

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

June 9, 2008

CHANGE NOTICE NO. 2
 to
CONTRACT NO. 071B6200182
 between
THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF VENDOR TransCor America, LLC 646 Melrose Avenue Nashville, TN 37211	TELEPHONE (615) 251-7008 Sharon Johnson Rion
	VENDOR NUMBER/MAIL CODE
	BUYER/CA (517) 373-8530 Rebecca Nevai
Contract Compliance Inspector: DOC: Laura Campbell (517) 373-4447 AG: Cynthia Fournier (517)335-0722 Prisoner Transportation Services – Department of Corrections	
CONTRACT PERIOD: From: March 30, 2006 To: December 12, 2008	
TERMS <p style="text-align: center;">N/A</p>	SHIPMENT <p style="text-align: center;">N/A</p>
F.O.B. <p style="text-align: center;">N/A</p>	SHIPPED FROM <p style="text-align: center;">N/A</p>
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;">N/A</p>	

NATURE OF CHANGES (S):

Effective June 13, 2008, the following changes are made to this Contract:

- Remaining Contract period will be shortened with a revised Contract expiration date of December 12, 2008.
- Article 1, Attachment A Pricing Schedule is revised as follows:
 1. (1.1) The rate for an adult male will be \$1.35 per mile for transports.
 1. (1.2) The rate for an adult female will be \$1.35 per mile for transports.

NOTE: The DMB Buyer for this Contract is changed to Rebecca Nevai. All other terms, conditions, specifications and pricing remain unchanged.

AUTHORITY/REASON:

Per vendor request (letter dated 5/19/2008) agencies' agreement and DMB/Purchasing Operations' approval.

CURRENT AUTHORIZED SPEND LIMIT REMAINS: \$2,018,850.12

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

July 12, 2006

CHANGE NOTICE NO. 1
to
CONTRACT NO. 071B6200182
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR TransCor America, LLC 646 Melrose Avenue Nashville, TN 37211	TELEPHONE (615) 251-7008 Sharon Johnson Rion
	VENDOR NUMBER/MAIL CODE
	BUYER/CA (517) 241-4225 Kevin Dunn
Contract Compliance Inspector: Laura Campbell (517) 373-4447 Prisoner Transportation Services – Department of Corrections	
CONTRACT PERIOD: From: March 30, 2006 To: March 29, 2009	
TERMS N/A	SHIPMENT N/A
F.O.B. N/A	SHIPPED FROM N/A
MINIMUM DELIVERY REQUIREMENTS N/A	

NATURE OF CHANGES (S):

Effective August 2, 2006, this Contract is hereby **INCREASED** by \$450,000.00 to cover the needs of the Department of Attorney General's Child Support and Criminal Divisions. All other terms, conditions, specifications and pricing remain unchanged.

AUTHORITY/REASON:

Per agency request (Craig Farr) and per DMB/Purchasing Operations approval.

INCREASE: \$450,000.00

TOTAL REVISED ESTIMATED CONTRACT VALUE: \$2,018,850.12

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

March 29, 2006

**NOTICE
 OF
 CONTRACT NO. 071B6200182
 between
 THE STATE OF MICHIGAN
 and**

NAME & ADDRESS OF VENDOR <p style="text-align: center;">TransCor America, LLC 646 Melrose Avenue Nashville, TN 37211</p>	TELEPHONE (615) 251-7008 <p style="text-align: center;">Sharon Johnson Rion</p> VENDOR NUMBER/MAIL CODE BUYER/CA (517) 241-4225 <p style="text-align: center;">Kevin Dunn</p>
Contract Compliance Inspector: Laura Campbell (517) 373-4447 <p style="text-align: center;">Prisoner Transportation Services – Department of Corrections</p>	
CONTRACT PERIOD: From: March 30, 2006 To: March 29, 2009	
TERMS <p style="text-align: center;">N/A</p>	SHIPMENT <p style="text-align: center;">N/A</p>
F.O.B. <p style="text-align: center;">N/A</p>	SHIPPED FROM <p style="text-align: center;">N/A</p>
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;">N/A</p>	

The terms and conditions of this Contract are those of ITB # 071I6200011, this Contract Agreement and the vendor's quote dated November 3, 2005. In the event of any conflicts between the specifications, terms and conditions indicated by the State and those indicated by the vendor, those of the State take precedence.

Estimated Contract Value: \$1,568,850.12

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

CONTRACT NO. 071B6200182
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR <p style="text-align: center;">TransCor America, LLC 646 Melrose Avenue Nashville, TN 37211</p>	TELEPHONE (615) 251-7008 Sharon Johnson Rion VENDOR NUMBER/MAIL CODE BUYER/CA (517) 241-4225 Kevin Dunn
Contract Compliance Inspector: Laura Campbell (517) 373-4447 <p style="text-align: center;">Prisoner Transportation Services – Department of Corrections</p>	
CONTRACT PERIOD: From: March 30, 2006 To: March 29, 2009	
TERMS <p style="text-align: center;">N/A</p>	SHIPMENT <p style="text-align: center;">N/A</p>
F.O.B. <p style="text-align: center;">N/A</p>	SHIPPED FROM <p style="text-align: center;">N/A</p>
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;">N/A</p>	
MISCELLANEOUS INFORMATION: <p>The terms and conditions of this Contract are those of ITB # 07116200011, this Contract Agreement and the vendor's quote dated November 3, 2005. In the event of any conflicts between the specifications, terms and conditions indicated by the State and those indicated by the vendor, those of the State take precedence.</p> <p>Estimated Contract Value: \$1,568,850.12</p>	

FOR THE VENDOR: <p style="text-align: center;">TransCor America, LLC</p> <hr/> <p style="text-align: center;">Firm Name</p> <hr/> <p style="text-align: center;">Authorized Agent Signature</p> <hr/> <p style="text-align: center;">Authorized Agent (Print or Type)</p> <hr/> <p style="text-align: center;">Date</p>	FOR THE STATE: <hr/> <p style="text-align: center;">Signature</p> <p style="text-align: center;">Kristi L. B. Thompson, Director</p> <hr/> <p style="text-align: center;">Name/Title</p> <p style="text-align: center;">Services Division, Acquisition Services</p> <hr/> <p style="text-align: center;">Department</p> <hr/> <p style="text-align: center;">Date</p>
--	---



**STATE OF MICHIGAN
Department of Management and Budget
Acquisition Services**

Contract No. 071B6200182
Prisoner Transportation for the Michigan Department of Corrections

Buyer Name: Kevin Dunn
Telephone Number: 517-241-4225
E-Mail Address: dunnk3@michigan.gov



