/95*

Date

# **Michigan Employment Security Commission's Mainframe Operations**

## **MMO Contract**



**State of Michigan  
Department of Management and Budget  
Office of Purchasing  
Lansing, Michigan 48909**

**Integrated Systems Solutions Corporation  
One Michigan Avenue  
Lansing, Michigan 48909**

**CONTRACT FOR MICHIGAN EMPLOYMENT SECURITY COMMISSION  
MAINFRAME OPERATIONS**

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**CONTRACT FOR MICHIGAN EMPLOYMENT SECURITY COMMISSION  
MAINFRAME OPERATIONS**

**SECTION 1 - CONTRACT INTRODUCTION**

This Contract for Michigan Employment Security Commission ("MESC") Mainframe Operations ("Contract"), effective as of October 18, 1995, 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 Stevens T. Mason Building in Lansing, Michigan 48909 (the "State"). ISSC is a wholly-owned subsidiary of International Business Machines Corporation, a New York corporation, which has provided the Guaranty (Section 3, Appendix I).

As used in this Contract, "Party" means either ISSC or the State, as appropriate, and the "Parties" means both ISSC and the State. The Parties agree that the following terms and conditions will apply to the Products and 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 information systems capabilities and technical support for the MESC. Accordingly, the State has solicited proposals for such Products and Services by issuance of the MESC Mainframe Operations ("MMO") RFP.
- (B) ISSC is a large well-known provider of information technology Products and 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 Products and Services.
- (C) In response to the MMO RFP, ISSC has submitted a proposal to provide the Products and Services requested by the State in the MMO RFP.
- (D) ISSC represents that, by skill and experience, it is qualified to deliver the Products and 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 delivered such Products and 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 the Conversion and Transition activities and the commencement of the deliverance of Computing Capacity from the ISSC Data Center in an orderly and smooth manner that will not disrupt the delivery of other Products and 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 requested Products and Services to the State.
- (F) The Terms and Conditions, Work Statement, attachments and schedules which are part of, or which have been incorporated into this Contract are modified versions of ISSC's Best and Final Offer proposal submitted in response to the State's MMO RFP.

1      **DEFINITIONS AND GLOSSARY**

As used in this Contract:

- (a) "AAA" shall mean the American Arbitration Association in Detroit, Michigan. AAA is defined as the organization who will mediate any formal dispute as defined in Section 2, Subsection 11 (Dispute Resolution).
- (b) "Acceptance Testing" shall have the meaning specified in Section 2, Subsection 1(A) (Acceptance of Deliverables).
- (c) "Actual Uptime" means, of the Scheduled Hours, the aggregate amount of time, in any month, during which each Region (including without limitation the communications network technologies ("CNT") from the Detroit based channel extender to the ISSC Data Center) is actually available for use by the State's end users at the point of interface to the State's network (i.e., CNT).
- (d) "Additional Service" shall have the meaning specified in Section 2, Subsection 30 (Contract Change Requests).
- (e) "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
- (f) "Application Usage Charges" shall mean the bundled charges which compensate ISSC for providing Computing Capacity and all resources and other factors of production used by ISSC to do so
- (g) "Approved Subcontractor" shall mean any ISSC subcontractor that the State has approved to deliver certain of the Products or perform certain of the Services, as indicated in Schedule D (Approved Subcontractors)
- (h) "Application Software" shall mean any Software that processes data for the end user.
- (i) "Asset Disposition" shall mean all activities associated with planning for and managing the de-installation and removal of certain hardware and software assets which MESC will no longer require after the transition to the ISSC Data Center
- (j) "Availability" shall mean actual uptime plus Excusable Downtime, divided by Scheduled Uptime. For purposes of determining whether ISSC's performance meets any availability Performance Standard, ISSC's availability performance shall be measured on a monthly basis for each Region during each month of the Term
- (k) "Batch Management" shall mean the process of controlling production batch work including the scheduling of resources, the processing of data and transactions and the distribution of data/information between users and facilities. The State instructions on what, when and how to schedule and recover shall be provided to ISSC and included in the Procedures Manual. Setup and scheduling shall be performed and controlled by ISSC in accordance with the Procedures manual
- (l) "Business Days" shall mean weekdays, Monday through Friday, inclusive, except for holidays observed by the State
- (m) "CA" shall mean the "State Contract Administrator".
- (n) "Capacity Management" shall mean the development and maintenance of tactical and strategic plans to ensure that the ISSC Data Center and network environments accommodate growing or changing business requirements

- (o) "Cause" shall have the meaning specified in Section 2, Subsection 36(A) (Termination).
- (p) "Change Authorization Order" shall mean a fully completed form (Change Authorization Order) that, when signed by the Purchasing Director, will authorize ISSC to implement a certain defined change request. See Section 2, Subsection 30 (Contract Change Requests) for further definition of the Contract Change Request process.
- (q) "Change Management" shall mean the process to assess if an identified change is necessary, validate the adequacy of the acceptance test, schedule the promotion into the test environment, notify the appropriate functions and verify successful implementation.
- (r) "Change Order Labor Rates" shall mean the fully-loaded hourly labor rates specified in Schedule B-9 (Contract Hourly Rates) which are to be charged to the State for work performed under a Change Authorization Order pursuant to Section 2, Subsection 30 (Contract Change Requests).
- (s) "Charges" shall mean any monetary amount which ISSC will present to the State for payment.
- (t) "Cold Site" shall mean ISSC's facility that will be available to provide Computing Capacity which will allow ISSC to transition work load from the Hot Site. It is anticipated that the Hot Site will be used to provide Computing Capacity for a period of up to six (6) weeks after the declaration of a disaster. If the primary facility is not available at the end of the six (6) week period, all workload will be transitioned to the Cold Site and Computing Capacity will be provided from the Cold Site facility until workload can transition back to the primary facility.
- (u) "Cold Site Charges" shall mean the daily charge for usage of ISSC's Cold Site. Cold Site charges will be effective beginning with the day workload transitions to the Cold Site and terminating with the day workload transitions back to the primary facility. Cold Site Charges are defined in Schedule B-5. Cold Site Charges are charged on a per twenty-four (24) hour day basis.
- (v) "Computing Capacity" shall mean the Product that ISSC will deliver to the State to process the MESC Application Software.
- (w) "Confidential Information" shall mean the "Confidential Information of ISSC" and/or the "Confidential Information of the State" as appropriate to the context.
- (x) "Confidential Information of ISSC" means all information of ISSC (other than Confidential Information of the State as defined in "Confidential Information of the State") which is marked confidential, restricted, proprietary or with a similar designation. See Section 2, Subsection 7 (Confidentiality) for further definition of Confidential Information.
- (y) "Confidential Information of the State" shall mean, but is not limited to: a) all work product developed under this Contract; b) all information concerning the business and affairs of the State, its financial affairs, and its relations with its citizens and employees; and c) information which may be classified as confidential, proprietary or with a similar designation by the State. See Section 2, Subsection 7 (Confidentiality) for further definition of Confidential Information.
- (z) "Confidentiality Statement" shall mean the form (Confidentiality Statement) that ISSC and any subcontractor, and each of their respective employees assigned to work on, or participate in, the delivery of any Product or Services pursuant to this contract, or review any Confidential Information of the State, may be required by the State to sign as a condition to being granted access or continued access to such Confidential Information.

- (aa) "Configuration Management" shall mean the process of processing Hardware and Software configuration changes and maintaining lists and diagrams of systems configurations in the Procedures Manual.
- (ab) "Contract" shall mean this Contract for MESC Mainframe Operations, including any and all schedules, attachments and incorporated documents.
- (ac) "Conversion" shall mean all activities involved with preparing for and migrating from the existing mainframe operating system(s) (i.e. VSE/ESA, VM/XA, MVS/ESA, MVS/XA) to the MVS/ESA operating system and environment that will be utilized to process State Applications at the ISSC Data Center.
- (ad) "CPU" shall mean the Central Processing Unit or mainframe computer which ISSC will utilize to provide Computing Capacity
- (ae) "CPU-Non Prime Usage Hours" shall mean the cumulative number of hours of elapsed time the mainframe CPU actually spends running State application-level work during the month (i.e. the actual application program processing time), during Non-Prime Shift measured using the SMF or other mutually agreed-upon facility. "CPU-Non Prime Usage Hours" shall exclude any CPU hours attributable to System Services or Service Provider Usage. CPU-Non Prime Usage Hours shall be calculated using "9021-340 Equivalent Application CPU Hours" "9021-340 Equivalent Application CPU Hours" means the number of CPU-Non Prime Usage Hours on an IBM ES9000/9021-340 single image processor that is equivalent in processing output to the "Hours Used" for any given period, determined using a mutually agreed-upon published conversion formula.
- (af) "CPU-Non Prime Usage Charges" shall mean an amount equal to the total of all applicable unit rates from Schedule B-2 for the applicable fiscal year multiplied by the portion of the CPU-Non Prime Usage Hours applicable for each unit rate
- (ag) "CPU-Prime Usage Hours" shall mean the cumulative number of hours of elapsed time the mainframe CPU actually spends running State application-level work during the month (i.e. the actual application program processing time) during Prime Shift measured using the SMF or other mutually agreed-upon facility. "CPU-Prime Usage Hours" shall exclude any CPU hours attributable to System Services or Service Provider Usage. CPU-Prime Usage Hours shall be calculated using "9021-340 Equivalent Application CPU Hours" "9021-340 Equivalent Application CPU Hours" means the number of CPU-Prime Usage Hours on an IBM ES9000/9021-340 single image processor that is equivalent in processing output to the "Hours Used" for any given period determined using a mutually agreed-upon published conversion formula
- (ah) "CPU-Prime Usage Charges" shall mean an amount equal to the total of all applicable unit rates from Schedule B-1 for the applicable fiscal year multiplied by the portion of the CPU-Prime Usage Hours applicable for each unit rate
- (ai) "DASD Usage" shall mean the MVS peak number of Gigabytes of DASD allocated by or for the State's application-level work during the month, measured using the FDR/ADR or other mutually agreed-upon facility. "DASD Usage" shall exclude any DASD usage attributable to System Services or Service Provider Usage
- (aj) "DASD Usage Charges" shall mean an amount equal to the total of all applicable unit rates from Schedule B-3 for the applicable fiscal year multiplied by the portion of the DASD Usage applicable for each unit rate.

- (ak) "Deliverable" means a discrete Work Product to be developed by ISSC and delivered to the State in accordance with this Contract.
- (al) "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.
- (am) "Declared Disaster" shall mean a Disaster that will result in the loss of critical applications at the ISSC Data Center, Hot Site or Cold Site for a continuous period of outage of more than 24 hours. Both ISSC and the State will mutually agree to declare a Disaster and such declaration will initiate the execution of Disaster Recover Plan and recovery at the designated recovery site.
- (an) "Defined Milestones" shall mean those dates which are of such importance to the State that ISSC's failure to meet those dates will constitute a breach of the Contract. The Defined Milestones are documented in Schedule C (Defined Milestones).
- (ao) "Disaster" shall mean a situation or event that will result in the loss of critical applications at the ISSC Data Center, Hot Site or Cold Site
- (ap) "Disaster Recovery Plan" shall mean the document(s) that provides a detailed description of all strategies, processes, procedures, schedules, and resources required to complete the disaster recovery process.
- (aq) "Disaster Recovery Travel Charges" shall mean all reasonable ISSC out-of-pocket expenses associated with travel of ISSC and/or its subcontractors for: 1) travel to the recovery site during a Declared Disaster; 2) upon the State's request, travel to a State facility during a Declared Disaster; and 3) upon the State's request, travel to a State facility during a Disaster test period
- (ar) "Dispute Notice" shall mean the written notice of a dispute and the submission of the controversy to arbitration. The Disputing Party is required to send the Dispute Notice to the American Arbitration Association and to the other Party as defined in Section 2, Subsection 11 (Dispute Resolution)
- (as) "Disputing Party" shall mean the Party submitting a controversy to arbitration as defined in Section 2, Subsection 11 (Dispute Resolution)
- (at) "DMB" shall mean the State of Michigan Department of Management and Budget
- (au) "Effective Date" shall mean October 18, 1995
- (av) "Environment" shall mean the CICS, TSO or Report Management Distribution System regions of the development and production logical partitions of the ISSC mainframe providing Computing Capacity pursuant to this Contract.
- (aw) "Excusable Downtime" shall mean, of the Scheduled Uptime; (i) the aggregate amount of time, in any month, during which a Region is down due to a force majeure event as specified in Section 2, Subsection 12 (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); or (ii) downtime to a Region deemed Excusable Downtime pursuant to the Excusable Downtime Resolution Process

- (ax) "Excusable Downtime Resolution Process" shall mean the process by which the State and ISSC mutually resolve issues involving Excusable Downtime. The Excusable Downtime Resolution Process will be defined before any work transitions to the ISSC Data Center.
- (ay) "Expedited/Emergency Change" shall mean an Expedited or Emergency Change as defined in the Change Management Process Guide.
- (az) "First Year Liability" shall mean the aggregate of all Conversion Charges, Transition Charges, Asset Disposition Charges and the estimated Charges for Computing Capacity during the first four (4) months of the Contract. The estimated usage for the first four (4) months of the Contract will be based on the estimated usage as defined in the pricing model (Excel spreadsheet) provided ISSC as part of the RFP 94-LE0096 bid process.
- (ba) "Hardware" shall mean all computers and related attachments, features, accessories, printers, peripheral devices and other computer hardware or equipment provided for, or to, the State by ISSC under this Contract
- (bb) "Hot Site" shall mean ISSC's facility that will be available to provide Computing Capacity in the event of a Declared Disaster. The Hot Site will be available to allow ISSC to fully recover the State's workload within 48 hours of the declaration of a Disaster. The Hot Site can be used for a period not to exceed six (6) weeks, at which point the workload will be transitioned to the primary site, if available, or to a Cold Site
- (bc) "Hot Site Charges" shall mean the daily charge for usage of ISSC's Hot Site. Hot Site charges will be effective beginning with the day workload transitions to the Hot Site and terminating with the day workload transitions to the primary facility or to the Cold Site. The Hot Site can be used for a period not to exceed six (6) weeks, at which point the workload will be transitioned to the primary site, if available, or to a Cold Site. Hot Site Charges are defined in Schedule B-5. Hot Site Charges are charged on a per twenty-four (24) hour day basis with a two (2) day minimum charge
- (bd) "Hours Used" shall mean the number of CPU-Prime Usage Hours or CPU-Non Prime Usage Hours actually used by the State during a month
- (be) "Initial Weighting Factor" (IWF) shall mean a percentage established by the State to reflect the relative importance to the State of a specific Service Level Requirement with respect to the other Requirements. The sum of all the weighting factors will equal 1.00. The Initial Weighting Factor is used to calculate the amount of Liquidated Damages due the State if ISSC fails to meet any Minimum Service Level Requirement in any month. Further definition can be found in Section 2 Subsection 19 (Liquidated Damages).
- (bf) "ISSC" shall mean the 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.
- (bg) "ISSC Contract Administrator" shall mean ISSC's officer, or designated representative, whom ISSC notifies the State is assigned to serve in such capacity.
- (bh) "ISSC Customer Services Representative" shall mean the ISSC manager, or designated representative, who will have direct day-to-day responsibility for all aspects of the Contract. The ISSC Customer Services Representative shall be assigned full time to perform his or her responsibilities in managing the delivery of Products and Services and shall be located on-site in Detroit.

- (bi) "ISSC Data Center" shall mean the ISSC information processing facility in Boulder, Colorado from which the Computing Capacity will be provided by ISSC, or any replacement ISSC information processing facility approved by the State.
- (bj) "Key Personnel" shall mean those individuals in management or leadership positions whose knowledge would be difficult or disruptive to transfer in the middle of the project. ISSC has defined and committed certain personnel to be involved with the delivery of certain Products and Services during the term of the Contract. A listing of Key Personnel is set forth in Schedule A (Key Personnel). Section 2, Sub-Section 8 (ISSC Personnel) defines certain terms and conditions associated with the designation of Key Personnel.
- (bk) "Maintenance Window" shall mean the period of time from 2 p.m. - 8 p.m. Sundays or such other time as may be agreed to by the Parties.
- (bl) "MESC" shall mean the State of Michigan, Michigan Employment Security Commission, or its successor or designee.
- (bm) "MESC Application Software" shall mean all of the various mainframe application programs and systems which process MESC data.
- (bn) "MESC Data Center" shall mean the State facility where MESC's mainframe Hardware and Operating Software is installed.
- (bo) "Minimum Performance Standards" shall mean the performance, as defined in Section 3 (Work Statement), which, if not met, shall cause ISSC to pay the State Service Credits or Liquidated Damages.
- (bp) "Monthly Amount" shall mean, 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.
- (bq) "MMO RFP" shall mean the MESC Mainframe Operations (MMO) Request for Proposal (RFP), denoted as State RFP #94-LE0096.
- (br) "Notice of Election" shall mean the written notification to the State, by ISSC, of ISSC's election to assume control of the defense and settlement of a specific claim as defined in Section 2, Subsection 13 (Indemnification).
- (bs) "On-Line Management" shall mean the process of coordinating the appropriate skills, information, tools and procedures required to manage on-line networks and their supporting hardware and software systems. This includes the staffing of a help desk facility for the State.
- (bt) "On-Line Response Time" shall mean the amount of time required by the CICS Region within an Environment (or ISO Region) to process a request for information from a State end user.
- (bu) "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.
- (bv) "Optional Business Recovery Test Time" shall mean any additional test time (usage of the ISSC Hot Site) the State may request over and above the Disaster Recovery test time defined in Schedule B-5, Paragraph 1 (Disaster Recovery Pricing Schedule). Usage of any Optional Business Recovery Test Time will be priced as defined in Schedule B-5 (Disaster Recovery Pricing Schedule).

- (bw) "Party" shall mean either ISSC or the State
- (bx) "Parties" shall mean both ISSC and the State.
- (by) "Performance Management" shall mean the process to identify, record, track, and correct issues impacting service delivery, recognize recurring problems, address procedural issues and contain or reduce the impact of problems that occur.
- (bz) "Performance Standards" shall mean the required level of performance, as defined in Section 3 (Work Statement), for delivering the Computing Capacity which, if not met by ISSC, shall constitute a breach of the Contract and shall cause ISSC to pay Liquidated Damages or Service Credits.
- (ca) "Preexisting Materials" shall mean, but shall not be limited to, any Software, Hardware, processes, procedures, Products or Services that existed before execution of this Contract.
- (cb) "Prime Shift" shall mean the hours of 8:00 a.m. through 5:00 p.m. (Eastern Time) Monday through Friday, including holidays. Hours that are not Prime Shift hours shall be referred to as "Non-Prime Shift".
- (cc) "Proceeding" shall mean any litigation, investigation, arbitration, debarment, bankruptcy or other proceeding. See Section 2, Subsection 10 (Disclosure of Litigation) for further definition.
- (cd) "Products" shall mean, but shall not be limited to, the Computing Capacity, Conversion and Transition, as such Products are described in this Contract, and as such Products evolve, are enhanced and change over the Term as contemplated by this Contract.
- (ce) "Purchasing Director" shall mean the individual who is serving as the Purchasing Director of the Office of Purchasing, State of Michigan, Department of Management and Budget, or designated representative.
- (cf) "Recovery Management" shall mean the process of planning, establishing and testing the recovery procedures required to provide the Computing Capacity in the event of a failure. The intent of this process is to anticipate and minimize the impact of systems resource failure through the development of predefined, documented procedures and software/hardware recovery capabilities.
- (cg) "Recovery Site" shall mean the ISSC facility which will be used to provide Computing Capacity in the event of a Declared Disaster.
- (ch) "Region" shall mean the CICS, TSO or RMDS region of an Environment as applicable.
- (ci) "RFP" shall mean the State's Request for Proposal documents and process as administered by the State of Michigan, Department of Management and Budget.
- (cj) "Schedules" shall mean the Schedules attached to this Contract, including any and all Attachments.
- (ck) "Services" shall mean, but shall not be limited to, Asset Disposition and any Additional Service 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.
- (cl) "Service Credits" shall mean the 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 19 (Liquidated

Damages), to which the State becomes entitled upon ISSC's failure to meet any Minimum Performance Standard in a month.

- (cm) "Service Guarantee" shall mean the maximum aggregate amount of Liquidated Damages for which ISSC shall be liable during any month, regardless of the number of Service Level Requirements ISSC fails to meet in such month. The maximum aggregate amount of Liquidated Damages will be 30% of the Monthly Amount. This percentage shall hereafter be referred to as the Service Guarantee Percentage.
- (cn) "Service Provider Usage" shall mean:
1. With regards to CPU-Prime Usage and CPU-Non Prime Usage shall mean the cumulative number of hours of elapsed time the mainframe CPU ISSC uses for running (including, but not limited to):
    - a. System programmer and operator ISO Id's and batch jobs;
    - b. System programmer test systems;
    - c. Contract data collection and reporting; and,
    - d. ISSC-caused lost time
  2. With regards to DASD Usage shall mean the gigabytes of DASD ISSC uses for (including, but not limited to):
    - a. System maintenance and DLIB volumes;
    - b. System management database (e.g. Info. Management);
    - c. Scheduler database (e.g. OPC);
    - d. Contract measurement and billing databases (e.g. SLR, SMF);
    - e. Console logs;
    - f. ISSC employee datasets; and,
    - g. System programmer test systems
  3. With regards to Tape Usage shall mean the tape mounts ISSC uses for (including, but not limited to):
    - a. System backups;
    - b. System maintenance;
    - c. File backups;
    - d. System logs; and,
    - e. ISSC employee datasets
- (co) "Set-Off" shall mean a monetary credit in the form of a reduction in the amount that would otherwise be payable by the State to ISSC under the Contract.
- (cp) "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 delivering Products or performing 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 Section 3, Subsection 6 D 17.
- (cq) "State" shall mean the State of Michigan, its departments, agencies, officers, employees and agents. The State of Michigan Department of Management and Budget (DMB), or its successor or assignee, shall be the State's authorized representative for purposes of Contract administration and compliance. With respect to Products or 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.

- (cr) "State Contract Administrator" shall mean the State official, or designated representative whom the State notifies ISSC is assigned to serve in such capacity.
- (cs) "State Facility" shall mean the MESC Data Center, the MESC State Office Building and any other State premises which the State makes available to ISSC to facilitate ISSC's performance pursuant to this contract
- (ct) "System Services" shall mean:
1. With regards to CPU-Prime Usage and CPU-Non Prime Usage (including, but not limited to):
    - a. Base MVS components (e.g. GRS, SMS/DFI, VLF);
    - b. System monitoring products (e.g. Omegamon, RMF, NPM);
    - c. JES and system-wide print drivers (e.g. JES2/3, PSF, VPS);
    - d. System network services (e.g. VTAM, Netview, MVS, TCP/IP);
    - e. System automation products (e.g. Schedulers, Tape Management, AutoOps); and,
    - f. System storage management (e.g. DASD backup/recovery and space management (DFHSM)).
  2. With regards to DASD Usage shall mean (including, but not limited to):
    - a. System product libraries;
    - b. Page space;
    - c. Spool space (JES);
    - d. Catalogs; and,
    - e. System parameter and control datasets
- (cu) "System Software Group 40 to Group 80 Upgrade Charges" shall mean those charges which will be instituted when the State's CPU-Prime Usage is equal to or greater than 400 hours. See Schedule B-6 for a further definition of these Charges.
- (cv) "Tape Usage" shall mean the cumulative number of tape mounts ISSC actually spends for State application-level work during the month (i.e. the actual application tape mounts) measured using the SMF or other mutually agreed-upon facility. "Tape Usage" shall exclude any tape usage attributable to tape mounts performed by the State. ISSC initiated system backups or Service Provider Usage.
- (cw) "Tape Usage Charges" shall mean an amount equal to the total of all applicable unit rates from Schedule B-4 for the applicable fiscal year multiplied by the portion of the Tape Usage applicable for each unit rate.
- (cx) "Term" shall mean the time period from the Effective Date through the expiration or termination for any reason of the last delivery of Products or provisioning of Services pursuant to the Contract.
- (cy) "Termination Assistance" shall have the meaning as defined in Section 2, Subsection 36 (Termination).
- (cz) "Third-Party Software" shall mean any Software that is not owned by ISSC, any Affiliate of ISSC or the State.
- (da) "Transition" shall mean all activities involved with preparing for and physically moving the mainframe operations from the existing MESC Data Center to the ISSC's Data Center.
- (db) "Unauthorized Removal" shall have the meaning specified in Section 2, Subsection 19 (Liquidated Damages).

- (dc) "Unilateral Change Authorization Order" shall have the meaning specified in Section 2, Subsection 30 (Contract Change Requests)
- (dd) "Virus" shall mean any destructive computer program or code that is intended to disrupt or interfere with normal computer operations, including, without limitation, viruses, "worms", data disabling codes, "logic bombs" and "time bombs".
- (de) "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 delivering the Products and performing the Services and fixed in any tangible medium, together with all intellectual property rights embodied in or associated with the foregoing items.
- (df) "Written Deliverables" shall mean any Deliverable that is delivered to the State in written format. Generally, all Deliverable shall be delivered to the State in written format.

2 INCORPORATED DOCUMENTS AND ORDER OF PRECEDENCE

- A. The documents listed in Table 1, along with their respective Attachments and Schedules, are hereby incorporated as part of this Contract. In the event of any inconsistency or conflict between any parts of this Contract and any parts of the documents in Table 1, the parts of the Contract shall govern. The order of precedence for resolving other inconsistencies or conflicts shall be in the order as presented in Table 1.

TABLE 1	
1	State BAFO Letter to ISSC;
2	State Question and Answers - RFP 94-LE0096
3	State RFP 94-LE0096;
4	ISSC Best and Final Offer, including:
a	Technical Proposal;
b	Pricing Proposal; and,
c	Response
5	ISSC Oral Presentation and Handout; and,
6	ISSC RFP 94-LE0096 Response, including:
a	Technical Proposal; and,
b	Pricing Proposal.

- B. ISSC shall not be entitled to payment for any Product or Service referred to in any of the documents defined in Table 1, unless specifically provided for in Schedule B (Pricing Schedules) or in Section 2, Subsection 17 (Invoicing and Payment) of this Contract.

3 PRODUCTS AND SERVICES OVERVIEW

## A PRODUCTS

### 1 Computing Capacity

ISSC will deliver sufficient Computing Capacity which will allow the State to process its Applications in a timely manner. In order to deliver such Computing Capacity ISSC will provide and maintain all central Hardware, certain associated peripheral equipment, and the Operating Software for processing the MESC Application Software, including providing dedicated communications facilities to the MESC Data Center in Detroit. ISSC will be responsible for all aspects of systems operation and management for the MESC Application Software, including Workload Scheduling, Performance Management, Capacity Management, Change Management, Problem Management, Service Level Management, Data Management (certain elements will be at the direction of the State), Resource Accounting, and Security Management (certain elements will be at the direction of the State), as such are more fully explained in Section 3 (Work Statement). ISSC shall also prepare an overall Disaster Recovery Plan, Disaster Recovery Manual and Disaster Recovery Test Plan as well as provide appropriate Disaster Recovery Capacity to allow full recovery within forty-eight (48) hours of a Disaster. ISSC will deliver the Computing Capacity according to the terms and conditions of this Contract. ISSC specifically agrees to deliver the Computing Capacity in accordance with the Performance Standards set forth in Section 3 (Work Statement).

### 2 Transition

The Transition will consist generally of all activities involved with migrating MESC Application processing from the MESC Data Center to the ISSC Data Center. ISSC will be responsible for all aspects of the Transition activities generally including planning, preparation of the ISSC facilities, developing appropriate processes and procedures, physical movement and system start-up activities. ISSC will perform the Transition according to the terms and conditions of this Contract. ISSC specifically agrees to perform the Transition in accordance with the requirements set forth in Section 3 (Work Statement).