Table of Contents

Article 1 – Statement of Work (SOW) 7

1.0 Project Identification 7

1.001 Project Request..... 7

1.002 Background 7

1.1 Scope of Work and Deliverables 7

1.101 In Scope 7

1.102 Out of Scope..... 7

1.103 Environment 8

1.104 Work and Deliverable..... 15

1.2 Roles and Responsibilities 15

1.201 Contractor Staff, Roles, and Responsibilities..... 15

1.202 State Staff, Roles, and Responsibilities 15

1.203 Other Roles and Responsibility - RESERVED 16

1.3 Project Plan 16

1.301 Project Plan Management - RESERVED 16

1.302 Reports - RESERVED..... 16

1.4 Project Management..... 16

1.401 Issue Management 16

1.402 Risk Management..... 16

1.403 Change Management 16

1.5 Acceptance..... 17

1.501 Criteria..... 17

1.502 Final Acceptance..... 17

1.6 Compensation and Payment 18

1.601 Compensation and Payment 18

1.7 Additional Terms and Conditions Specific to this SOW..... 18

1.701 Additional Terms and Conditions Specific to this SOW - RESERVED..... 18

2.010 Contract Structure and Administration..... 19

2.011 Definitions..... 19

2.012 Attachments and Exhibits 19

2.013 Statement of Work 19

2.014 Issuing Office 20

2.015 Contract Compliance Inspector..... 20

2.020 Contract Objectives/Scope/Background 20

2.021 Background 20

2.022 Purpose..... 21

2.023 Objectives and Scope..... 21

2.024 Interpretation 21

2.025 Form, Function, and Utility 21

2.030 Legal Effect and Term..... 21

2.031 Legal Effect..... 21

2.032 Contract Term..... 21

2.040 Contractor Personnel..... 21

2.041 Contractor Personnel 21

2.042 Contractor Identification 23

2.043 Cooperation with Third Parties..... 23

2.044 Subcontracting by Contractor 23

2.045 Contractor Responsibility for Personnel..... 24

2.050 State Standards 24

2.051 Existing Technology Standards - RESERVED 24

2.052 PM Methodology - RESERVED 24

2.053 Adherence to Portal Technology Tools - RESERVED 24

2.054 Acceptable Use Policy - RESERVED..... 24



2.060 Deliverables 25

 2.061 Ordering 25

 2.062 Software - RESERVED 25

 2.063 Hardware - RESERVED 25

 2.064 Equipment to be New and Prohibited Products - RESERVED 25

2.070 Performance..... 25

 2.071 Performance, In General 25

 2.072 Time of Performance 25

 2.073 Liquidated Damages - RESERVED 25

 2.074 Bankruptcy 25

 2.075 Time is of the Essence 26

2.080 Delivery and Acceptance of Deliverables 26

 2.081 Delivery Responsibilities - RESERVED 26

 2.082 Delivery of Deliverables 26

 2.083 Testing 26

 2.084 Approval of Deliverables, In General 27

 2.085 Process For Approval of Written Deliverables 28

 2.086 Process for Approval of Services 28

 2.087 Process for Approval of Physical Deliverables 28

 2.088 Final Acceptance..... 28

2.090 Financial 28

 2.091 Pricing 28

 2.092 Invoicing and Payment Procedures and Terms..... 29

 2.093 State Funding Obligation 30

 2.094 Holdback 30

 2.095 Electronic Payment Availability..... 30

2.100 Contract Management..... 30

 2.101 Contract Management Responsibility..... 30

 2.102 Problem and Contract Management Procedures 30

 2.104 System Changes 31

 2.105 RESERVED 31

 2.106 Change Requests 31

2.110 Records and Inspections..... 33

 2.111a Records and Inspections 33

 2.112 Errors..... 33

2.120 State Responsibilities 33

 2.121 State Performance Obligations 33

2.130 Security 34

 2.131 Background Checks 34

2.140 Reserved 34

2.150 Confidentiality..... 34

 2.151 Freedom of Information..... 34

 2.152 Confidentiality 35

 2.153 Protection of Confidential Information 35

 2.154 Exclusions 35

 2.155 No Implied Rights..... 35

 2.156 Remedies 35

 2.157 Security Breach Notification 36

 2.158 Survival 36

 2.159 Destruction of Confidential Information 36

2.160 Proprietary Rights 36

 2.163 Rights in Data 36

 2.164 Ownership of Materials - RESERVED 36

 2.165 Standard Software - RESERVED 36

 2.166 Pre-existing Materials for Custom Software Deliverables - RESERVED 36

 2.167 General Skills 37



2.170 Warranties And Representations..... 37

 2.171 Warranties and Representations..... 37

 2.175a Disclaimer 38

 2.175b Standard Warranties 39

 2.176 Consequences For Breach 39

2.180 Insurance..... 39

 2.181 Liability Insurance..... 39

2.190 Indemnification 41

 2.191 Indemnification..... 41

 2.192 Continuation of Indemnification Obligations 42

 2.193 Indemnification Procedures..... 42

2.200 Limits of Liability and Excusable Failure..... 43

 2.201 Limits of Liability..... 43

 2.202 Excusable Failure..... 43

 2.203 Disaster Recovery..... 44

2.210 Termination/Cancellation by the State 44

 2.211 Termination for Cause 44

 2.212 Termination for Convenience 45

 2.213 Non-Appropriation 45

 2.214 Criminal Conviction 45

 2.216 Rights and Obligations Upon Termination..... 45

 2.217 Reservation of Rights 46

 2.218 Contractor Transition Responsibilities..... 46

 2.219 State Transition Responsibilities 47

2.220 Termination by Contractor 47

 2.221 Termination by Contractor 47

2.230 Stop Work..... 47

 2.231 Stop Work Orders 47

 2.232 Cancellation or Expiration of Stop Work Order 47

 2.233 Allowance of Contractor Costs 48

2.240 Reserved 48

2.250 Dispute Resolution..... 48

 2.251 In General..... 48

 2.252 Informal Dispute Resolution 48

 2.253 Injunctive Relief..... 48

 2.254 Continued Performance 49

2.260 Federal and State Contract Requirements 49

 2.261 Nondiscrimination..... 49

 2.262 Unfair Labor Practices..... 49

 2.263 Workplace Safety and Discriminatory Harassment..... 49

2.270 Litigation 49

 2.271 Disclosure of Litigation 49

 2.272 Governing Law 50

 2.273 Compliance with Laws..... 50

 2.274 Jurisdiction..... 50

2.280 Environmental Provision 50

 2.281 Environmental Provision..... 50

2.290 General 51

 2.291 Amendments 51

 2.292 Assignment..... 51

 2.293 Entire Contract; Order of Precedence 52

 2.294 Headings 52

 2.295 Relationship of the Parties (Independent Contractor Relationship) 52

 2.296 Notices 52

 2.297 Media Releases and Contract Distribution..... 52

 2.298 Reformation and Severability 53

 2.299 Consents and Approvals..... 53

 2.300 No Waiver of Default 53

 2.301 Survival 53



2.302 Covenant of Good Faith 53
2.303 Permits 53
2.304 Website Incorporation 53
2.305 Taxes 53
2.306 Prevailing Wage 54
2.307 Call Center Disclosure..... 54
2.308 Future Bidding Preclusion 54
2.310 Reserved 54
2.320 Extended Purchasing..... 54
 2.321 MiDEAL 54
2.330 Federal Grant Requirements 54
 2.331 Federal Grant Requirements..... 55

APPENDICES

- Appendix A
- Appendix B
- Appendix C
- Appendix D
- Appendix E



Article 1 – Statement of Work (SOW)

1.0 Project Identification

1.001 Project Request

This contract is for the transportation of male and female prison escapees, parole violators and parole absconders from out-of-state locations back to Michigan by law enforcement trained, professional and custodial personnel.

1.002 Background

The primary responsibility of the Michigan Department of Corrections (MDOC) is to protect society from those individuals who are sentenced to its care. Security must never be compromised. It must remain constant and become a primary duty of the Contractor providing services required by this Contract. It is essential to realize that every confined prisoner may consider escape at one time or another, and the greatest opportunity may occur during the transportation process. To lessen the probability of escape attempts, the transportation of prisoners must be viewed as a serious undertaking, demanding the highest level of professionalism, competence, and diligence.

The MDOC contracts for the transport of male and female escapees, parole violators and parole absconders from out-state locations back to Michigan. Male prisoners will be returned to the Reception and Guidance Center in Jackson, Michigan. Female prisoners will be returned to the Scott Correctional Facility in Plymouth, Michigan. This is to be accomplished by law enforcement trained, professional, custodial personnel so as to minimize the risk of escape during transportation. Such transportation is to be performed in a timely manner in keeping with the policies, procedures, rules, regulations and guidelines set forth by the MDOC. The MDOC Transportation Manual is to be the standard used for guidelines concerning this Contract, and will be issued to the Contractor.

WHEN TRANSPORTING FEMALE PRISONERS, THE MDOC REQUIRES THAT FEMALE STAFF PERSONNEL ACCOMPANY THE TRIP AND BE PRESENT THROUGHOUT TRANSPORT. This means the Contractor must retain a sufficient number of trained female agents to cover the entire transport of female escapees, parole violators and absconders.

The MDOC has determined that ground transport of prisoners is acceptable and the preferred method of transport. The use of air transport is to be used only in extreme circumstances to be determined by the MDOC due to high cost. Such extreme circumstances would include, but not be limited to: pregnancy, AIDS/HIV infected prisoners, or special requirements on medications such as temperature and administration of the drug, or certain high profile prisoners with specific security needs. Commercial air transportation will be used in the following instances: 1) When the movement of a prisoner by air is requested by the MDOC; or 2) When a prisoner is medically unfit to travel on the ground; or 3) When short notice is given with a deadline and ground travel is impractical; or 4) A special move is required by a department head of the Contractor to meet that department's special needs.

The MDOC anticipates requiring approximately 500 pickups/transportations during the first year, 515 pickup/transportations during the second year and 530 pickups/transportations during the third year, for a total of 1,545 pickups/transportations for the total three-year Contract. These quantities are estimates only, based on current figures. The State is not obligated to purchase in these or any other quantities.

1.1 Scope of Work and Deliverables

1.101 In Scope

The MDOC anticipates requiring approximately 500 transports during the first year, 515 transports during the second year and 530 transports during the third year, for a total of 1,545 transports for the total three-year Contract. These quantities are estimates only, based on current figures. The State is not obligated to purchase in these or any other quantities.

1.102 Out of Scope

Any medical costs incurred during transport due to a physical examination or hospital stay is not included in this contract.



1.103 Environment OBJECTIVES

General:

The objective is to ensure that the MDOC utilizes the most economical means for returning escapees, parole violators, and absconders to Michigan, while not compromising the personal rights or safety and security of the prisoner being returned, nor enhancing the risk of escape while in transit.

Specific:

To obtain prisoner transport services under the circumstances outlined in this Contract, with clear standards for appropriate action in all cases. This includes, but is not limited to: proper notification, arrangement of pickups, uncontrolled circumstances such as inclement weather or breakdown of vehicles, and misconduct on the part of escapees. Other specific objectives are to provide specifications for the proper food, lodging, security (vehicle requirements, use of force, restraints, etc.), humane treatment, and medical transfer of prisoners.

CONTRACTOR TASKS AND REQUIREMENTS

The following is a preliminary analysis of the major tasks involved in this Contract. The Contractor is not, however, constrained from supplementing this listing with additional steps, alternate methods or equipment, sub-tasks or elements deemed necessary to permit the carrying out of these tasks:

1. Contractor Personnel

To ensure that all personnel employed by the Contractor (carrier) engaged in transporting prisoners for the MDOC are:

- a. At least 21 years of age;
- b. Have successfully passed a background check of driving record, criminal history, former and present employers and personal references;
- c. Successfully passed CPR;
- d. Successfully passed weapons qualifications;
- e. Successfully passed transportation training;
- f. Successfully passed a drug screen test.

2. Prior Notification of Arrival

The Contractor shall provide the MDOC with prior notice of their arrival at the home location to allow the MDOC a reasonable time to meet with the Contractor at the home location and prepare to take custody of the prisoner.

- a. The Contractor shall provide an estimated date of return to the home location at the time the pickup is called in. Arrangements shall be confirmed by fax.
- b. The Contractor shall notify the MDOC at least 72 hours in advance if they will not be picking up the prisoner on or before the deadline date so the MDOC can determine whether other arrangements are necessary.
- c. The Contractor shall notify the MDOC at least 72 hours in advance if they will not be returning the prisoner to the home location on or before the estimated date of return.

3. Proper Surrender of Custody

To ensure the proper surrender of custody by the Contractor to the MDOC or its duly authorized agents:

- a. The Contractor shall not surrender custody of prisoner(s) without first verifying the identification of the person(s) to whom custody of the prisoner(s) is to be transferred as being an employee of, or duly authorized agent of, the MDOC.



- b. The MDOC or its duly authorized agent shall present bona fide articles of identification upon request by the Contractor at the home destination.
 - c. If the MDOC or its apparent agent, in the opinion of the Contractor, fails to provide bona fide articles of identification upon request by the Contractor, the Contractor shall make appropriate inquiry with the MDOC to verify identification of the apparent agent prior to surrendering custody.
4. Transportation Upon Request
The Contractor shall furnish transportation for prisoners and official passengers of the MDOC within, or out of, the State of Michigan upon request. However, the MDOC shall notify the Contractor within ten days in advance of desired departure time, unless emergency or special circumstances require transport arrangements sooner.
5. Delays in Departure or Arrival
- a. The Contractor shall immediately notify the MDOC of actual delay in departure or arrival of departmental prisoners. In addition:
 1. Delay in Departure: The Contractor shall notify the law enforcement agency currently holding the prisoner of such delay in departure for the destination location. Such notice shall be given within 24 hours so as to give holding law enforcement agency a reasonable time to reschedule prisoner out-processing and avoid delay to the holding law enforcement agency in delivery and transfer of custody to the Contractor at the destination location.
 2. Delay in Arrival: The Contractor shall notify the MDOC of such delay in arrival at the home location. Such notice shall be given within 24 hours so as to give the MDOC a reasonable time to reschedule departmental personnel so as to avoid delay in receiving transfer of custody to the MDOC at the home location.
 - b. In the event of delays such as inclement weather conditions or mechanical failure of the Contractor's vehicle(s), the Contractor shall bear all costs related to such layover. Such costs shall include food and lodging costs of the Contractor's personnel and prisoners in their custody.
 - c. In the event of delays necessitating lodging of prisoners for one or more nights, the Contractor shall arrange for safe and healthful lodging in an appropriate local detention facility. Such lodging shall be in accordance with the standards set forth in the MDOC Transportation Manual.
 - d. Only under circumstances where different efforts have been made to lodge prisoners in an appropriate local detention facility and such efforts have failed, shall the Contractor lodge prisoners in a private/public motel or hotel. In such cases, no more than two (2) prisoners may be lodged in a room together, and a Contractor employee shall at all times be present and alert. Security arrangements shall be in keeping with the standards set forth in the MDOC Transportation Manual.
 - e. In the event the Contractor, for reasons other than inclement weather conditions or mechanical failure, lodges the prisoners for one or more nights in a detention facility other than the original detention facility, the Contractor shall notify the Contract Compliance Inspector immediately of the new holding location and the length of time the prisoner will be held there.
 1. The new detention facility shall provide safe and healthful lodging in accordance with standards set forth in the MDOC Transportation Manual.
 2. The Contractor shall bear all costs related to such layover.
 - f. The Contractor's inability to comply with specifications for reason of weather, acts of God, or other causes beyond their control shall not be considered a breach of Contract.



6. Refusal to Transport Prisoner by Agent When Requested by Michigan Department of Corrections
- a. The Contractor reserves the right to refuse any prisoner transport for good cause. In the event of such refusal, the Contractor shall notify the MDOC within four hours of receiving such transport request.
 - b. Profit margin or purely economic consideration regarding a particular transport shall not constitute good cause for refusal to accept a transportation request.
 - c. The person-in-command of Contractor's vehicle shall have the right to refuse to transport any individual whose condition or behavior, in the opinion of the person-in-command, would be detrimental or dangerous to the safety of any such individual. The MDOC shall be notified immediately of such refusal and there shall be no charge to the MDOC.

7. Transportation Vehicles

NOTE: The MDOC does not dictate transportation vehicles to Contractors. The following are suggested guidelines only, based on MDOC standards:

- a. For emergency purposes, each vehicle used to transport prisoners must carry first-aid kit and approved fire extinguisher.

A log book shall be maintained to record all emergency contacts with law enforcement agencies and/or any unusual occurrences.

After each stop, a count will be made and recorded. Each person occupying a vehicle must wear the safety belt, if provided, while the vehicle is in motion. The number of occupants shall not exceed the vehicle's designated seating capacity. A prisoner will not be handcuffed, chained or secured, other than by a seat belt to a stationary object inside a moving vehicle, unless in an emergency. Deviation from this provision shall require that the agent-in-command submit a written statement within 48 hours of the completion of the transfer.

When a prisoner transportation trip is scheduled and the expected distance traveled during one day will be greater than 200 miles, a relief driver shall be available.

- b. Passenger Sedan and Van

The standard passenger sedan, station wagon or van, with a screened cage separating the front and rear passenger area, shall be used for the transportation of prisoners whose custody level is Secure Level I or higher. Any additional employees (other than the driver) will ride in the front seat or appropriate caged area facing at an angle that allows visual contact with the prisoner(s). The rear passenger door and window controls are to be removed, thus leaving the responsibility of exiting the prisoner(s) to the officer in case of emergency.

All drivers of vans must have a valid operator or chauffeur's license. Vans are not to be loaded beyond their rated capacity. Staff shall not ride in the prisoner compartment. Under no circumstances shall a weapon or chemical agent be placed in the same compartment as the prisoner. When personal property is carried on the van, transportation staff must be diligent to ensure that property is not within the prisoner's reach.

- c. Transportation Bus

When transporting 21 or more Level IV and V custody prisoners, specially constructed buses shall be used. The driver's compartment shall be protected by a heavy screen partition. Another screened cage shall be located at the rear of the bus to protect other transportation staff. These areas shall not be left unattended when prisoners are on board. A female agent must accompany female prisoners throughout the transport. Anytime an agent enters the area of the prisoners, the agent shall be unarmed and without keys. The security gates to the area where the prisoners are riding shall be locked. When relief of the armed officer in the cage is in effect, the armed officer shall step out the rear door. The relief officer shall step in the rear, both officers keeping possession of their own weapons.