### 3 Conversion

The Conversion will consist generally of all activities involved with converting the MESC Applications from their current Operating Software to the MVS/ESA Operating Software. ISSC will be responsible for providing the skills, expertise, tools and personnel required to perform the Conversion in a highly automated manner. The final Conversion will occur during the Transition process when processing will move from the MESC Data Center to the ISSC Data Center. ISSC will perform the Conversion according to the terms and conditions of this Contract. ISSC specifically agrees to perform the Conversion in accordance with the requirements set forth in Section 3 (Work Statement).

## B SERVICES

### 1 Asset Disposition

Asset Disposition will consist generally of all activities involved with planning for, and managing of the de-installation and removal of certain hardware and software assets which MESC will no longer require after the transition to the ISSC Data Center. ISSC specifically agrees to perform Asset Disposition in accordance with the requirements set forth in Section 3 (Work Statement).

4 EXCLUSIONS

The Print and Distribution option, referenced in various places throughout this Contract, will be specifically excluded and will not be executed as part of this initial Contract. The State reserves the right to add the Print and Distribution option at a future date through the Contract Change Request process.

5 OBJECTIVES

A It is anticipated that the Products and Services provided pursuant to this Contract are the most innovative, flexible, guaranteed, industry proven and cost effective solutions that meet or exceed the State's requirements and financial expectations. In order to achieve these objectives, the State and ISSC have agreed to the following specific goals and objectives for the Products which will be delivered and the Services that will be performed pursuant to this Contract:

1. Each of the components of the Products and Services will be designed and delivered to meet or exceed the State's requirements specified in the MMO RFP
2. ISSC will use its best efforts to deliver the Products and perform the Services in such a manner that they will not disrupt the delivery of other Products or performance of any Services to, or the operation of the other systems of, the State. As of the date ISSC is to initiate delivery of Computing Capacity from the ISSC Data Center, ISSC will have taken all necessary and appropriate steps within its control to plan and execute a smooth and orderly transition to and start-up of the delivery of Computing Capacity from the ISSC Data Center.
3. ISSC will deliver the Products and perform the Services for the prices stated in Schedule B 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, Products and Services. Specifically, ISSC represents that its solution will meet the following pricing objectives of the State:
  - a. Deliver significant long-term operational savings to the State;
  - b. Provide predictable charges and easily understood invoices, with no unanticipated price increases over time;
  - c. Be sufficiently flexible to adapt to changing technology and business needs;
  - d. Assure that factors affecting charges to the State will remain within the State's control;
  - e. Be fair and desirable to both Parties;
  - f. Preserve the original economics of this Contract over time;
  - g. Facilitate simple and easy administration and auditing by the State;
  - h. Avoid the need to renegotiate pricing;
  - i. Reflect an appropriate relationship between fixed and variable charges;

- j. Provide pricing advantages to the State due to economies of scale;
  - k. 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 Products and Services; and,
    - IV. implement technology that facilitates, rather than constrains, the State's decisions and strategy;
  - l. 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,
  - m. Protect the State in the event of unsatisfactory performance by ISSC.
4. At all times, ISSC's delivery of Products and performance of Services 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 delivery of Products and performance of Services will meet or exceed each of the Performance Standards specified in Section 3. The Parties expect that the Products and 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 provider of Products and Services.
  5. ISSC will work closely and cooperate fully with the State and other service or equipment providers of the State to ensure coordination of all activities, including the Hardware platforms and Software operated by ISSC, with other State technology, administrative or management initiatives
  6. Upon the suspension, expiration or termination of this Contract with respect to any Product or Service for any reason, ISSC will cooperate with and assist the State in transferring responsibility for the Products and Services provided by ISSC relating to such Product or Service to the State or to another vendor selected by the State, with ISSC using its best efforts to avoid disruption in the delivery of Products or performance of Services or degradation in the quality, completeness or responsiveness of the delivery of Products or performance of Services during the transition back to the State, or the transition to a contractor designated by the State

## 6 CONSTRUCTION

- A. The above provisions of this Section 1 (Contract Introduction) 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 Section 1 (Contract Introduction).

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## SECTION 2 - CONTRACT TERMS, CONDITIONS AND PROVISIONS

The following terms, conditions and provisions apply to ISSC's delivery of Product and performance of Services pursuant to this Contract.

### I ACCEPTANCE OF DELIVERABLES

#### A ACCEPTANCE TESTING

1. Certain Deliverables to be provided by ISSC require testing and acceptance by the State before commencement of actual usage of such Deliverables
2. The acceptance test criteria and acceptance test period for each Deliverable shall include a period of uninterrupted operation in full production mode in compliance in all material respects with all performance standards for a period of sixty (60) days.
3. ISSC will perform acceptance tests and the State will participate in the performance of those tests to determine whether the Deliverables conform in all material respects to the specifications as set forth in this Contract, as measured by mutually agreed upon acceptance test criteria which will be set forth in the detailed implementation plan or a Contract Change Request.

#### B ACCEPTANCE OF WRITTEN DELIVERABLES

1. Within the applicable number of business days specified in Section 3 (Work Statement) 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 CA, and shall provide ISSC a written notice of acceptance of the Deliverable or a written notice of non-acceptance citing the reasons for non-acceptance and examples of the deficiencies that must be corrected
2. ISSC is responsible for identifying all deficiencies without regard to whether they have been identified by the State.
3. ISSC shall promptly correct all indicated deficiencies and resubmit the Deliverable for approval by the State no later than five (5) business days after receiving the State's notice.

#### C NON-CONFORMANCE

1. 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
2. Upon completion of such corrections the Deliverable will be subject to re-testing to determine whether the previously reported nonconformity has been corrected and the Deliverable meets the criteria for acceptance.
3. This process will be repeated as necessary until all nonconformities are corrected
4. If ISSC fails to make the Deliverable meet the criteria for acceptance within fifteen (15) calendar days after receiving the State's written notification of nonconformance 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:

- a. Extend the period of time for ISSC to make corrections, in writing, without waving rights or remedies.
  - b. Directly, or by use of a third party contractor, make the necessary corrections or otherwise furnish the Deliverable, and charge to ISSC (or Set-Off against ISSC charges) an amount equal to (1) the costs incurred by the State in making such correction or furnishing the Deliverable itself or through a third party contractor, plus (2) the amount, if any, paid or payable to ISSC for the Deliverable (not withstanding its nonconformance), less (3) 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.
  - c. Accept the Deliverable in its nonconforming condition 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.
  - d. 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
5. The remedies set forth above shall be in addition to all other legal and equitable remedies available to the State, including liquidated damages as defined below.

## 2 ACCOUNTING RECORDS

- A. ISSC will be required to retain all pertinent financial and accounting records (including time sheets and payroll records, and information pertaining to this Contract and to the Products and Services provided under this Contract) in accordance with Generally Accepted Accounting Principles and other procedures specified by the State.
- B. 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 State (including, but not limited to, the Michigan Department of Management and Budget, the Michigan Department of Labor, the Michigan Office of the Auditor General and the Michigan Employment Security Commission), the United States Department of Labor, and the Office of the United States Inspector General, or their respective designees or representatives, at any time during this Contract term and any extension thereof, and for three (3) years from the expiration date of, and final payment under, this Contract or any extension thereof.

## 3 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.

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

B. ISSC shall not assign the right to receive money due under this Contract without the prior written consent of the State Purchasing Director

#### 4 AUDIT RIGHTS

##### A. ACCESS

1. ISSC will provide to the State (including, but not limited to, its auditors (including the State's internal audit staff) the Michigan Department of Labor, the Michigan Employment Security Commission, and the Michigan Attorney General), the United States Department of Labor (USDOL), or the United States Inspector General, or their respective designees or other representatives, within twenty-four (24) hours after a request made by the State at any time, access to:
  - a any facility or part of a facility which is used to provide Products and Services under this Contract,
  - b to ISSC s (and its subcontractors' and agents') personnel, and
  - c to data and records relating to the Products and Services provided pursuant this Contract
2. Such access shall be for the purpose of:
  - a performing audits and inspections of the State and its business, or
  - b verifying the integrity of data owned by the State, or
  - c examining the systems that support and transmit that data, or
  - d verifying the accuracy of ISSC s billings to the State, including, without limitation, to the extent applicable to the Products and Services provided pursuant to this Contract. audits of:
    - (1) practices and procedures
    - (2) systems.
    - (3) general controls and security practices and procedures,
    - (4) disaster recovery and back-up procedures,
    - (5) the efficiency of ISSC's operations,
    - (6) ISSC s financial and accounting records, and
    - (7) the performance levels, and the accuracy in reporting performance levels, achieved by ISSC

3. Notwithstanding anything to the contrary above, 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.
4. ISSC will provide to such auditors, inspectors and regulators any assistance that they require, including installing and operating audit software.

B AUDIT CONFERENCE

- 1 ISSC will cooperate fully with the State (including, but not limited to, its auditors (including the State's internal audit staff) the Michigan Department of Labor, the Michigan Employment Security Commission and the Michigan Attorney General), the United States Department of Labor (USDOL), or the United States Inspector General, or their respective designees or other representatives in connection with State or Federal audit functions.
- 2 Following any audit or examination, State or Federal auditors 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
- 3 The State and ISSC agree to develop, before transitioning any workload to the ISSC Data Center, 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.

5 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.

6 COMPLIANCE WITH STATUTES, ETC

A GENERAL

- 1 ISSC must comply with all applicable State, Federal and local statutes, regulations, ordinances, and instructions in delivering Products or performing Services to the State under this Contract
2. 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 and as amended, dealing with issuance of W-2s to common law employees.
3. ISSC is responsible for both Federal and State unemployment insurance coverage and standard workers compensation insurance coverage for its employees.
- 4 ISSC must comply with all Federal and State tax laws and withholding requirements for its employees.

- 5 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.
- 6 ISSC may be required to demonstrate compliance with such laws at the written request of the Director of Purchasing or CA

7 CONFIDENTIALITY

A. CONFIDENTIAL INFORMATION

- 1 ISSC and the State each acknowledge that the other possesses and will continue to possess information that has been developed or received by it.
2. As used in this Subsection (Confidentiality), "Confidential Information" of ISSC means 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
3. "Confidential Information" of the State includes, but is not limited to, the following:
  - a All work product developed under this Contract, and
  - b All information concerning the business and affairs of the State, its financial affairs, and its relations with its citizens and employees, and
  - c Any information which may be classified as confidential, proprietary or with a similar designation by the State

B PROTECTION OF CONFIDENTIAL INFORMATION

- 1 Except as required by law, 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
- 2 Neither ISSC nor the State will:
  - a make any use of the Confidential Information of the other except as contemplated by this Contract
  - b acquire any right in or assert any lien against the Confidential Information of the other, or
  - c 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 it if requested to do so
3. ISSC will limit disclosure of Confidential Information of the State to its employees who must have access thereto in order for ISSC to perform its obligations under this Contract.
- 4 Notwithstanding the foregoing, ISSC may disclose Confidential Information of the State to its subcontractors, where:

- a. use of the subcontractor is authorized under this Contract, and
  - b. ISSC assumes full responsibility for the acts or omissions of its subcontractors.
- 5 At the State's request, ISSC and any subcontractor, and each of their respective employees assigned to work on, or participate in the delivery of any Product or Services pursuant to this Contract, or 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.
- 6 ISSC must comply with all applicable State and Federal Confidential Information statutes, regulations, ordinances or instructions.
- 7 Without limiting the generality of the foregoing, ISSC must comply with the Employment Security Act 1936 PA 1, Section 11, as amended, MCL 421.11(b); MSA 17 511(b) as it relates to Confidential Information.

C. EXCLUSIONS

- 1 Notwithstanding the foregoing, this Subsection (Confidentiality) will not apply to any particular information which the State or ISSC can demonstrate:
- a. was in the possession of the receiving party at the time of disclosure to it;
  - b. 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
  - c. was independently developed by the receiving party without reference to Confidential Information of the furnishing party
- 2 Further, this Subsection (Confidentiality) 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 Subsection (Confidentiality) 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 implied any right or license to the Confidential Information of the other party

E. REMEDIES

- 1. Each party acknowledges that if it breaches (or attempts or threatens to breach) its obligations under this Subsection (Confidentiality), the other party will be irreparably harmed
- 2. 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).

8 ISSC PERSONNEL

A KEY PERSONNEL

“Key Personnel” are defined as those individuals in management or leadership positions whose knowledge would be difficult or disruptive to transfer in the middle of the project. During the evaluation process, the State considers the credentials and experience of named staff. Since the evaluation is based on such named individuals, they are by definition “Key Personnel”. Those other individuals ISSC subsequently names and commits to a project in responsible positions would generally be defined as Key Personnel as well. A listing of all Key Personnel has been set forth in Schedule A (Key Personnel)

1. The State will have the right to approve the assignment and replacement by ISSC of all Key Personnel assigned to provide on-site ISSC representation, including, without limitation, individuals named or described in Schedule A (Key Personnel), and individuals assigned significant managerial responsibilities as mutually agreed by the parties.
2. Before assigning an individual to any of these positions, 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.
3. The State reserves the right to interview the individual before granting approval
4. The State has no rights as to the hiring or termination of ISSC employees

B. REPLACEMENT OF PERSONNEL AT THE STATE'S REQUEST

1. The State reserves the right to require ISSC to replace ISSC's employees who the State determines unsuited and therefore whose continued use is contrary to the best interests of the State.
2. Before a written request is issued it will be discussed by authorized representatives of the State and ISSC
3. Upon receipt of a written request from an authorized representative of the State, ISSC shall be required to proceed with the replacement
4. The replacement request will include the desired replacement date
5. ISSC shall effect the replacement in a manner that does not degrade service quality.
6. This provision does not give the State the right to require ISSC to terminate any of ISSC's employees' employment; it gives the State only the right to require that ISSC discontinue using an employee in the delivery of Products or Services to the State

C REPLACEMENT PERSONNEL

Any replacement personnel assigned by ISSC to deliver Products or Services under this Contract shall have qualifications for the assigned position that equal or exceed those of the person being replaced

9 ISSC RESPONSIBILITIES

- A. ISSC will be totally responsible for all contractual activities whether or not ISSC performs them.