The armed front cage agent shall observe the prisoners during this exchange. Keys to the caged area shall always remain with the agent in the cage that shall remain locked. When the front officers are exchanged, the back cage officer will observe the prisoner compartment. At the completion of the exchange, an accurate prisoner count shall be made.

Lighting is to be provided inside the bus at night to allow constant observation of the prisoners. All prisoners shall be attached to the "long chain" which will prevent any prisoner movement while the bus is in motion.

Staff operating the transportation bus shall possess a valid Commercial Driver's License with appropriate endorsement in accordance with the MDOC Policy Directive 01/03/120, Vehicle Use.

A Contractor bus shall be operated in accordance with State motor vehicle laws governing bus operations. A bus transporting prisoners shall stop before proceeding at each railroad crossing and shall clearly display a cautionary sign on the back of the bus which reads: "This vehicle will stop at all railroad crossings."

d. Air Transportation

Air transport is to be used only in extreme circumstances to be determined by the MDOC due to high cost. Such extreme circumstances would include, but not be limited to: pregnancy, AIDS/HIV infected prisoners, or special requirements on medications such as temperature and administration of the drug, or certain high profile prisoners with specific needs.

Commercial air transportation will be used when one or more of the following criteria are met: 1) When the movement of a prisoner by air is requested by the MDOC; or 2) When a prisoner is medically unfit to travel on the ground; or 3) When short notice is given with a deadline and ground travel is impractical; or 4) A special move is required by a department head of the Contractor to meet that department's special needs.

If the Contractor determines that air transportation is required, and it does not meet one of the four criteria shown above, then the Contractor must provide supporting documentation as to why they feel the prisoner should be air-flexed rather than regular ground transport. The final decision as to whether air transportation will be used or not will be at the sole discretion of the MDOC.

8. Preparing for the Transportation Assignment

a. Equipment Checklist:

The following equipment must be obtained and ready to go:

- Driver's license
- ID Card
- Duty belt with keepers
- Seat belt cutter
- Chemical agent with case
- 12 gauge shotguns
- Double speed loader with additional 12 rounds of ammunition
- Glock
- Handcuffs with case
- Approved chemical agent mask (if applicable)
- CCW Permit
- CPR mask and gloves

b. Vehicle Checklist:



The following is a checklist of things to do and items needed:

- Make sure fuel and oil levels are full
- Make sure all emergency breakdown reflectors are in good condition
- Radios must be in proper working order
- First Aid kit in full and in good condition
- Up-to-date road maps
- Extra restraints available and in good working condition
- A box of latex gloves for spills, especially body fluids
- Blood spill kit
- Trip sheet
- Vehicle log
- Fire extinguisher
- SCBA with mount, plus backup units in the trail vehicles (when transportation bus is used)

9. Security Level and Restraints Used

The importance of the proper use of restraints cannot be overemphasized. The application of restraints is a necessary skill and a vital part of the transportation agent's duty. Restraint equipment, although useful in securing the prisoner, is not a substitute for employee vigilance and performance. **It is the responsibility of the Contract staff to see that the appropriate restraint equipment is applied in the required manner.** Faulty application of restraints can result in an escape or injury to staff or the prisoner. Restraint equipment is not to be applied as punishment or in a manner that causes physical pain, reduces blood circulation or restricts breathing.

Restraints **shall not** be removed during the transfer except in an extreme emergency. Caution must be taken when restraints are applied and removed. When possible, at least two officers should be present when this task is performed.

The following specifications are those used for in-State MDOC transports. The Contractor should employ comparable methods using highest security deemed appropriate, while maintaining humane treatment and refraining from unnecessary force.

a. Handcuffs

The basic principle of handcuffs is that hands secured together are rendered harmless. This is usually true if the cuffs are applied correctly and the following precautions are taken.

1. Install the cuffs between the hand and the wrist bone, ensuring that the cuff will barely slide over the wrist bone. This will prevent the normal movement of the hand without restricting circulation.
2. Cuffing the backs of the hands together behind the back can further restrict motion.
3. When applying cuffs, never allow the free end to leave your hand. It can be used as a very dangerous weapon.
4. Cuffs should be applied with the double bar "up" and the keyhole "in" to prevent picking of the lock. Cuffs will always be double locked.
5. If the prisoner has extremely small hands that may slip through the cuffs, firmly compress the hands and adjust the cuffs to a point at which they cannot slide over the hand.
6. Never let the prisoner know the location of the handcuff key.



b. Handcuff Cover

The handcuff cover (black box) covers the keyhole and is used to prevent picking or tampering with the lock. The closed plastic cover has space for a metal clop that the security link passes through. This allows the officer to use the security link chain to restrict movement of the prisoner's hands. A small padlock close to the snap, placed through the chain links, completes the assembly procedure. Handcuff covers may be placed in the position desired depending on the degree of risk and security presented by the prisoner.

c. Belly Chains

These are strong, welded link chains with two handcuffs attached. The proper procedure for application is to have the prisoner face away from the employee applying the belly chains. Make certain the chain is secure on the prisoner's hip bond prior to placing the padlock through the ends of the chain to finish securing the chain. After applying handcuffs to wrist, the employee shall make a double check to ensure there is not extra slack in the belly chain. The second employee should conduct this check.

d. Leg Irons

Leg irons are large cuffs at the end of an 18-inch welded link chain. After the belly chain or handcuff cover and linked chain have been applied and while standing at one side of the prisoner, apply one cuff to the nearest leg. **Leg irons are not to be applied from the front while facing the prisoner.** This places the officer in a dangerous position. Be careful not to lose control of the opposite end of the chain while placing the first cuff. Remove the leg irons in reverse order.

e. Chemical Agents

Transportation officers may use chemical agents during the transport of prisoners, at the discretion of the supervising agent. Chemical agents may be used in the following situations:

- Controlling disruptive prisoners
- Protecting staff from serious injury
- Preventing the taking of hostages
- Preventing escapes
- Preventing major destruction to transportation vehicle

Before using chemical agents, and if time and circumstances permit, the prisoner should be heard and informed of alternatives which will occur if s/he does not comply. **Use of a chemical agent in a moving vehicle is not permitted.**

10. Meals, Lodging and Miscellaneous Costs

- a. The Contractor shall be responsible for all costs that may occur for its employees, offenders and/or prisoners (inmates), excluding medical costs for the offenders and prisoners, during the term of this Contract.
- b. Three hot meals per 24 hours shall be required for the offenders and prisoners during transport. Meals from fast food-type restaurants shall be acceptable.
- c. Any delay during transport that results in lodging requirements for offenders and prisoners shall be arranged with the appropriate local detention facility.
- d. All medical costs of offenders and prisoners, including cost of transportation to or from any medical facility, shall be paid by the MDOC. The Contractor shall be authorized to obtain emergency and routine medical treatment for offenders and prisoners.



11. Medical Transports

The Correctional Facilities Administration (CFA), Deputy Director or designee, determines medical and custody coverage for special circumstances during transport. For any special circumstance, use of local jails for drop-offs shall be subject to the approval of the CFA Deputy Director, and will also determine the chain of custody.

Agents must notify the MDOC, CFA, Deputy Director when an inmate is out of their custody. This must be person-to-person contact, and not a message left by voice mail, e-mail, or other electronic methods. In the event a transport takes more than three days, the MDOC must be notified.

In the case of medical emergency, the MDOC shall be notified for appropriate arrangements including chain of custody, transfer of custody, and responsibility for custody responsibilities at the hospital or medical facility. The MDOC shall incur all costs for any transport involving medical or emergency health care treatment, and shall be charged accordingly. These charges shall be quoted in advance, unless emergency nature prohibits advance pricing. In the case of a medical transport known at the onset, any special pricing shall be quoted and approved by the MDOC prior to transport.

12. High Notoriety Cases

In the event the transport of a prisoner is required involving a high notoriety case, it will be determined by the MDOC as to whether the MDOC will pickup the prisoner, or have the Contractor carry out the transport. Such cases must have prior approval of the MDOC, CFA, Deputy Director, or designee.

CONTRACT PAYMENT

The specific payment schedule for this Contract will be mutually agreed upon by the MDOC and the Contractor. The schedule should show payment amount and should reflect actual work done by the payment dates, less any penalty cost charges accrued by those dates. As a general policy, statements shall be forwarded to the designated representative by the 15th day of the following month.

Compensation to Contractor

a. Ground Transportation: The Contractor shall be compensated by the MDOC for transportation of prisoners or passengers authorized by the MDOC. Compensation shall be based on a per mileage rate in accordance with the Michigan Department of Management and Budget, Vehicle and Travel Services, Standardized Travel Regulations, as approved by the Michigan Civil Service Commission. For Ground Transportation, price per mile per male offender and/or prisoner; and price per mile per female offender and/or prisoner shall be quoted. In addition, discount per individual offender in the case of multiple pickups from one location shall be quoted. PC* Miler/Streets 2000/Beta will be used to compute transport mileage, and to confirm any invoice discrepancies in mileage charged.

b. Air Transportation: In the case where air transport is the most viable means of returning a prisoner, the Contractor shall use the lowest airfare available at time of transport and bill accordingly, submitting appropriate documentation to support the ticket cost. All air transports must be approved in advance by the MDOC.

c. Rate Schedules shall be set forth and **attached as an appendix** hereto, and made a part hereof. No changes in the rate schedule shall be made without written approval of the MDOC.

d. A charge of 50% of the regular rate may be billed to the MDOC for any passenger cancellation by the MDOC not reported to the Contractor prior to four hours before scheduled departure time for intrastate transportation and eight hours before scheduled departure time for interstate transportation.

e. When billing the MDOC for transportation services, the Contractor shall include the following information in the invoice:



1. Prisoner or passenger name;
2. Prisoner's Michigan prison number;
3. Departure point and date of departure;
4. Point of destination;
5. Date prisoner transferred to MDOC custody at the home location;
6. Detail and substantiation if MDOC is assessed a minimum delay service charge.

f. Invoice shall include itemization of all surcharges.

g. All invoices shall be addressed to:

Finance Division
Michigan Department of Corrections
P.O. Box 30003
Lansing, Michigan 48909

1.104 Work and Deliverable

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

MICHIGAN DEPARTMENT OF CORRECTIONS SPECIFIC REQUIREMENTS FOR PICKUP REQUESTS

1. Maximum of ten-day pickup timeframe. The Contractor must be flexible to pickup prisoners with short notice due to court orders, accommodating holding facilities, etc. The Contractor is responsible for making requests for extensions.
2. Placing pickup requests must be available online, by fax or by phone.
3. An 800 number must be available for telephone and fax.
4. A confirmation of placed pickup requests must be available.
5. Online availability to query orders, review confirmations and track status of pickup requests.
6. Ground pickup must be available within the continental United States. Exceptions would include Hawaii, Alaska, Puerto Rico, etc.
7. If a pickup request for a release date cannot be accomplished on a specific date, the Contractor is responsible for making other arrangements with the holding facility.
8. Medical information for inmates is to be obtained by the Contractor.

1.2 Roles and Responsibilities

1.201 Contractor Staff, Roles, and Responsibilities

Identify Contractor staff who will be involved and describe in detail their roles and responsibilities. If an overall organization chart has been developed, then provide a reference to that chart as well.

1.202 State Staff, Roles, and Responsibilities

The Department of Corrections will oversee this contract. Laura Campbell, Contracts Manager, is the Contract Compliance Inspector (CCI). Her role is to oversee the Contractor's performance on a day-to-day basis during the term of the contract.

The Parole Violation Unit, the Community Residential Programs Section, the Interstate Unit of the Field Operations Administration, or the Correctional Facilities Administration, Department of Corrections, will make all prisoner transportation requests.



The receiving staff for male offenders is located at the Egeler Reception and Guidance Center, in Jackson, Michigan.

The receiving staff for female offenders is located at Scott Correctional Facility, in Plymouth, Michigan.

The invoice and payment processing will be completed by the Finance Division, Department of Corrections. The Finance Division's role is to ensure that all payments, made to the Contractor, are in compliance with the terms and conditions of the contract.

1.203 Other Roles and Responsibility - RESERVED

1.3 Project Plan

1.301 Project Plan Management – RESERVED

1.302 Reports - RESERVED

1.4 Project Management

1.401 Issue Management

TransCor acknowledges that the lack of a direct and specific contact for individual customers can adversely impact that service. To ensure ongoing communication, TransCor is assigning MDOC with a dedicated customer service representative.

This representative will be available whenever MDOC needs assistance. Listed below is the contact information for Alan Proctor, Customer & Operational Support Manager.

Alan Proctor, *Customer & Operational Support Manager*
(800) 825-3320 ext. 44406
(615) 240-4403 Fax
(615) 944-9061 Mobile Phone
aproctor@transcor.com

In this role as primary contact, Mr. Proctor will be responsible for monitoring issues before they occur, while they are ongoing and after they have been resolved to the satisfaction of all parties. He will spearhead internal efforts to address such issues that might arise and will be the conduit for keeping MDOC updated on our efforts and their outcomes.

TransCor spends significant time and resources reviewing incidents, issues and trends that develop during the course of our operations. We recognize that identifying negative trends and addressing customer concerns early is essential to preventing their becoming an issue that endangers our partnership with our customers. Our goal is to investigate the facts early and accurately and make any necessary operational or procedural adjustments going forward to correct the issue.

1.402 Risk Management

Since Sharon Johnson Rion returned to TransCor as President and CEO in January 2005, the company has strengthened its emphasis on risk management. Subsequent staff additions have furthered heightened our ability to capture, analyze and respond to risk areas.

The company now tracks such information as the cause of delays on each trip. From mechanical failures, weather and facility delays to staff issues, TransCor's Safety, Time & Performance (STP) tracks the root causes of the delays. These causes are then trended weekly for each region and the company as a whole, and are then compiled into monthly reports. Individual recurrent causes can then be identified and addressed. This trending of information enables TransCor to implement strategies and measure to improve our performance week over week.



TransCor is committed to making sure that the occurrence of incidents is kept to a minimum. From escapes to vehicle accidents, no incident is acceptable and no incident occurs without review and adjustment. TransCor takes each incident seriously and works to make revisions to policy and practice to help safeguard against similar occurrences in the future.

TransCor recognizes the importance of risk management and continues to look for and implement procedures and programs that help safeguard our primary goal of providing safe, secure and timely prisoner transportation services.

The person responsible for overseeing the company's comprehensive quality assurance program, which extends to all areas of management and operations is:

Linda Dodson, *Managing Director of Operational Support*
(800) 825-3320 Phone
(615) 240-4403 Fax
ldodson@transcor.com

1.403 Change Management

Changes that are not within the scope of the contract will require a contract amendment and will be processed as a Contract Change Request and a change notice will be issued by the Department of Management and Budget - Acquisition Services.

If a proposed contract change is approved by the Contract Compliance Inspector, the Contract Compliance Inspector will submit a request for change to the Department of Management and Budget, Acquisition Services Buyer, who will make recommendations to the Director of Acquisition Services regarding ultimate approval/disapproval of change request. If the DMB Acquisition Services Director agrees with the proposed modification, and all required approvals are obtained (including State Administrative Board), the Acquisition Services Buyer will issue an addendum to the Contract, via a Contract Change Notice. **Vendors who provide products or services prior to the issuance of a Contract Change Notice by the DMB Office of Acquisition Services, risk non-payment for the out-of-scope/pricing products and/or services.**

1.5 Acceptance

1.501 Criteria

The following criteria will be used by the State to determine acceptance of the services and/or deliverables provided under this SOW:

1. Prior to the start of the engagement the Contractor will provide department staff with a detailed "scope of work" document defining the key aspects of the engagement that the Contractor will be required to complete.
2. Monthly submission of the Contractor's invoices providing the prisoner transportation details, mileage, and mileage rate of charge.
3. The Contractor must meet all previously agreed upon deadlines for prisoner transportation schedules.
4. The Contractor must respond within a mutually agreed upon timeframe, to required changes in the scope of the engagement including modifications to required completion dates or deployment of resources.

1.502 Final Acceptance

Final Acceptance will be acknowledged upon receipt and approval of items detailed in section 1.501.



1.6 Compensation and Payment

1.601 Compensation and Payment

This is a fixed unit price contract, and will be based on the cost per mile of a prisoner pickup.