- B The State reserves the right to receive copies of and review all subcontracts associated with this Contract.
- C ISSC is the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from this Contract.
- D If ISSC proposes to use any subcontractor(s), ISSC must provide the CA with a list of the proposed subcontractor(s), including firm name and address, contact person, complete description of work to be subcontracted, and descriptive information concerning subcontractors' organizational abilities
  - 1. No part of this work may be subcontracted without the written approval of the State
  - 2. The State reserves the right to approve or disapprove proposed subcontractors for this project in its sole discretion and to require ISSC to replace subcontractors found, in the opinion of the State, to be unacceptable.
  - 3. ISSC is totally responsible for adherence by any subcontractor and its personnel to all provisions of this Contract
  - 4. All compensation to subcontractors or suppliers must be made by ISSC.
- E The State will not direct payments for Products or Services acquired in connection with this procurement other than to ISSC, nor will the State release ISSC from having to perform any obligations under this Contract, notwithstanding the fact that a subcontractor may have been engaged to perform those obligations.

10 DISCLOSURE OF LITIGATION

A DISCLOSURE

- 1 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, debarment, bankruptcy or proceeding which arises during the Term, to which ISSC (or any subcontractor hereunder) is a party, and which involves:
  - a 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;
  - b a claim or written allegation of fraud against ISSC or any subcontractor hereunder arising out of their business activities; or,
  - c a claim or written allegation that ISSC or any subcontractor hereunder violated any Federal, State or local statute, regulation or ordinance
- 2. Any such litigation, investigation, arbitration, debarment, bankruptcy or other proceeding (collectively "Proceeding") must be disclosed in a written statement to the CA within 15 business days of the commencement of any such Proceeding, or from the date ISSC becomes aware of any such Proceeding.

3. Details of settlements which are prevented from disclosure by the terms of the settlement may be annotated as such
4. Annually, on or before February 15 of each year, ISSC shall, after investigation, certify in writing that it is in compliance with this Subsection (Disclosure of Litigation). With respect to such certification, ISSC may rely on similar good faith written certification of its subcontractors, which 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 Subsection (Disclosure of Litigation), or of which the State otherwise becomes aware, during the Term causes the State to be concerned about:

1. ISSC's (or subcontractor's) ability to continue to perform this Contract in accordance with its terms and conditions, or
2. whether ISSC (or subcontractor) in providing Product or 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 statute, regulations, ordinance, instruction, or public policy,

then ISSC shall be required to provide the State all reasonable assurances requested by the State to demonstrate that:

1. ISSC and/or its subcontractor(s) will be able to continue to perform this Contract in accordance with its terms and conditions, and
2. ISSC and/or its subcontractor(s) has not and will not engage in conduct in delivering Products or performing Services for the State which is similar in nature to the conduct alleged in such proceeding

## 11 DISPUTE RESOLUTION

### A WAIVER

All claims, counterclaims, or disputes 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) calendar days from the occurrence of the event which gives rise to the dispute shall be deemed waived

### B CLAIM

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, 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

### C AFFIDAVIT

For all ISSC claims seeking an increase in the amounts payable to ISSC or the time for ISSC's performance, ISSC shall submit an affidavit executed by an officer or partner of ISSC who is authorized to do so, certifying that the claim is made in good faith, 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 claims entitlement from the occurrence of the claimed event, and supporting data are current, and complete to ISSC's best knowledge and belief.

D. INFORMAL DISPUTE RESOLUTION

1. If ISSC's on-site Customer Services Representative is unable to resolve disputes, ISSC, upon the written request of a party, will appoint one or more designated representatives who does not devote substantially all of his or her time to performance under this Contract, whose task it will be to meet with the CA or designated representative for the purpose of endeavoring to resolve such dispute.
2. If the CA, or designated representative, and the designated ISSC representative(s) are unable to resolve the dispute, they will meet with the Director of the Office of Purchasing, or designated representative, for the purpose of endeavoring to resolve such dispute.
3. ISSC designees and State representative(s) shall meet as often as the parties reasonably deem necessary in order to gather and furnish to the other all information with respect to the matter at issue which the parties believe to be appropriate and germane in connection with its resolution. The representatives shall discuss the problems and negotiate in good faith in an effort to resolve the dispute without the necessity of any formal proceeding.
4. During the course of negotiations, all reasonable requests made by one Party to another for non-privileged 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.
5. 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.

E. FORMAL DISPUTE RESOLUTION

If the State and ISSC are unable to informally resolve any controversy relating to or arising under this Contract, 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 for monetary damages, such action shall be submitted to the Michigan Court of Claims while all other actions initiated by either party shall be initiated in the Michigan District or Circuit Court; provided however that the State reserves, at its sole option, the right to require that any particular claim, whether it is initiated by ISSC or the State, be submitted to mandatory and binding arbitration. At least twenty-one (21) calendar days prior to commencing any action against the State, ISSC shall request the State to inform ISSC whether the controversy shall be resolved through litigation or by mandatory and binding arbitration.

Formal proceedings for the resolution of a disputed claim may not be commenced until the earlier of:

1. the designated representatives concluding in good faith that amicable resolution through continued negotiation of the matter does not appear likely; or

2. thirty (30) calendar days after the initial request to resolve 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, or to preserve a superior position with respect to other creditors.

If the controversy is to be resolved by arbitration, then the following procedures shall apply:

1. a. The party submitting the controversy to arbitration (the "Disputing Party") shall notify the American Arbitration Association in Detroit, Michigan ("AAA") and the other party 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.
  - b. Each party shall have fifteen (15) business 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 the three (3) arbitrators from those individuals.
2. a. Arbitration will be conducted by the arbitrators selected pursuant to Paragraph 1 above with respect to the dispute described in the Dispute Notice and any other disputes related to this Contract between the parties to this Contract (A) pending at the inception of such arbitration and not otherwise being arbitrated under this Subsection (Formal Dispute Resolution) or (B) arising during the pendency of such arbitration, in accordance with the Commercial Arbitration Rules of the AAA, except as specifically provided otherwise in Section 2, Subsection 29 (Severability)
  - b. The arbitrators will allow reasonable discovery as otherwise set forth 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.
  - c. The arbitrators will have no power or authority, under the Commercial Arbitration Rules of AAA or otherwise, to amend or disregard any provision of the Contract unless otherwise agreed to by the parties in writing.
  - d. Unless otherwise agreed to in writing, the arbitration hearing shall be limited to not more than ten (10) hearing days conducted on consecutive business days, with each of the parties being allocated one-half of the time for the presentation of its case.
3. Should an arbitrator refuse or be unable to proceed with arbitration proceedings as called for by this Paragraph, the arbitrator shall be replaced by an arbitrator selected from the other arbitrators originally proposed by AAA and 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 this Subsection (Formal Dispute Resolution). If an arbitrator is replaced pursuant to this paragraph, then a rehearing shall take place in accordance with the provisions of this Subsection (Formal Dispute Resolution) and the Commercial Arbitration Rules of AAA.

4. The arbiters 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 arbiter's opinion shall be a confidential document subject to the confidentiality obligations contained in this Contract.
5. Arbitration hearings shall be held in Lansing or Detroit, Michigan.
6.
  - a. 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.
  - b. The arbitrators shall render their judgment or award within fifteen (15) business days following the conclusion of the arbitration proceeding.
  - c. 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.

F 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.

G GOVERNING LAW

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

H JURISDICTION

1. ISSC irrevocably consents to the exclusive jurisdiction of the Courts of the State of Michigan and 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 otherwise.
2. ISSC agrees to appoint agents in the State of Michigan to receive service of process.

12 EXCUSABLE FAILURE

- A. Neither party will be liable for any default or delay in the performance of its obligations under this Contract, except as otherwise provided pursuant to the Disaster Recovery requirements, 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; 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, work-around plans or other means, including disaster recovery plans.

- B. 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.
- C. If any of the above-enumerated circumstances substantially prevent, hinder, or delay delivery of the necessary Products or performance of the necessary Services for the performance of the State's functions for more than forty-eight (48) consecutive hours, and the State determines that performance is not likely to be resumed within a period of time that is satisfactory to the State in the exercise of its reasonable discretion, then at the State's option:
  - 1. the State may procure such Products or 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;
  - 2. the State may terminate any portion of this Contract so affected and the charges payable thereunder shall be equitably adjusted to reflect those terminated Products or Services; or
  - 3. 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
- D. 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 Products or Services not rendered as a result of the excusable failure condition
- E. 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 a excusable failure condition described in this Subsection (Excusable Failure) and ISSC cannot reasonably circumvent the effect of the subcontractor's default or delay in performance through the use of alternate sources, work-around plans or other means

13 INDEMNIFICATION

A PATENT/COPYRIGHT INFRINGEMENT INDEMNITY

- 1. 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, without limitation, 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 piece of equipment sold, or any software licensed to the State by ISSC or its subcontractors, or the operation of such equipment or software, or the use or reproduction of any documentation provided with such equipment 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, or any other country
- 2. In addition, should the equipment 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:

- a. procure for the State the right to continue using the equipment or software; or, if such option is not reasonably available to ISSC,
- b. replace or modify the same with equipment or software, as the case may be, of equivalent function and performance so that it becomes non-infringing, or, if such option is not reasonably available to ISSC,
- c. accept its return by the State with appropriate credits to the State against ISSC's charges

B OTHER INDEMNITIES

- 1 ISSC shall indemnify, defend and hold harmless the State from and against all losses, liabilities, damages and claims (including taxes), and all related costs and expenses (including, without limitations, attorneys' fees and disbursements and costs of investigation, litigation, settlement, judgments, interest and penalties), arising from, related to, or in connection with any of the following:
  - a. Any claim, action or proceeding brought against the State by any third party with respect to or as a result of any breach by ISSC of any representation or warranty made by ISSC in this Contract;
  - b. Any claim, action or proceeding brought against the State, by any third party, solely as a result of ISSC's failure to comply with Federal statutes, regulations, ordinances or instructions, unless such failure to comply was the result of ISSC following the State's written direction;
  - c. Occurrences that ISSC is required to insure against as provided for above not involving 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, or (ii) the maximum amount of damages recoverable by the State as defined in this Contract; 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 as provided for above, without limitation as to amount;
  - d. 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 delivery of Products or 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;
  - e. Any claim, action 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;

- f. Any claim, action or proceeding brought against the State by any third party with respect to or as a result of any breach of ISSC's, or any of its subcontractor's in its or their capacity as an employer of a person, confidentiality obligations set-forth in this Contract; and,
  - g. Any claim, action or proceeding brought against the State by any third party with respect to or as a result of any breach arising from, related to, or in connection with this Contract.
2. In any and all claims against the State 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 any laws, including but not limited to, 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 for which it will seek indemnification, the State shall notify ISSC of such claim in writing
- 3. Failure to notify ISSC shall not relieve ISSC of its indemnification obligations, except to the extent that ISSC can demonstrate damages attributable to such failure.
- 4. Within fifteen (15) business days following receipt of written notice from the State relating to any claim, but no later than ten (10) business 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")
- 5. 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:
  - a. ISSC shall not be so entitled until the Attorney General provides to ISSC written notice permitting ISSC to have such control;
  - b. 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;
  - c. ISSC shall, at the request of the State, demonstrate to the satisfaction of the State ISSC's financial ability to carry-out its defense and Indemnity obligations;
  - d. 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 denied; and,
  - e. to the extent that any principles of law may be involved or challenged, the State shall have the right, at its own expense, to control the defense of such claim.

- 6 ISSC's indemnification obligations pursuant to this Contract shall remain unchanged, even if the Attorney General determines that sole control over the defense and or settlement of lawsuits and or claims will not be relinquished to ISSC. ISSC's indemnification obligation under this Subsection (Indemnification) shall not extend to any losses, liabilities, damages or claims (including taxes), and all related costs and expenses that ISSC 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."
- 7 Any determination relinquishing control over any lawsuit or claim may be altered by the Attorney General, during the progression of any lawsuit or claim.
- 8 Even 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 sole cost and expense of ISSC. ISSC shall promptly reimburse the State (or Set-Off against ISSC charges) for all such costs and expenses

14 INDEPENDENT CONTRACTOR RELATIONSHIP

- A. The relationship between the State and ISSC is that of independent contractor ISSC and the State agree that ISSC, in the performance of this Contract, shall act in an independent capacity and not as an officer, employee, or agent of the State
- B. 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
- C. 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

15 INSURANCE

A COVERAGE

ISSC shall purchase and maintain 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, product 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 the Contractor'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 non-owned 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; and,
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 used by ISSC to provide Products or Services to the State, up to the replacement value thereof, where such office space and its 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

ISSC shall require any one or more of its subcontractors to purchase and maintain some or all of the insurance coverage described in Paragraph A (Coverage) above in connection with the performance of work by the subcontractors. If at any time the State determines that insurance coverage is insufficient or inadequate, the State may require any one or more of the subcontractors to purchase and maintain some or all of the insurance coverage described in Paragraph A (Coverage) above in connection with the performance of work by the subcontractors.

#### C. CERTIFICATES OF INSURANCE AND OTHER REQUIREMENTS

BEFORE STARTING WORK, ISSC MUST FURNISH TO THE DIRECTOR OF THE OFFICE OF PURCHASING CERTIFICATE(S) OF INSURANCE VERIFYING INSURANCE COVERAGE OR PROVIDING SATISFACTORY EVIDENCE OF SELF-INSURANCE AS REQUIRED ABOVE. THE CONTRACT NUMBER MUST BE SHOWN ON THE CERTIFICATES OF INSURANCE TO ASSURE CORRECT FILING

1. These Certificates 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 this Contract Number) of cancellation, non-renewal or reduction in limit or in scope of coverage of such policies.
2. Each commercial general liability, commercial automobile liability and the first \$25,000,000 of umbrella liability coverage shall include as additional insurers the State and its agents and employees

3. ISSC shall maintain all required insurance coverage throughout the term of this Contract and, in the case of claims made policies, for at least three (3) years following the expiration or termination of this Contract.
4. 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.
5. ISSC shall be responsible for all deductibles with regard to such insurance.
6. 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.