1.7 Additional Terms and Conditions Specific to this SOW

1.701 Additional Terms and Conditions Specific to this SOW - RESERVED



Article 2 – General Terms and Conditions

2.010 Contract Structure and Administration

2.011 Definitions

Capitalized terms used in this Contract (including its Exhibits) shall have the meanings given below, unless the context requires otherwise:

- (a) “Days” means calendar days unless otherwise specified.
- (b) “24x7x365” means 24 hours a day, seven days a week, and 365 days a year (including the 366th day in a leap year).
- (c) “Additional Service” means any Services/Deliverables within the scope of the Contract, but not specifically provided under any Statement of Work, that once added will result in the need to provide the Contractor with additional consideration. “Additional Service” does not include New Work.
- (d) “Amendment Labor Rates” means the schedule of fully loaded hourly labor rates attached as **Article 1, Attachment C**.
- (e) “Audit Period” has the meaning given in **Section 2.111**.
- (f) “Business Day,” whether capitalized or not, shall mean any day other than a Saturday, Sunday or State-recognized legal holiday (as identified in the Collective Bargaining Agreement for State employees) from 8:00am EST through 5:00pm EST unless otherwise stated.
- (g) “Incident” means any interruption in Services.
- (h) “Business Critical” means any function identified in any Statement of Work as Business Critical.
- (i) “Deliverable” means physical goods and/or commodities as required or identified by a Statement of Work
- (j) “Key Personnel” means any Personnel designated in **Article 1, Section 1.201 and/or Attachment B**, as Key Personnel.
- (k) “New Work” means any Services/Deliverables outside the scope of the Contract and not specifically provided under any Statement of Work, that once added will result in the need to provide the Contractor with additional consideration. “New Work” does not include Additional Service.
- (l) “Services” means any function performed for the benefit of the State.
- (m) “State Location” means any physical location where the State performs work. State Location may include state-owned, leased, or rented space.
- (n) “Subcontractor” means a company Contractor delegates performance of a portion of the Services to, but does not include independent contractors engaged by Contractor solely in a staff augmentation role.
- (o) “Work in Process” means a Deliverable that has been partially prepared, but has not been presented to the State for Approval.

2.012 Attachments and Exhibits

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

2.13 Statement of Work

- (a) The parties agree that the Services/Deliverables to be rendered by Contractor pursuant to this Contract (and any future amendments of it) will be defined and described in detail in Statements of Work or Purchase Orders (PO) executed under this Contract. Contractor shall not be obliged or authorized to commence any work to implement a Statement of Work until authorized via a PO issued against this Contract, or an amendment to this Contract (see 2.106). Contractor shall perform in accordance with this Contract, including the Statements of Work/Purchase Orders executed under it.
- (b) Unless otherwise agreed by the parties, each Statement of Work (as defined in Article 1) will include, or incorporate by reference to the appropriate Contract Article 1 Attachment containing, the following information:



- a description of the Services to be performed by Contractor under the Statement of Work;
- a project schedule (including the commencement and completion dates for all tasks, subtasks (for all projects of sufficient duration and complexity to warrant sub task breakdown), and Deliverables;
- a list of the Deliverables to be provided, if any, including any particular specifications and acceptance criteria for such Deliverables, and the dates on which the Deliverables are scheduled to be completed and delivered to the State;
- all Deliverable price schedules and other charges associated with the Statement of Work, the overall fixed price for such Statement of Work and any other appropriate pricing and payment terms;
- a specification of Contractor's and the State's respective performance responsibilities with respect to the performance or completion of all tasks, subtasks and Deliverables;
- a listing of any Key Personnel of Contractor and/or its Subcontractors for that Statement of Work and any future Statements of Work;
- any other information or provisions the parties agree to include.

(c) Reserved.

(d) The initial Statements of Work, as of the Effective Date, are attached to this Contract.

2.014 Issuing Office

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

Kevin Dunn
Office of Acquisition Services
Department of Management and Budget
Mason Bldg, 2nd Floor
PO Box 30026
Lansing, MI 48909
dunnk3@michigan.gov
517-241-4225

2.015 Contract Compliance Inspector

Upon receipt at OAS of the properly executed Contract, it is anticipated that the Director of DMB Acquisition Services, in consultation with (insert the end using agency), will direct that the person named below, or any other person so designated, be authorized to monitor and coordinate the activities for the Contract on a day-to-day basis during its term. However, monitoring of this Contract implies **no authority to change, modify, clarify, amend, or otherwise alter the prices, terms, conditions and specifications of such Contract as that authority is retained by the Office of Acquisition Services.** The Contract Compliance Inspector for this Contract is:

Laura Campbell
Department of Corrections, Procurement
206 E. Michigan Ave.
PO Box 30003
Lansing, MI 48909
Campbell1@michigan.gov
(517) 373-4447

2.016 Project Manager - RESERVED

2.020 Contract Objectives/Scope/Background

2.021 Background

Please see Section 1.002

**2.022 Purpose**

Please see Section 1.001

2.023 Objectives and Scope

Please see Section 1.101

2.024 Interpretation

Sections 2.021 through 2.023 are intended to provide background and context for this Contract and are not intended to expand the scope of the obligations under this Contract or to alter the plain meaning of the terms and conditions of this Contract. However, to the extent the terms and conditions of this Contract are unclear or otherwise ambiguous, such terms and conditions are to be interpreted and construed in light of the provisions of this Section.

2.025 Form, Function, and Utility

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

2.030 Legal Effect and Term**2.031 Legal Effect**

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

2.032 Contract Term

This Contract is for a period of 3 years commencing on the date that the last signature required to make the Contract enforceable is obtained. All outstanding Purchase Orders shall also expire upon the termination (cancellation for any of the reasons listed in 2.210) of the Contract, unless otherwise extended pursuant to the Contract. Absent an early termination for any reason, Purchase Orders issued but not expired, by the end of the Contract's stated term, will remain in effect for the balance of the fiscal year for which they were issued.

2.033 Renewal(s)

This Contract may be renewed in writing by mutual agreement of the parties not less than thirty (30) days before its expiration. The Contract may be renewed for up to 2 additional 1 year periods. Successful completion of negotiations surrounding the terms of the extension will be a pre-requisite for the exercise of any option year.

2.040 Contractor Personnel**2.041 Contractor Personnel**

- (a) Personnel Qualifications. All persons assigned by Contractor to the performance of Services under this Contract shall be employees of Contractor or its majority-owned (directly or indirectly, at any tier) subsidiaries (or a State-approved Subcontractor) and shall be fully qualified to perform the work assigned to them. Contractor shall include a similar provision in any subcontract entered into with a Subcontractor. For the purposes of this Contract, independent contractors engaged by Contractor solely in a staff augmentation role shall be treated by the State as if they were employees of Contractor for this Contract only; however, the State understands that the relationship between Contractor and Subcontractor is an independent contractor relationship.
- (b) Key Personnel
 - (i) In discharging its obligations under this Contract, Contractor shall provide the named Key Personnel on the terms indicated. **Exhibit C** provides an organization chart showing the roles of certain Key Personnel, if any.



- (ii) Key Personnel shall be dedicated as defined in **Exhibit C** to the Project for its duration in the applicable Statement of Work with respect to other individuals designated as Key Personnel for that Statement of Work.
- (iii) The State will have the right to recommend and approve in writing the initial assignment, as well as any proposed reassignment or replacement, of any Key Personnel. Before assigning an individual to any Key Personnel position, Contractor will notify the State of the proposed assignment, will introduce the individual to the appropriate State representatives, and will provide the State with a resume and any other information about the individual reasonably requested by the State. The State reserves the right to interview the individual before granting written approval. In the event the State finds a proposed individual unacceptable, the State will provide a written explanation including reasonable detail outlining the reasons for the rejection. Additionally, the State's request shall be based on legitimate, good faith reasons. Proposed alternative for the individual denied, shall be fully qualified for the position.
- (iv) Contractor shall not remove any Key Personnel from their assigned roles or the Contract without the prior written consent of the State. If the Contractor does remove Key Personnel without the prior written consent of the State, it shall be considered an unauthorized removal ("Unauthorized Removal"). It shall not be considered an Unauthorized Removal if Key Personnel must be replaced for reasons beyond the reasonable control of Contractor, including illness, disability, leave of absence, personal emergency circumstances, resignation or for cause termination of the Key Personnel's employment. It shall not be considered an Unauthorized Removal if Key Personnel must be replaced because of promotions or other job movements allowed by Contractor personnel policies or Collective Bargaining Agreement(s) as long as the State receives prior written notice before shadowing occurs and Contractor provides thirty (30) days of shadowing unless parties agree to a different time period. The Contractor with the State shall review any Key Personnel replacements, and appropriate transition planning will be established. Any Unauthorized Removal may be considered by the State to be a material breach of the Contract, in respect of which the State may elect to exercise its rights under **Section 2.210**.
- (v) It is acknowledged that an Unauthorized Removal will interfere with the timely and proper completion of the Contract, to the loss and damage of the State, and that it would be impracticable and extremely difficult to fix the actual damage sustained by the State as a result of any Unauthorized Removal. Therefore, Contractor and the State agree that in the case of any Unauthorized Removal in respect of which the State does not elect to exercise its rights under **Section 2.210**, the State may assess liquidated damages against Contractor as specified below.

For the Unauthorized Removal of any Key Personnel designated in the applicable Statement of Work, the liquidated damages amount shall be \$25,000.00 per individual provided Contractor identifies a replacement approved by the State pursuant to **Section 2.041** and assigns the replacement to the Project to shadow the Key Personnel s/he is replacing for a period of at least thirty (30) days prior to such Key Personnel's removal.

If Contractor fails to assign a replacement to shadow the removed Key Personnel for at least thirty (30) days, in addition to the \$25,000.00 liquidated damages for an Unauthorized Removal, Contractor shall pay the amount of \$833.33 per day for each day of the thirty (30) day shadow period that the replacement Key Personnel does not shadow the removed Key Personnel, up to \$25,000.00 maximum per individual. The total liquidated damages that may be assessed per Unauthorized Removal and failure to provide thirty (30) days of shadowing shall not exceed \$50,000.00 per individual.

- (c) Re-assignment of non-Key Personnel. Prior to re-deploying to other projects, at the completion of their assigned tasks on the Project, teams of its non-Key Personnel who are performing Services on-site at State facilities or who are otherwise dedicated primarily to the Project, Contractor will give the State at least ten (10) Business Days notice of the proposed re-deployment to give the State an opportunity to object to the re-deployment if the State reasonably believes such team's Contract responsibilities are not likely to be completed and approved by the State prior to the proposed date of re-deployment.
- (d) Re-assignment of Personnel at the State's Request. The State reserves the right to require the removal from the Project of Contractor personnel found, in the judgment of the State, to be unacceptable. The State's request shall be written with reasonable detail outlining the reasons for the removal request. Additionally, the State's request shall be based on legitimate, good faith reasons. Replacement personnel for the removed person shall be fully qualified for the position.



If the State exercises this right, and the Contractor cannot immediately replace the removed personnel, the State agrees to an equitable adjustment in schedule or other terms that may be affected by the State's required removal. If any such incident with removed personnel results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Service will not be counted in **Section 2.076** for a time as agreed to by the parties.

- (e) **Staffing Levels.**
 - (i) All staff requirements not specified in the applicable Statement of Work or State-approved project plan as State personnel will be supplied by Contractor. This includes secretarial, clerical and Contract administration support staff necessary for Contractor to perform its obligations hereunder.
 - (ii) Contractor shall provide sufficient personnel resources for the completion of Contract tasks indicated in Contractor's project plan approved by the State. If the level of personnel resources is insufficient to complete any Contractor Contract tasks in accordance with the Contract time schedule as demonstrated by Contractor's failure to meet mutually agreed to time schedules, Contractor shall promptly add additional qualified personnel resources to the performance of the affected tasks, at no additional charge to the State, in an amount sufficient to complete performance of Contractor's tasks in accordance with the Contract time schedule.
- (f) **Personnel Turnover.** The Parties agree that it is in their best interests to keep the turnover rate of employees of Contractor and its Subcontractors who are performing the Services to a reasonable minimum. Accordingly, if the State determines that the turnover rate of such employees is excessive and so notifies Contractor, Contractor will meet with the State to discuss the reasons for the turnover rate and otherwise use commercially reasonable efforts to minimize such turnover rate. If requested to do so by the State, Contractor will submit to the State its proposals for reducing the turnover rate to an acceptable level. In any event, notwithstanding the turnover of personnel, Contractor remains obligated to perform the Services without degradation and in accordance with the State-approved Contract schedule.
- (g) **Location.** All staff assigned by Contractor to work on the Contract will perform their duties either primarily at Contractor's offices and facilities or at State facilities. Without limiting the generality of the foregoing, Key Personnel will, at a minimum, spend at least the amount of time on-site at State facilities as indicated in the applicable Statement of Work. Subject to availability, selected Contractor personnel may be assigned office space to be shared with State personnel.

2.042 Contractor Identification

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

2.043 Cooperation with Third Parties

Contractor agrees to cause its personnel and the personnel of any Subcontractors to cooperate with the State and its agents and other contractors including the State's Quality Assurance personnel, and, as reasonably requested by the State, to provide to the State's agents and other contractors with reasonable access to Contractor's Project personnel, systems and facilities to the extent they relate to activities specifically associated with this Contract and will not interfere or jeopardize the safety or operation of the systems or facilities and provided Contractor receives reasonable prior written notice of such request. The State acknowledges that Contractor's time schedule for the Contract is very specific and agrees not to unnecessarily or unreasonably interfere with, delay or otherwise impeded Contractor's performance under this Contract with such requests for access.

2.044 Subcontracting by Contractor

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



- (b) Contractor shall not delegate any duties under this Contract to a Subcontractor unless the Department of Management and Budget, Office of Acquisition Services has given written consent to such delegation. The State shall have the right of prior written approval of all Subcontractors and to require Contractor to replace any Subcontractors found, in the reasonable judgment of the State, to be unacceptable. The State's request shall be written with reasonable detail outlining the reasons for the removal request. Additionally, the State's request shall be based on legitimate, good faith reasons. Replacement Subcontractor(s) for the removed Subcontractor shall be fully qualified for the position. If the State exercises this right, and the Contractor cannot immediately replace the removed Subcontractor, the State will agree to an equitable adjustment in schedule or other terms that may be affected by the State's required removal. If any such incident with a removed Subcontractor results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Work will not be counted in **Section 2.076** for a time agreed upon by the parties.
- (c) In any subcontracts entered into by Contractor for the performance of the Services, Contractor shall require the Subcontractor, to the extent of the Services to be performed by the Subcontractor, to be bound to Contractor by the terms of this Contract and to assume toward Contractor all of the obligations and responsibilities that Contractor, by this Contract, assumes toward the State. The State reserves the right to receive copies of and review all subcontracts, although Contractor may delete or mask any proprietary information, including pricing, contained in such contracts before providing them to the State. The management of any Subcontractor will be the responsibility of Contractor, and Contractor shall remain responsible for the performance of its Subcontractors to the same extent as if Contractor had not subcontracted such performance. Contractor shall make all payments to Subcontractors or suppliers of Contractor. Except as otherwise agreed in writing by the State and Contractor, the State will not be obligated to direct payments for the Services other than to Contractor. The State's written approval of any Subcontractor engaged by Contractor to perform any obligation under this Contract shall not relieve Contractor of any obligations or performance required under this Contract. Attached as **Exhibit E** is a list of the Subcontractors, if any, approved by the State as of the execution of this Contract, together with a copy of the applicable subcontract.
- (d) Except where specifically approved in writing by the State on a case-by-case basis, Contractor shall flow down the obligations in **Sections 2.040, 2.110, 2.150, 2.160, 2.171(c), 2.172(b), 2.180, 2.260, 2.276, 2.297** in all of its agreements with any Subcontractors.
- (e) The Contractor shall select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the Contract.

2.045 Contractor Responsibility for Personnel

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

2.050 State Standards

2.051 Existing Technology Standards - RESERVED

2.052 PM Methodology - RESERVED

2.053 Adherence to Portal Technology Tools - RESERVED

2.054 Acceptable Use Policy - RESERVED

2.060 Deliverables**2.061 Ordering**

- (a) Any Services/Deliverables to be furnished under this Contract shall be ordered by issuance of written Purchase Orders/Blanket Purchase Order by the State after approval by the Contract Administrator or his/her designee. All orders are subject to the terms and conditions of this Contract. In the event of conflict between an order and this Contract, the Contract shall take precedence as stated in **Section 2.293**. In no event shall any additional terms and conditions contained on a Purchase Order/Blanket Purchase Order be applicable, unless specifically contained in that Purchase Order/Blanket Purchase Order's accompanying Statement of Work.