16 INTELLECTUAL PROPERTY RIGHTS

A RIGHTS IN DATA

1. The State will be and will remain the owner of all data provided to ISSC by the State or its agents, contractors or representatives pursuant to this Contract.
2. ISSC will not use this data for any purpose other than providing Products or Services under this Contract, nor will any part of this data be disclosed, sold, assigned, leased or otherwise disposed to third parties or commercially exploited by or on behalf of ISSC.
3. ISSC will not possess or assert any lien or other right against this data.

B. OWNERSHIP OF WORK PRODUCT

1. 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.
2. 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 U.S. and foreign patents, copyrights and trade secrets.
3. With regard to work performed by ISSC's subcontractors, ISSC will require that all agreements with subcontractors provide for the irrevocable assignment of rights to the State without additional consideration of all Work Product of the subcontractors.
4. ISSC shall give the State and any person designated by the State, 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.
5. 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:

1.        such preexisting materials and their owners were identified in ISSC's proposal, and
2.        such preexisting materials are either readily commercially available products or ISSC or its subcontractor, as the case may be, has the right to license such preexisting materials to the State and is licensing such preexisting materials to the State pursuant to this Contract.

D        STATE SOFTWARE LICENSES

- 1        ISSC and its subcontractors will be granted a non-exclusive license during the term of this Contract to use the MESC's Application Software solely for the purpose of providing Products or Services to the State.
2.        ISSC and its subcontractors will not have any other rights to or interest in such application software.

E        GENERAL SKILLS

Notwithstanding anything to the contrary in this Subsection (Intellectual Property Rights), 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 delivering Products or performing Services under this Contract, 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 developed in connection with RFP 94-LE0096 or this Contract.

F        SOFTWARE TERMS

1.        Operating System Software and Utilities
  - a.        Any operating systems software and utilities (i.e., compilers, utilities, case tools, database managers and other application-enabling software) used by ISSC to provide Product or Services to the State under this Contract but not used exclusively to provide Product or Services to the State shall be either:
    - (1)        readily commercially available software used without modification by ISSC; or
    - (2)        readily commercially available software, used with modifications owned by ISSC to which ISSC agrees to grant to the State or its designee at no charge, upon the termination or expiration of this Contract, a perpetual, fully paid-up license (subject to reasonable and customary confidentiality and other license terms and conditions) to such modifications to use them solely for the purpose of conducting the State's business; or
    - (3)        proprietary software which ISSC has the right to license to the State and to which ISSC agrees to grant to the State or its designee at no charge

upon the termination of this Contract a perpetual, fully paid-up license (subject to reasonable and customary confidentiality and other license terms and conditions) to use such software solely for the purpose of conducting the State's business.

- b. If ISSC procures under this Contract a license for operating systems software or utilities to be used solely to provide Products or perform Services for the State, 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 software solely to provide Products or Services to the State during the term of this Contract. In such event, the State agrees to grant to ISSC at no charge during the term of this Contract, subject to customary confidentiality and other license terms and conditions, the right to use such software solely to deliver Products to or perform Services for the State.

2. Application Software

- a. 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 MESC Application Software, and, to the extent the State is permitted to do so, any other application software ISSC is not required to provide pursuant to this Contract but which the State has a license for and requires ISSC to use under this Contract, solely to provide Product or Services to the State during the Term.
- b. ISSC acknowledges that in no event will it have the right to make changes in the MESC Application Software without the prior written authorization of the State.
- c. Any applications software provided by ISSC pursuant to this Contract shall be either:
  - (1) developed under this Contract and owned by the State; or
  - (2) existing software owned by ISSC or its subcontractor(s) to which ISSC agrees to grant to the State or its designee at no charge upon the termination or expiration of this Contract a perpetual, fully paid-up license (subject to reasonable and customary confidentiality and other license terms and conditions) to use such software solely for the purpose of conducting the State's business; or
  - (3) third-party software licensed in the name of the State if the State is permitted to grant ISSC the right to use such software solely to provide Product or Services to the State during the Term. In such event, the State agrees to grant to ISSC at no charge during the Term, subject to customary confidentiality and other license terms and conditions, the right to use such third-party software solely to provide Product or Services to the State

3. Right to Reproduce Documentation

- a. To the extent the State has the right to do so, the State shall have the right to reproduce at no charge, but at the State's cost for reproduction, for use solely for the purpose of conducting the State's business, any documentation for software

owned by ISSC or any of its subcontractors that is used to deliver Product or Services under this Contract.

- b. To the extent ISSC has the right to do so, ISSC grants the State the right to reproduce at no charge, but at the State's cost for reproduction, for use solely for the purpose of conducting the State's business, any documentation for software owned by third parties but used by ISSC or any of its subcontractors to deliver Product or Services under this Contract
- c. If ISSC does not have the right to grant such rights to the State with respect to any particular software that will be used by ISSC or any of its subcontractors to provide Products or perform Services under this Contract, ISSC shall so state in express terms and shall specify the per copy charge, (ISSC's actual cost of reproduction), at which the State may obtain additional copies of such documentation.

#### 4 Software Changes

ISSC acknowledges that it shall have no right to make changes to any software used to deliver Product or Services under this Contract, 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.

### 17 INVOICING AND PAYMENT

#### A. COMPUTING CAPACITY CHARGES

The State shall pay ISSC a monthly fee for utilizing ISSC's Computing Capacity. The monthly fee shall consist of the following components:

##### 1. Computing Capacity Usage Charges

The State shall pay ISSC the applicable Computing Capacity Usage Charges for the following:

- a. CPU-Prime Usage;
- b. CPU-Non Prime Usage;
- c. Tape Usage; and,
- d. DASD Usage.

These charges shall be based on the actual monthly CPU-Prime Usage Hours, CPU-Non Prime Usage Hours, Tape Usage and DASD Usage and shall utilize the pricing tables set forth in:

- a. Schedule B-1 (CPU-Prime Usage Pricing Schedule);
- b. Schedule B-2 (CPU-Non Prime Usage Pricing Schedule);
- c. Schedule B-3 (DASD Usage Pricing Schedule); and,

d. Schedule B-4 (Tape Usage Pricing Schedule).

The Computing Capacity Usage Charges are bundled charges which compensate ISSC for the State's utilization of Computing Capacity and for ISSC's provisioning of all resources and other factors of production used by ISSC to provide such Computing Capacity.

Computing Capacity Usage Charges are applicable starting with the date workload transitions to ISSC's facility

The following table displays a hypothetical example of the methodology used to calculate the Computing Capacity Usage Charges for CPU-Prime Usage Charges, CPU-Non-Prime Usage Charges, Tape Usage Charges and DASD Usage Charges utilizing the appropriate Pricing Schedules as defined in Schedules B-1 Through B-4. For example purposes, the total CPU-Prime Usage Hours for July 1996 is 246. Using this assumption, the calculations would be as follows:

Minimum	Maximum	1996 Unit Price	Extended
> 0	= 50	5928	(x 50) \$296,400
> 50	= 100	565	(x 50) \$28,250
> 100	= 150	565	(x 50) \$28,250
> 150	= 200	565	(x 50) \$28,250
> 200	= 250	565	(x 46) \$25,990
CPU-Prime Usage Charges			\$407,140

2. Disaster Recovery Charges

The State shall pay ISSC the applicable Disaster Recovery Charges for the following:

- a. Optional Business Recovery Test Time;
- b. Hot Site Charges;
- c. Cold Site Charges; and
- d. Disaster Recovery Travel Charges.

These charges shall be based on the pricing tables set forth in Schedule B-5 (Disaster Recovery Pricing Schedule).

3. System Software Group 40 to Group 80 Upgrade Charges

The State shall pay ISSC any applicable one-time and/or ongoing monthly System Software Group 40 to Group 80 Upgrade Charge that is set forth in Schedule B-6 (System Software Group 40 to Group 80 Upgrade Pricing Schedule).

4 Transition Charges

The State shall pay ISSC any applicable monthly Transition Charge that is set forth in Schedule B-8 (Transition Pricing Schedule)

5 Conversion Charges

The State shall pay ISSC any applicable monthly MVS Conversion Charge that is set forth in Schedule B-7 (Conversion Pricing Schedule).

6 Asset Disposition Charges

The State shall pay ISSC any applicable monthly Asset Disposition Charge that is set forth in Schedule B-10 (Asset Disposition Pricing Schedule).

7 Service Credits and Liquidated Damages

This Contract or schedules thereto shall set forth the amounts of service credits or liquidated damages payable to the State in the event that performance fails to comply with agreed levels. These credits or liquidated damages, if any, must be reflected as a reduction of amounts otherwise due to ISSC.

8 Invoicing and Payment

ISSC's invoice for Computing Capacity Usage shall contain or be accompanied by a report (i.e., deliverable), in a form and with content approved by the State, showing:

- a. The number of units of Computing Capacity Usage (CPU-Prime Usage, CPU-Non Prime Usage, Tape Usage and DASD Usage) provided by ISSC during the month;
- b. The unit charges for the Computing Capacity Usage;
- c. Any applicable Disaster Recovery Charge;
- d. Any applicable one-time and/or ongoing monthly System Software Group 40 to Group 80 Upgrade Charge;
- e. Any applicable monthly Transition Charge;
- f. Any applicable monthly Conversion Charge;
- g. Any applicable monthly Asset Disposition Charge; and,
- h. Service credits or liquidate damage amount(s)

ISSC shall invoice the State monthly in arrears by the tenth day of the month following the month in which the Products and Services are provided.

B. OUT OF POCKET EXPENSES

1. ISSC acknowledges that out-of-pocket expenses that ISSC expects to incur in delivering the Products or 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.
2. ISSC's out-of-pocket expenses are not separately reimbursable by the State unless, on a case-by-case basis for unusual expenses, the State has agreed in advance in writing to reimburse ISSC for the expense. Such reimbursement will be limited as provided by State travel regulations and guidelines.

C. BILLING FORMAT

Invoices must be submitted by ISSC in the form specified by the State.

1. The invoice will show details as to cost by product or service category 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.
2. At the State's option, and in addition to, and not necessarily 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).

D. PRORATION

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

E. 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.

F. DISPUTED CHARGES

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

G. FINAL PAYMENT

1. The making and acceptance of final payment by the State to ISSC does not constitute a waiver by the State of any rights pertaining to ISSC's continuing obligations under this Contract. In addition, it will not 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 Products, Services and Deliverables not reasonably known until after acceptance to be defective or substandard.

2. 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.

#### H PRODUCTS AND SERVICES COVERED

For all Products and Services 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.

#### 18 LIABILITY

- A. IN NO EVENT SHALL THE STATE OR ISSC BE LIABLE TO THE OTHER 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 with regard to damages arising out of the Products delivered and Services performed under this Contract each party's maximum aggregate liability shall be limited to an amount equal to the total amount of the Contractor's charges for all such Products delivered and Services performed 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 such cut-over date, the amount defined as the First Year Liability

- B. Notwithstanding the foregoing limitations of liability, neither the State's nor ISSC's liability for claims shall be limited for claims arising out of its gross negligence or willful misconduct, its unlawful intentional termination of this Contract without cause, or its material breach of its obligation to provide continued performance in accordance with Section 2, Subsection 11 (Dispute Resolution-Continued Performance) or termination assistance in accordance with Section 2, Subsection 36 (Termination, Termination Assistance), and shall furthermore not limit ISSC's indemnification obligations, responsibilities and liabilities to the State as set forth in Section 2, Subsection 18 (Indemnification), with respect to third party claims, actions, and proceedings brought against the State.
- C. This provision shall not be construed to constitute a waiver of any governmental immunity provided by law

#### 19 LIQUIDATED DAMAGES

##### A GENERAL

1. Set forth below are Liquidated Damages for:
  - a. The removal or reassignment by ISSC, without the State's prior written approval of certain personnel considered to be important for the successful and timely delivery of Products or completion of Services (any such removal or reassignment of personnel being referred to below as an "Unauthorized Removal"); and
  - b. ISSC introducing a software virus that results in contamination or damage to the State's equipment or its network, personal computing or other operating environments, including the hardware or software of any contractor or third party

authorized to be connected to the State's computing environments (any such item of software being referred to below as "Contaminated Software"); and

- c. ISSC's failure to meet the minimum Service Level Requirements (any such failure being referred to below as "Failure to Meet Service Levels").
2. Because it would be impractical or extremely difficult to fix the actual amount of damages sustained by the State as a result of any such Unauthorized Removal, Contaminated Software, or Failure to Meet Service Levels, ISSC and the State agrees that:
    - a. In the event of any such Unauthorized Removal, Contaminated Software, or Failure to Meet Service Levels 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
    - b. In the event of any such Unauthorized Removal, Contaminated Software, or Failure to Meet Service Levels, at the written direction of the State, ISSC shall pay the amount(s) as set forth below to the State as Liquidated Damages, and not as a penalty
    - c. Liquidated Damages shall be payable within fifteen (15) business days after notification of assessment by the State.
    - d. In its discretion, the State may deduct any Liquidated Damages assessed by the State from any charges payable to ISSC pursuant to this Contract.
    - e. No delay by the State in assessing or collecting Liquidated Damages shall be construed as a waiver of such right
    - f. Any amount paid as liquidated damage under this Contract shall be applied toward the limitation of liabilities established under Subsection 18 (Liability).
  4. The State agrees to promptly notify ISSC of any circumstance of which the State becomes aware that the State believes is likely to result in the imposition of Liquidated Damages against ISSC

## B LIQUIDATED DAMAGE AMOUNTS

### UNAUTHORIZED REMOVAL

1. Without the State's prior written approval, which approval will not be unreasonably withheld, ISSC will not willingly remove or reassign any Key Personnel, until ninety (90) days after the termination of the Contract.
2. Removal of Key Personnel for termination of employment with ISSC, for serious illness of the person or a member of their family or other reasons beyond the direct control of both the employee and ISSC shall not be deemed to be a violation of this paragraph and shall not result in the imposition of Liquidated Damages. Key Personnel include those named in Schedule A (Key Personnel) and others assigned significant management responsibilities as mutually agreed by the parties

- 3 ISSC will pay the State, as Liquidated Damages, \$100,000 for each occurrence of any such Unauthorized Removal.

CONTAMINATED SOFTWARE

- 4 If ISSC 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, ISSC will pay the State, as Liquidated Damages, the following amounts:
  - a. \$10,000 for each hour or fraction of an hour in excess of one (1) hour that any regularly planned and scheduled mainframe computer function or operation available prior to the introduction of the Contaminated Software is unavailable to any significant segment of the State's user community; provided, however, that the liability under this paragraph (a) for each incidence of any software virus shall not exceed \$500,000 per mainframe affected by such software virus.
  - b. \$100 for each hour or fraction of an hour in excess of one (1) hour for each piece of equipment in the State's network or personal computing environment is unable to perform any function or operation which it was able to perform prior to the introduction of the Contaminated Software; provided, however, that the liability of ISSC under this paragraph (b) for each incidence of any software virus shall not exceed \$400,000.

The Liquidated Damages set forth in Paragraph (B.4.) shall be in addition to ISSC's obligation to remove the software 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 the "Programmer" rate as defined in Schedule B-9 (Contract Hourly Rates) for each hour or fraction of an hour multiplied by the total number of staff hours that State's personnel expend to recover or recreate damaged State data files

FAILURE TO MEET SERVICE LEVELS

5. If ISSC's performance of an applicable portion of the Services fails to meet or exceed the corresponding Service Level Requirements as defined in this Contract 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 Liquidated Damages as provided in this Subsection
  - a. For each month during the Term, ISSC will provide the State with reports of its actual performance in relation to the minimum Service Level Requirements as provided in this Contract. ISSC and the State will then determine whether ISSC's performance met the Service Level Requirements in each such month.
  - b. ISSC should acknowledge and agree that its failure to meet any Service Level Requirement in any month shall constitute a breach of this Contract.
  - c. Monthly Amount shall mean, with respect to any month during the Contract, an amount equal to the sum of all charges and any other amounts payable to ISSC by the State for such month.

- d. The aggregate amount of Liquidated Damages for which ISSC shall be liable during any month, regardless of the number of Service Level Requirements ISSC fails to meet in such month, will be 30% of the Monthly Amount. This percentage shall hereafter be referred to as the Service Guarantee Percentage.
- e. Each Service Level Requirement shall be assigned an Initial Weighting Factor (IWF) by the State to reflect the relative importance to the State of that Requirement with respect to the other Requirements. The sum of all the weighting factors will equal 1.00. Upon written notice, but not more than once per every six months, the State may adjust the weighting factors to reflect reasonable changes in the State's priorities.
- f. ISSC's failure to meet any Service Level Requirement in any month shall result in a Liquidated Damages to the State in an amount equal to the weighting factor for that category multiplied by the Service Guarantee Percentage. For example, if the Monthly Amount is \$1,000,000 and ISSC has failed to meet one Service Level Requirement in the month with a weighting factor of 0.10, the applicable Liquidated Damages shall be:  $0.10 \times 0.30 \times \$1,000,000 = \$30,000$ .

#### C. OTHER REMEDIES

The assessment and collection of Liquidated Damages for any Unauthorized Removal, Contaminated Software, or Failure to Meet Service Levels described above shall not be construed to limit in any way any other legal or equitable remedies of the State for such Unauthorized Removal, Contaminated Software, or Failure to Meet Service Levels (including, without limitation, the right to terminate this Contract for cause), except that the State's right to seek actual damages shall be as set forth below. The State may seek actual damages for any Unauthorized Removal, Contaminated Software, or Failure to Meet Service Levels 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 Unauthorized Removal, Contaminated Software, or Failure to Meet Service Level; provided, however, that if the State commences an action or proceeding seeking actual damages for any such Unauthorized Removal, Contaminated Software, or Failure to Meet Service Levels, 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 Unauthorized Removal, Contaminated Software, or Failure to Meet Service Levels 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 Unauthorized Removal, Contaminated Software, or Failure to Meet Service Levels the State will promptly refund the difference to ISSC.

#### 20 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 providing Products or performing Services under this Contract.

#### 21 MOST FAVORED CUSTOMER

- A. In the event that ISSC's charges to any commercial customer, or to any other State, Federal or local governmental entity which purchases similar levels and types of Products or 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 contained in those portions of ISSC's proposal that apply to the Transition and Conversion 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.
- B. 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.
- C. Any failure by ISSC to comply with this Subsection (Most Favored Customer) shall be considered to be a material breach of this Contract.
- D. ISSC must furnish the State annually, on or before February 15 of each year, with a certification of its compliance with this Subsection (Most Favored Customer), which Certification shall be signed by an officer of ISSC duly authorized to make such certification.

22 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 this Contract, or the Products, Services, study, data or project to which this Contract relates, without the prior written approval of the State, and then only in accordance with explicit written instructions from the State.

23 NO THIRD PARTY BENEFICIARIES

- A. It is expressly understood and agreed by the parties that this Contract and the Products and Services provided thereunder are not intended to inure to the benefit or detriment of any third party.
- B. This Contract shall not be construed to create any legal rights or interests of any nature in subcontractors, suppliers or any other entities or individuals not a party to this Contract.

24 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 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 *without the specific written permission of the State.*

25 NONDISCRIMINATION CLAUSE

In performing under this Contract, ISSC agrees to comply with the provisions of the Elliot-Larsen Civil Rights Act, 1976 PA 453, as amended, MCL 37 2201 *et seq*; MSA 3 548(201) *et seq*, and the Michigan Handicapper's Civil Rights Act, 1976 PA 220 as amended, MCL 37 1201 *et seq*; MSA 3.550(201) *et seq*, and any other federal or State laws governing employment and covenants 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, religion, national origin, ancestry, age, sex, height, weight, marital status or handicap unrelated to the individual's ability to perform the duties of a particular position. Subcontracts with each subcontractor will contain a provision requiring non-discrimination in employment as herein specified. Any breach of this covenant may be regarded as a material breach of this Contract.

26 OFFICIALS NOT TO BENEFIT

No member of the Legislature of the State of Michigan or any individual employed by the State shall be permitted to share in any part of this Contract, or to any benefit that may arise.

27 PASS-THROUGH OF MANUFACTURERS' WARRANTIES

If, under this Contract, ISSC procures any materials or products for the State, ISSC shall assign or otherwise transfer to the State, or afford the State the benefits of, any manufacturer's warranty for such materials or products.

28 REPRESENTATIONS AND WARRANTIES

- A. ISSC will deliver all Products and perform all Services in accordance with the highest industry standards.
- B. ISSC will use sufficient numbers of qualified individuals with appropriate training, education, experience and skill to deliver the Products and 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 applicable manufacturer's recommendations.
- D. ISSC will efficiently use any resources or services necessary to deliver all Products and perform all Services under this Contract.
- E. ISSC will deliver all Products and perform all Services in the manner most cost-effective to the State consistent with the required level of quality and performance
- F. ISSC will deliver all Products and perform all Services in a manner that does not infringe the proprietary rights of any third party
- G. ISSC will provide all Products and perform all Services in a manner that complies with all applicable laws and regulations
- H. ISSC will ensure that no viruses or similar items are coded or introduced into the systems used to provide all Products and Services under this Contract
- I. ISSC will not insert or activate any disabling code into the systems used to provide the Products or Services without the State's prior written approval.

THESE 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 OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

29 SEVERABILITY

- A. Whenever possible, each provision of this Contract will be interpreted in such a manner as to be effective and valid under applicable law
- B. 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.

- C. 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.

## 30 CONTRACT 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 work to be performed by ISSC under this Contract, including the timing of deliverables. Examples of change requests include, but are not limited to, the following:

1. Hardware and software additions and modifications requested by the CA.
2. Changes mandated by State, Federal, or local statutes, regulations, ordinances or instructions.
3. Changes in project scope.
4. Requests for specific assistance to be provided to State departments, to be paid for with funds provided by the requesting department.
5. Requests by the State for additional assistance in support of the State's information systems related activities.
6. Equipment, commercial software, or other Products and Services required to provide requested capabilities. Products and Services

### B PROCEDURES

1. Within forty-five (45) business days with (i) respect to any other Product or Services, or such other period of time as the parties may mutually agree to in writing, or (ii) notice to the State by ISSC of any event or condition which ISSC knew or should have known may result in additional compensation for lost efforts as defined in this Contract, 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.
  - a. 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.
  - b. 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 cost plus percentage mark-up of any materials or products required to implement the change request.

- c. To the extent that the additional cost or cost savings result from an increased or decreased number of labor hours, ISSC shall use the applicable fully-loaded hourly labor rates specified in Schedule B-9 (Contract Hourly Rates) 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 a labor rate for that category which is discounted by a percentage equal to the percentage discount for the most nearly equivalent labor category for which a labor rate is specified in the pricings of this Contract).
  - d. To the extent that the Change Authorization Order results in an increase in required products and materials for which ISSC is not an authorized reseller, the State shall agree to an increase equal to the lowest direct cost available to ISSC in its own right and not as an agent for another customer, plus a markup not to exceed seven percent (7%).
  - e. To the extent that the Change Authorization Order results in an increase in required products and materials for which ISSC is an authorized reseller, the State shall agree to an increase equal to the lowest price at which ISSC sells such hardware to any customer buying a similar quantity.
  - f. To the extent that the Change Authorization Order results in a reduction in required products and materials, ISSC's charges shall be reduced by the cost savings resulting from the reduction in materials or products.
2. If the State accepts ISSC's proposal, it will issue a Change Authorization Order signed by the Purchasing Director and ISSC will implement the change request described therein.
- a. ISSC will not implement any change request until a Change Authorization Order has been validly issued.
  - b. ISSC shall not be entitled to any compensation for implementing any change request or Change Authorization Order except as explicitly provided for in an approved Change Authorization Order.
3. If the State does not accept ISSC's proposal, the State may:
- a. Withdraw its change request;
  - b. Modify its change request in which case the procedures set forth above will apply to the modified change request; or
  - c. Issue a unilateral Change Authorization Order signed by the Purchasing Director which sets forth what the State considers to be the appropriate price adjustment for the change request
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, Subsection 11 (Dispute Resolution) within thirty (30) calendar days after issuance of such Change Authorization Order, in which case the price adjustment will be determined in accordance with such dispute resolution procedures

5. ISSC will be required to use all commercially reasonable efforts to implement a change request described in a unilateral Change Authorization Order and in accordance with the terms of such Unilateral Change Authorization 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 PRODUCTS OR SERVICES

1. If the State requests or directs ISSC to deliver any Product or perform any Service that is consistent with and similar to the Product or Services being provided by ISSC under this Contract, but which ISSC reasonably and in good faith believes is not included within the scope of ISSC's responsibilities as set forth in this Contract, then prior to delivering such Product or performing such Services, ISSC shall promptly notify the State in writing that it considers the Product or Services to be an "Additional Product or Service" for which ISSC should receive additional compensation.
2. If ISSC does not so notify the State, ISSC shall have no right to claim thereafter that it is entitled to additional compensation for delivering such Product or performing such Services.
3. If ISSC does so notify the State, then the delivery of such Product or performance of such Service shall be governed by the change request procedure set forth in this Subsection (Contract Change Requests).

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, then:

1. ISSC shall first provide to the State written notice of any such claim of performance failure by the State 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.
2. If ISSC does not timely notify the State, ISSC shall have no right or entitlement to additional compensation from the State for any unproductive, wasted or additional services, functions or the like arising out of or resulting from lost efforts performed or incurred prior to the submission of such notice
3. 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 Section 2, Subsection 30 (Contract Change Requests).

31 STATE EXCULPATION

Except to the extent provided in Section 2, Subsection 32 (State Performance Obligations), 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 subcontractor(s) 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.

32 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.

33 SUBCONTRACTING

A. DELEGATION OF DUTIES

1. ISSC will be totally responsible for all contractual activities whether or not ISSC performs them.
  - a. The State reserves the right to receive copies of and review all subcontracts associated with this Contract
  - b. Further, ISSC is the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from this Contract.
  - c. If ISSC proposes to use any subcontractor(s), ISSC must provide the CA with a list of the proposed subcontractor(s), including firm name and address, contact person, complete description of work to be subcontracted, and descriptive information concerning the subcontractor's organizational abilities
2. ISSC shall not delegate any duties under this Contract to a subcontractor unless the CA has given written consent to the delegation.
3. The State shall have the right to approve all subcontractors and to require ISSC to replace subcontractors found by the State, either initially or based on performance, to be unacceptable.
4. In any subcontracts entered into by ISSC for the delivery of Products or performance of Services under this Contract 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
5. 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 subcontracts prior to providing them to the State
6. The contract management of any subcontractor will be the responsibility of ISSC
7. All payments to subcontractors or suppliers must be made by ISSC.
8. The State will not direct payments for Products or Services acquired in connection with this Contract other than to ISSC nor will the State release ISSC 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.
9. Notwithstanding the foregoing, the State expressly initially consents to the contractor's use of the subcontractors designated in Schedule D (Approved Subcontractors) in delivering the specified Products or providing the specified Services.

B. RESTRICTION AGAINST ASSIGNMENT OF REVENUES

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

34 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

35 TAXES

The State is exempt from Federal Excise Tax, State and Local Sales Tax, with respect to the sale to and use by the State of tangible personal property, and such taxes shall not be included in the Contract price. Any other taxes imposed on the Services, Products or materials provided by ISSC, or otherwise resulting from ISSC charges to the State must be included in the Contract pricing schedules, and will not be separately paid or reimbursed by the State

36 TERMINATION

A. TERMINATION BY THE STATE FOR CAUSE

1 In the event that ISSC:

- a. 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 a written notice of breach to ISSC, such time period to be at least thirty (30) calendar days; or
- b. breaches any particular material duty or obligation under this Contract on more than one occasion; or
- c. 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
- d. breaches any material duty under this Contract which is not capable of being cured, including, without limitation, its confidentiality obligations set-forth above;

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

2 If the State chooses to terminate this Contract in part:

- a. the charges payable under this Contract will be equitably adjusted to reflect those Products or Services that are terminated.
- b. In addition to any other legal and equitable remedies available to the State, ISSC will be liable for costs incurred by the State (including, without limitation, court costs and attorneys' fees) in terminating this Contract.

- 3 In the event this Contract is Terminated for Cause and it is thereafter determined that ISSC was not in breach of this Contract, 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 the clause providing for Termination for Convenience by the State.

**B. TERMINATION BY ISSC FOR NONPAYMENT**

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

**C. TERMINATION FOR LACK OF FUNDING**

- 1 The term of this Contract extends for several fiscal years.
- 2 Continuation of this Contract is subject to appropriation of funds.
- 3 If funds to effect continued payment are not appropriated or otherwise made available by executive action or by Law, the State shall have the right to terminate this Contract without penalty at the end of the period for which funds have been appropriated or otherwise made available by executive action or by Law by giving written notice of termination to ISSC.
- 4 If funds to pay ISSC for the agreed to level of delivery of Products or performance of Services to be provided by ISSC are not appropriated or otherwise made available either by executive action or by Law the State may, upon thirty (30) calendar days written notice to ISSC, reduce such level of delivery of Products or performance of 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 delivery of Products or performance of Services

**D. TERMINATION DUE TO ADVERSE LEGAL DECISION**

- 1 The State may terminate this contract in whole or in part by giving written notice of termination to ISSC:
  - a if any final administrative or judicial decision or adjudication pertaining to the applicability of MICH CONST 1963, Art 11, Section 5 and Civil Service Rule 4-6 or any authorization required by law adversely impacts the authority of the State to enter into or proceed with this Contract; or
  - b if in the sole determination of the State a State or Federal change in law affects or impacts this Contract
- 2 Immediately upon receipt of written notice of termination under 1 a above, ISSC shall discontinue providing personal services under this Contract and the State shall only be liable for personal services rendered by ISSC prior to its receipt of written notices of termination.
- 3 Immediately upon receipt of written notice of termination under 1 b above, ISSC shall discontinue providing services under this Contract and the State shall only be liable for services rendered by ISSC prior to its receipt of written notice of termination

E TERMINATION FOR CONVENIENCE

The State may terminate this Contract, in whole or in part, at any time and for any reason whatsoever without penalty (i.e., without liability for damages to ISSC or its subcontractors beyond the termination charges set forth in this Contract) upon at least twelve (12) months prior written notice to ISSC with respect to the Computing Capacity. The State will reimburse ISSC for its reasonable and actual out-of-pocket expenses incurred as a result of such early termination, in an amount not to exceed in the aggregate the amount paid by the State to ISSC for the calendar month immediately preceding the effective date of termination.

F EXTENSION OF TERMINATION EFFECTIVE DATE

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

G TERMINATION ASSISTANCE

1 If this Contract is terminated for any reason, ISSC will provide for up to one (1) year after such termination, all reasonable termination assistance requested by the State to allow the State to continue without interruption or adverse affect, and to facilitate the orderly transfer of such Products and Services to the State or its designee. Such termination assistance is described in more detail below, and will be deemed by the Parties to be governed by the terms and conditions of this Contract. If such termination assistance requires resources in addition to those resources then being regularly utilized in performing under this Contract, the State shall pay ISSC for the resources utilized in providing such termination assistance per Schedule B-9 (Contract Hourly Rates); 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.

2 Introduction: It is the intention of the Parties that, upon the expiration or termination for any reason of the Contract, in whole or in part, ISSC will cooperate with the State and provide the State with the termination assistance described herein, in order to enable the State to obtain from another vendor, or provide for itself, Products and Services to substitute for or replace the terminated Products or Services previously provided by ISSC. The purpose of such Termination Assistance, and ISSC's goal on providing it, is to minimize the disruption to the State of transferring the terminated Products and Services provided by ISSC.

3 Termination Assistance: The Termination Assistance to be provided by ISSC to the State or the State's designees (if and to the extent any third parties are designated by the State to assume providing the terminated Services) will include, without limitation, the following:

- a. Developing, with the assistance of the State, a plan for the transition of the terminated Products and Services from ISSC to the State, which plan will include, to the extent requested by the State and not inconsistent with the provisions of the Contract, performance of the specific services listed as Specific Termination Assistance Services.
- b. Providing to applicable personnel of the State training in the delivery of the Products and performance of the Services then being performed by ISSC which are to be transferred to the State; and,

- c Making available to the State, pursuant to mutually agreeable terms and conditions, any third party services obtained by ISSC or its subcontractors that are then dedicated to the delivery of Products or the performance of Services under the Contract. The State may assume ISSC's rights and obligations with respect to any such third party services, including, but not limited to, third-party hardware and/or software maintenance agreements.
- 4. Access to System: In providing the Termination Assistance, ISSC will provide the State and its designee, agents, contractors and consultants with the reasonable access to and use of all systems then being used to provide the Products and Services to the State
- 5. Process
  - a ISSC will identify all potential risk factors relating to the transaction being planned, and will design plans and contingencies to mitigate them. ISSC will establish the relationship between ISSC and the State or the State's designee during the first week of the transition period and direct all activities to create a seamless turnover on the specified termination or expiration date.
  - b. ISSC will assemble a transition management team at least eight (8) months prior to the expiration or termination of the term of the affected Product or Service, or immediately upon notification in the event of termination for Cause. The ISSC transition management team will provide to the State a detailed methodology to ensure the complete review, certification and acceptance of ISSC's Products, Services and documentation. The ISSC transition management team will perform a comprehensive assessment of ISSC's Product and Services documentation. This assessment, and any resulting updated documentation, will be delivered to the State no later than three (3) months prior to the expiration or termination of the Contract and will include, but not be limited to:
    - (1) A list of all reports and their descriptions;
    - (2) A list of all licensed software;
    - (3) A copy of the appropriate documentation for all licensed software;
    - (4) All data descriptions;
    - (5) A copy of all ISSC-developed user documentation;
    - (6) All hardware and software configuration documentation and diagrams; and,
    - (7) A copy of all appropriate computer operation procedures
  - c. The State will assign a transition manager and an associated operations manager organization to work in concert with the ISSC transition management team.
- 6. The Specific Termination Assistance Services to be provided by ISSC will include, without limitation, the following:
  - a Pre-Migration Services
    - (1) Freeze all noncritical software changes.
    - (2) Notify all outside vendors of procedures to be followed during the turnover phase.

- (3) Review all Software libraries (test and production) with new operations staff.
- (4) Assist in establishing naming conventions for the new production site.
- (5) Analyze space required for the databases and software libraries.
- (6) Generate and deliver a tape and computer listing (in a form reasonably requested by the State and/or its designee) of the source code for the software to be provided to the State to the extent that ISSC has the source code for such software in its possession and is entitled to provide such source code to the State. (The State agrees to execute confidentiality agreements with the vendors of third party Software in order to facilitate the provision of source code under the previous sentence )
- (7) Deliver to the State and/or its designee all source code, technical specifications, materials and user documentation for the Software to be provided to the State
- (8) Review and explain all control plans and other management documents used by ISSC to the new operations staff.
- (9) Provide appropriate training to new operations staff.

b Migration Services

- (1) Unload the production databases.
- (2) Deliver tapes of production databases (with content listings) to new operations staff.
- (3) Assist with the loading of the databases
- (4) Assist with the telecommunications turnover.
- (5) Assist in the execution of a parallel operation
- (6) Check the effectiveness of the hardware and Software configuration to meet the Performance Standards
- (7) Correct any identified errors and provide plans and contingencies during the transition process
- (8) Provide the State with any other necessary files, documentation, software or services necessary to complete a smooth and orderly transition

c Post-Migration Services

- (1) Provide consulting support on an "as needed" basis
- (2) Turnover any remaining reports and documentation still in ISSC's or its subcontractors' possession or control.

## H. RIGHTS UPON TERMINATION

1. In the event the State terminates this Contract prior to its expiration, the State shall pay ISSC for all partially completed Conversion and Transition deliverables, on a percentage of completion basis, that the State desires to have ISSC turn over to the State in the case of termination for any other reason, plus, the charges due under this Contract for Products and 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 offset against any amounts due to ISSC the amounts of any damages for which ISSC is liable to the State. 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 Products 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 Products, Services and materials provided exclusively under this Contract with the State, and may further pursue completion of the work as set forth in this Contract by replacement contract or as the State may in its sole judgment deem expedient.
3. Software which is used by ISSC and its subcontractors exclusively to deliver Products and perform Services at the time of non-renewal or expiration of this Contract will, at the State's option, be assigned or licensed to the State subject to normal ongoing charges and other license provisions
  - a. ISSC will be responsible for any transfer fees.
  - b. For software not generally available, ISSC will provide a mutually agreeable commercially available substitute, subject to ongoing license charges.
4. The State will have the right to make offers of employment, subject to Civil Service rules, to any or all employees of ISSC and its subcontractors who are delivering Products and performing Services for the State under this Contract. 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 all other items furnished by or owned, leased or licensed by the State.

## I. 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.

## 37. SUSPENSION OF WORK

Without invalidating this Contract, the State may order ISSC in writing to defer, stop, slow down, suspend, interrupt or extend all or any part of its performance obligations or work under this Contract as a result of an adverse decision in a judicial or administrative proceeding.

Immediately upon receipt of written notice of suspension, ISSC shall discontinue providing Products and Services under this Contract and the State shall only be liable at that time for Products and Services provided by ISSC under this Contract prior to receipt of its written notice of suspension.

If the suspension is rescinded and ISSC is thereafter required to commence performance under this Contract, the State will issue through the State Change Request process an amendment to the Contract upon an adequate showing that the delay caused by the extension resulted in significant time loss and/or performance under the Contract.

38 TIME OF THE ESSENCE

Time shall be of the essence with respect to ISSC meeting all milestone delivery dates set forth in Schedule C (Defined Milestones).

39 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 1980 PA 278, as amended, MCL 423 321 *et seq*; MSA 17.458(21) *et seq*.

40 UPDATES, REVIEWS AND PLANNING

- A. ISSC shall promptly update all written plans and procedures to reflect changes to any Products, Services or Deliverables
- B. In addition, at least once each year during the term of this Contract, senior representatives of ISSC shall meet with representatives of the State to review changes implemented during the previous year and discuss possible changes to be implemented during the coming year. At such meetings, ISSC should present recommendations to the State on all Products, Services and Deliverables that ISSC believes would significantly reduce costs, improve service or enhance operability or reliability.

**CONTRACT FOR MICHIGAN EMPLOYMENT SECURITY COMMISSION  
MAINFRAME OPERATIONS**

**CONTRACT SCHEDULES**

**INDEX**

SCHEDULE A	Key Personnel
SCHEDULE B	Pricing
SCHEDULE C	Defined Milestones
SCHEDULE D	Approved Subcontractors

**Schedule A**

**KEY PERSONNEL**

The following ISSC and Approved Subcontractor personnel are designated as Key Personnel:

Ed Johnson  
Patrick Fournier  
Alan Mainero

Customer Services Representative, ISSC  
MVS Conversion Manager, TCN  
Account Manager, ISSC Solution Center, ISSC

**Schedule B**

**PRICING SCHEDULES**

The following Pricing Schedules are included in Schedule B:

Schedule

B-1	CPU-Prime Usage
B-2	CPU-Non Prime Usage
B-3	DASD Usage
B-4	Tape Usage
B-5	Disaster Recovery
B-6	System Software Group 40 to Group 80 Upgrade
B-7	Conversion
B-8	Transition
B-9	Contract Hourly Rates
B-10	Asset Disposition

**Schedule B-1**

**CPU-PRIME USAGE PRICING SCHEDULE**

The following table defines fiscal year per unit pricing for CPU-Prime Usage:

Minimum	Maximum	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
> 0	= 50	0	5928	3136	2954	2971	2789	2908	2933	2927	2923	2764
> 50	= 100	0	565	459	342	338	332	318	307	278	274	269
> 100	= 150	0	565	459	342	338	332	318	307	278	274	269
> 150	= 200	0	565	459	342	338	332	318	307	278	274	269
> 200	= 250	0	565	459	342	338	332	318	307	278	274	269
> 250	= 300	0	565	459	342	338	332	318	307	278	274	269
> 300	= 350	0	565	459	342	338	332	318	307	278	274	269
> 350	= 400	0	565	459	342	338	332	318	307	278	274	269
> 400	= 450	0	565	459	342	338	332	318	307	278	274	269
> 450	= 500	0	577	471	355	350	344	331	320	291	287	281
> 500	= 550	0	542	439	322	319	315	301	291	263	261	256
> 550	= 600	0	542	439	322	319	315	301	291	263	261	256
> 600	= 650	0	542	439	322	319	315	301	291	263	261	256
> 650	= 700	0	542	439	322	319	315	301	291	263	261	256
> 700	= 750	0	542	439	322	319	315	301	291	263	261	256
> 750	= 800	0	542	439	322	319	315	301	291	263	261	256
> 800	= 850	0	542	439	322	319	315	301	291	263	261	256
> 850	= 900	0	542	439	322	319	315	301	291	263	261	256
> 900	= 950	0	542	439	322	319	315	301	291	263	261	256
> 950	= 1,000	0	541	438	322	319	315	300	290	263	260	255
> 1,000	= 1,050	0	518	417	301	299	297	283	274	247	246	241
> 1,050	= 1,100	0	518	417	301	299	297	283	274	247	246	241
> 1,100	= 1,150	0	518	417	301	299	297	283	274	247	246	241
> 1,150	= 1,200	0	518	417	301	299	297	283	274	247	246	241
> 1,200		0	518	417	301	299	297	283	274	247	246	241

**Schedule B-2**

**CPU-NON PRIME USAGE PRICING SCHEDULE**

The following table defines fiscal year per unit pricing for CPU-Non Prime Usage:

<b>Minimum</b>	<b>Maximum</b>	<b>1995</b>	<b>1996</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>
> 0	= 50	0	3192	1689	1591	1600	1502	1621	1579	1576	1574	1488
> 50	= 100	0	304	247	184	182	179	177	165	150	148	145
> 100	= 150	0	304	247	184	182	179	177	165	150	148	145
> 150	= 200	0	304	247	184	182	179	177	165	150	148	145
> 200	= 250	0	304	247	184	182	179	177	165	150	148	145
> 250	= 300	0	304	247	184	182	179	177	165	150	148	145
> 300	= 350	0	304	247	184	182	179	177	165	150	148	145
> 350	= 400	0	304	247	184	182	179	177	165	150	148	145
> 400	= 450	0	304	247	184	182	179	177	165	150	148	145
> 450	= 500	0	311	254	191	189	185	184	172	157	155	152
> 500	= 550	0	292	236	174	172	170	168	157	142	140	138
> 550	= 600	0	292	236	174	172	170	168	157	142	140	138
> 600	= 650	0	292	236	174	172	170	168	157	142	140	138
> 650	= 700	0	292	236	174	172	170	168	157	142	140	138
> 700	= 750	0	292	236	174	172	170	168	157	142	140	138
> 750	= 800	0	292	236	174	172	170	168	157	142	140	138
> 800	= 850	0	292	236	174	172	170	168	157	142	140	138
> 850	= 900	0	292	236	174	172	170	168	157	142	140	138
> 900	= 950	0	292	236	174	172	170	168	157	142	140	138
> 950	= 1,000	0	292	236	173	172	169	167	156	141	140	137
> 1,000	= 1,050	0	279	225	162	161	160	158	147	133	132	130
> 1,050	= 1,100	0	279	225	162	161	160	158	147	133	132	130
> 1,100	= 1,150	0	279	225	162	161	160	158	147	133	132	130
> 1,150	= 1,200	0	279	225	162	161	160	158	147	133	132	130
> 1,200		0	279	225	162	161	160	158	147	133	132	130

**Schedule B-3**

**DASD USAGE PRICING SCHEDULE**

The following table defines fiscal year per unit (Gigabyte) pricing for DASD Usage:

Minimum	Maximum	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
> 0	= 50	0	724	636	588	497	497	457	401	432	401	423
> 50	= 100	0	409	462	443	319	304	290	222	235	223	210
> 100	= 150	0	392	461	448	319	298	288	221	230	222	209
> 150	= 200	0	453	456	448	342	294	288	233	226	222	219
> 200	= 250	0	465	455	448	347	293	288	235	226	222	221
> 250	= 300	0	490	479	471	372	318	313	261	252	247	251
> 300	= 350	0	469	459	452	351	297	292	239	230	226	226
> 350	= 400	0	469	459	452	351	297	292	239	230	226	226
> 400	= 450	0	469	459	451	350	297	292	239	230	226	226
> 450	= 500	0	458	449	442	341	288	284	231	222	219	217
> 500	= 550	0	458	449	442	341	288	284	231	222	219	217
> 550	= 600	0	458	449	442	341	288	284	231	222	219	217
> 600	= 650	0	458	449	442	341	288	284	231	222	219	217
> 650	= 700	0	458	449	442	341	288	284	231	222	219	217
> 700	= 750	0	458	449	442	341	288	284	231	222	219	217
> 750	= 800	0	458	449	442	341	288	284	231	222	219	217
> 800	= 850	0	458	449	442	341	288	284	231	222	219	217
> 850	= 900	0	458	449	442	341	288	284	231	222	219	217
> 900	= 950	0	447	439	433	332	279	275	223	214	212	209
> 950	= 1,000	0	447	439	433	332	279	275	223	214	212	209
> 1,000	= 1,050	0	447	439	433	332	279	275	223	214	212	209
> 1,050	= 1,100	0	447	439	433	332	279	275	223	214	212	209
> 1,100	= 1,150	0	447	439	433	332	279	275	223	214	212	209
> 1,150	= 1,200	0	447	439	433	332	279	275	223	214	212	209
> 1,200		0	447	439	433	332	279	275	223	214	212	209

**Schedule B-4**

**TAPE USAGE PRICING SCHEDULE**

The following table defines fiscal year per unit (Tape mount) pricing for Tape Usage:

Minimum	Maximum	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
> 0	= 1200	0.00	3.29	3.11	3.11	3.09	3.07	3.01	3.00	2.95	2.70	2.62
> 1200	= 2400	0.00	3.29	3.11	3.11	3.09	3.07	3.01	3.00	2.95	2.70	2.62
> 2400	= 3600	0.00	3.29	3.11	3.11	3.09	3.07	3.01	3.00	2.95	2.70	2.62
> 3600	= 4800	0.00	3.29	3.11	3.11	3.09	3.07	3.01	3.00	2.95	2.70	2.62
> 4800	= 6000	0.00	3.29	3.11	3.11	3.09	3.07	3.01	3.00	2.95	2.70	2.62
> 6000	= 7200	0.00	3.29	3.11	3.11	3.09	3.07	3.01	3.00	2.95	2.70	2.62
> 7200	= 8400	0.00	3.29	3.11	3.11	3.09	3.07	3.01	3.00	2.95	2.70	2.62
> 8400	= 9600	0.00	3.29	3.11	3.11	3.09	3.07	3.01	3.00	2.95	2.70	2.62
> 9600	= 10800	0.00	3.29	3.11	3.11	3.09	3.07	3.01	3.00	2.95	2.70	2.62
> 10800	= 12000	0.00	3.29	3.11	3.11	3.09	3.07	3.01	3.00	2.95	2.70	2.62
> 12000	= 13200	0.00	3.29	3.11	3.11	3.09	3.07	3.01	3.00	2.95	2.70	2.62
> 13200	= 14400	0.00	3.29	3.11	3.11	3.09	3.07	3.01	3.00	2.95	2.70	2.62
> 14400	= 15600	0.00	3.29	3.11	3.11	3.09	3.07	3.01	3.00	2.95	2.70	2.62
> 15600	= 16800	0.00	3.29	3.11	3.11	3.09	3.07	3.01	3.00	2.95	2.70	2.62
> 16800	= 18000	0.00	3.29	3.11	3.11	3.09	3.07	3.01	3.00	2.95	2.70	2.62
> 18000	= 19200	0.00	3.29	3.11	3.11	3.09	3.07	3.01	3.00	2.95	2.70	2.62
> 19200	= 20400	0.00	3.29	3.11	3.11	3.09	3.07	3.01	3.00	2.95	2.70	2.62
> 20400	= 21600	0.00	3.29	3.11	3.11	3.09	3.07	3.01	3.00	2.95	2.70	2.62
> 21600	= 22800	0.00	3.29	3.11	3.11	3.09	3.07	3.01	3.00	2.95	2.70	2.62
> 22800	= 24000	0.00	3.29	3.11	3.11	3.09	3.07	3.01	3.00	2.95	2.70	2.62
> 24000	= 25200	0.00	3.29	3.11	3.11	3.09	3.07	3.01	3.00	2.95	2.70	2.62
> 25200	= 26400	0.00	3.29	3.11	3.11	3.09	3.07	3.01	3.00	2.95	2.70	2.62
> 26400	= 27600	0.00	3.29	3.11	3.11	3.09	3.07	3.01	3.00	2.95	2.70	2.62
> 27600	= 28800	0.00	3.29	3.11	3.11	3.09	3.07	3.01	3.00	2.95	2.70	2.62
> 28800		0.00	3.29	3.11	3.11	3.09	3.07	3.01	3.00	2.95	2.70	2.62

Schedule B-5

**DISASTER RECOVERY PRICING SCHEDULE**

This schedule defines the pricing for various Disaster Recovery services.

- 1 This Contract includes the following annual Disaster Recovery test time within the base charges:
  - a 48 hours of test time in the first year; and,
  - b 24 hours of test time in all remaining Contract years
2. Additional test time "Optional Business Recovery Test Time" may be purchased in blocks of 8 hours at a price of 40% of the monthly subscription fee equivalent which is based on the State's system usage level in the month a disaster is declared
- 3 In the event a disaster is declared, normal Application Usage Charges will apply in addition to any applicable Disaster Recovery Charges
4. In the event a disaster is declared, Hot Site usage will be charged "Hot Site Charges" at a rate of \$10,000 per twenty-four (24) hour day with a two day minimum charge. The hot site may be utilized for up to six weeks after which MESC will be transferred to the cold site.
5. The Cold Site can be used at no additional cost for the first six months. After six months a daily cold site usage fee will be charged "Cold Site Charges". The fee will be set at 20% of the monthly subscription fee equivalent which is based on MESC's system usage in the month a disaster is declared
6. This Contract includes travel expenses for ISSC and subcontractors between ISSC primary and backup sites for the testing periods defined in (1) above, but does not include ISSC and subcontractor travel during a declared disaster.
- 7 If MESC requests ISSC or its subcontractors to travel to a State location during an actual disaster or test period, or in the event of a declared disaster, ISSC will bill "Disaster Recovery Travel Charges" all directly related travel expenses at actual rates on an out-of-pocket basis.

Schedule B-6

**SYSTEM SOFTWARE GROUP 40 TO GROUP 80 UPGRADE PRICING SCHEDULE**

Due to the dramatic variability of MESC's workload and the extensive portfolio of OEM software, upgrading from model group 40 to model group 80 system software has significant implications with regard to both timing and financial impact. In order to facilitate the management of this upgrade the pricing for this upgrade has not been included in the Price Schedules B-1 and B-2

ISSC projects that the upgrade from model group 40 to model group 80 will be required when MESC's prime shift usage is equal to or greater than 400 application hours. At the time ISSC recognizes that this upgrade will be required ISSC will initiate a change order to add the pricing for this software upgrade to the pricing charts

ISSC will include in the change order a one-time charge which will include the pricing for the one-time costs associated with the model group upgrade and a monthly on-going charge which will include all additional on-going costs attributable to the model group upgrade. The monthly on-going charge will begin in the same month as the model group upgrade is effective and the one-time charge is initiated

ISSC will price the upgrade from model group 40 to model group 80 at the then current price (one-time and ongoing) plus a markup not to exceed 7%. The then current price will be determined within the terms and conditions established for software changes defined within this Contract

For planning purposes the current pricing for the model group 40 to model group 80 software upgrade are estimated to be:

One-time charge	\$ 1,143,000
Monthly on-going charge	\$ 265,000

**Schedule B-7**

**CONVERSION PRICING SCHEDULE**

The following table defines monthly pricing for the MVS Conversion activities:

1995 Jan	1995 Feb	1995 Mar	1995 Apr	1995 May	1995 June	1995 July	1995 Aug	1995 Sept	1995 Oct	1995 Nov	1995 Dec	1995 TOTAL
									193,000	193,000	193 000	579 000
1996 Jan	1996 Feb	1996 Mar	1996 Apr	1996 May	1996 June	1996 July	1996 Aug	1996 Sept	1996 Oct	1996 Nov	1996 Dec	1996 TOTAL
193 000	193 000	193 000	193 000	193 000								965 000

**Schedule B-8**

**TRANSITION PRICING SCHEDULE**

The following table defines monthly pricing for the Transition activities:

1995 Jan	1995 Feb	1995 Mar	1995 Apr	1995 May	1995 June	1995 July	1995 Aug	1995 Sept	1995 Oct	1995 Nov	1995 Dec	1995 TOTAL
									425,000	425,000	425,000	1 275 000
1996 Jan	1996 Feb	1996 Mar	1996 Apr	1996 May	1996 June	1996 July	1996 Aug	1996 Sept	1996 Oct	1996 Nov	1996 Dec	1996 TOTAL
425,000	425,000	425,000	425,000	425,000								2 125 000

Schedule B-9

**CONTRACT HOURLY RATES**

The following table defines fully-loaded hourly labor rate pricing for additional staff provided by ISSC under Change Authorization Orders:

<b>Individual and/or Position</b>	<b>Hourly Labor Rate</b>
Consultant	\$235
Project Manager	\$150
Analyst	\$96
Database Analyst/Programmer/Administrator	\$85
Programmer	\$75
Junior Programmer	\$60
Administrative Assistant	\$35

**Schedule B-10**

**ASSET DISPOSITION PRICING SCHEDULE**

The following table defines monthly pricing for the Asset Disposition activities:

1995 Jan	1995 Feb	1995 Mar	1995 Apr	1995 May	1995 June	1995 July	1995 Aug	1995 Sept	1995 Oct	1995 Nov	1995 Dec	1995 TOTAL
1996 Jan	1996 Feb	1996 Mar	1996 Apr	1996 May	1996 June	1996 July	1996 Aug	1996 Sept	1996 Oct	1996 Nov	1996 Dec	1996 TOTAL
				7 291	7 291	7,291	7 291	7 291	7 295			43,750

NOTE: The exact date the Asset Disposition project will start may vary from the proposed May 1, 1996 start date. The Asset Disposition charges will be applicable starting with the date the project officially starts. The official start date will be determined as part of the detailed planning phase of the Contract.

**Schedule C**

**DEFINED MILESTONES**

<b><u>Defined Milestone</u></b>	<b><u>Defined Milestone Date</u></b>
1. MESC Approval of Detailed Implementation Plan	January 22, 1996
2. Completion of MVS Conversion	July 15, 1996
3. Completion of Transition to ISSC Data Center	July 15, 1996

**Schedule D**

**APPROVED SUBCONTRACTORS AND RESPONSIBILITIES**

The State has approved the following Approved Subcontractors for use by ISSC in delivering the Transactions. The Approved Subcontractors and a synopsis of their approved areas of responsibilities are as follows:

**TCN Automation and Migration Services ("TCN" and/or "TCN/ANS")**: TCN/ANS will be responsible for performing the operating system conversion. This conversion will transition MESC from the current operating system(s) to the MVS/ESA operating system.