2.062 Software - RESERVED**2.063 Hardware - RESERVED****2.064 Equipment to be New and Prohibited Products - RESERVED**2.070 Performance**2.071 Performance, In General**

The State engages Contractor to execute the Contract and perform the Services/provide the Deliverables, and Contractor undertakes to execute and complete the Contract in its entirety in accordance with the terms and conditions of this Contract and with the participation of State representatives as specified in this Contract.

2.072 Time of Performance

- (a) Contractor shall use commercially reasonable efforts to provide the resources necessary to complete all Services and Deliverables in accordance with the time schedules contained in the Statements of Work and other Exhibits governing the work, and with professional quality.
- (b) Without limiting the generality of **Section 2.072(a)**, Contractor shall notify the State in a timely manner upon becoming aware of any circumstances that may reasonably be expected to jeopardize the timely and successful completion of any Deliverables/Services on the scheduled due dates in the latest State-approved delivery schedule and, in such event, shall inform the State of the projected actual delivery date.
- (c) If Contractor believes that a delay in performance by the State has caused or will cause Contractor to be unable to perform its obligations in accordance with specified Contract time periods, Contractor shall notify the State in a timely manner and shall use commercially reasonable efforts to perform its obligations in accordance with such Contract time periods notwithstanding the State's failure. Contractor will not be in default for a delay in performance to the extent such delay is caused by the State.

2.073 Liquidated Damages - RESERVED**2.074 Bankruptcy**

If Contractor shall file for protection under the bankruptcy laws, or if an involuntary petition shall be filed against Contractor and not removed within thirty (30) days, or if the Contractor becomes insolvent, be adjudicated bankrupt, or if it should make a general assignment for the benefit of creditors, or if a receiver shall be appointed due to its insolvency, and Contractor and/or its affiliates are unable to provide reasonable assurances that Contractor and/or its affiliates can deliver the services provided herein, the State may, without prejudice to any other right or remedy, terminate this Contract, in whole or in part, and, at its option, may take possession of the "Work in Process" and finish such Works in Process by whatever appropriate method the State may deem expedient. Contractor will fix appropriate notices or labels on the Work in Process to indicate ownership by the State. To the extent reasonably possible, materials and Work in Process shall be stored separately from other stock and marked conspicuously with labels indicating ownership by the State.

To secure the State's progress payments before the delivery of any services or materials required for the execution of Contractor's obligations hereunder, and any work which Contractor may subcontract in the support of the performance of its obligations hereunder, title shall vest in the State to the extent the State has made progress payments hereunder.

**2.075 Time is of the Essence**

The vendor must be able to fulfill the timelines of prisoner pickup requests per the statement of work.

2.76 Service Level Agreements (SLAs)

- (a) SLAs will be completed with the following operational considerations:
- (i) SLAs will not be calculated for individual Incidents where any event of Excusable Failure has occurred as defined in **Section 2.202**,
 - (ii) SLAs will not be calculated for individual Incidents where loss of service is planned and where the State has received prior notification and/or coordination.
 - (iii) SLAs will not apply if the applicable Incident could have been prevented through planning proposed by Contractor and not implemented at the request of the State. In order to invoke this consideration, complete documentation relevant to the denied planning proposal must be presented to substantiate the proposal.
 - (iv) Time period measurements will be based on the time Incidents are received by the Contractor and the time that the State receives notification of resolution based on 24x7x365 time period, except that the time period measurement will be suspended based on the following ("Stop-Clock Conditions"):
 - 1. Time period(s) will not apply where Contractor does not have access to a physical State Location and where access to the State Location is necessary for problem identification and resolution.
 - 2. Time period(s) will not apply where Contractor needs to obtain timely and accurate information or appropriate feedback and is unable to obtain timely and accurate information or appropriate feedback from the State.
- (b) Chronic Failure for any Service(s) will be defined as three (3) unscheduled outage(s) or interruption(s) on any individual Service for the same reason or cause or if the same reason or cause was reasonably discoverable in the first instance over a rolling thirty (30) day period. Chronic Failure will result in the State's option to terminate the effected individual Service(s) and procure them from a different vendor for the chronic location(s) with Contractor to pay the difference in charges for up to three (3) additional months. The termination of the Service will not affect any tiered pricing levels.
- (c) Root Cause Analysis will be performed on any Business Critical outage(s) or outage(s) on Services when requested by the Contract Administrator. Contractor will provide its analysis within two (2) weeks of outage(s) and provide a recommendation for resolution.
- (d) All decimals shall be rounded to two decimal places with 5 and greater rounding up and 4 and less rounding down unless otherwise specified.

2.080 Delivery and Acceptance of Deliverables**2.081 Delivery Responsibilities - RESERVED****2.082 Delivery of Deliverables**

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

2.083 Testing

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



- (b) If a Deliverable includes installation at a State Location, then Contractor shall (1) perform any applicable testing, (2) correct all material deficiencies discovered during such quality assurance activities and testing, and (3) inform the State that the Deliverable is in a suitable state of readiness for the State's review and approval. To the extent that testing occurs at State Locations, the State shall be entitled to observe or otherwise participate in testing.

2.084 Approval of Deliverables, In General

- (a) All Deliverables (Physical Deliverables and Written Deliverables) and Services require formal written approval by the State, in accordance with the following procedures. Formal approval by the State requires that the Deliverable be confirmed in writing by the State to meet its specifications, which will include the successful completion of Testing as applicable in **Section 2.083**, to be led by the State with the support and assistance of Contractor. The parties acknowledge that the approval process set forth herein will be facilitated by ongoing consultation between the parties, visibility of interim and intermediate Deliverables and collaboration on key decisions.
- (b) The State's obligation to comply with any State Review Period is conditioned on the timely delivery of Deliverables/Services being reviewed.
- (c) Prior to commencement of its review or testing of a Deliverable/Service, the State may inspect the Deliverable/Service to confirm that all components of the Deliverable/Service have been delivered without material deficiencies. If the State determines that the Deliverable/Service has material deficiencies, the State may refuse delivery of the Deliverable/Service without performing any further inspection or testing of the Deliverable/Service. Otherwise, the review period will be deemed to have started on the day the State receives the Deliverable or the Service begins, and the State and Contractor agree that the Deliverable/Service is ready for use and, where applicable, certification by Contractor in accordance with **Section 2.083(a)**.
- (d) The State will approve in writing a Deliverable/Service upon confirming that it conforms to and, performs in accordance with, its specifications without material deficiency. The State may, but shall not be required to, conditionally approve in writing a Deliverable/Service that contains material deficiencies if the State elects to permit Contractor to rectify them post-approval. In any case, Contractor will be responsible for working diligently to correct within a reasonable time at Contractor's expense all deficiencies in the Deliverable/Service that remain outstanding at the time of State approval.
- (e) If, after three (3) opportunities (the original and two repeat efforts), Contractor is unable to correct all deficiencies preventing Final Acceptance of a Deliverable/Service, the State may: (i) demand that Contractor cure the failure and give Contractor additional time to cure the failure at the sole expense of Contractor; or (ii) keep the Contract in force and do, either itself or through other parties, whatever Contractor has failed to do, in which event Contractor shall bear any excess expenditure incurred by the State in so doing beyond the Contract price for such Deliverable/Service and will pay the State an additional sum equal to ten percent (10%) of such excess expenditure to cover the State's general expenses provided the State can furnish proof of such general expenses; or (iii) terminate the particular Statement of Work for default, either in whole or in part by notice to Contractor provided Contractor is unable to cure such breach. Notwithstanding the foregoing, the State shall not use, as a basis for exercising its termination rights under this Section, deficiencies discovered in a repeat State Review Period that could reasonably have been discovered during a prior State Review Period.
- (f) The State, at any time and in its reasonable discretion, may halt the testing or approval process if such process reveals deficiencies in or problems with a Deliverable/Service in a sufficient quantity or of a sufficient severity as to make the continuation of such process unproductive or unworkable. In such case, the State may stop using the Service or return the applicable Deliverable to Contractor for correction and re-delivery prior to resuming the testing or approval process.

**2.085 Process For Approval of Written Deliverables**

The State Review Period for Written Deliverables will be the number of days set forth in the applicable Statement of Work following delivery of the final version of the Deliverable (failing which the State Review Period, by default, shall be five (5) Business Days for Written Deliverables of one hundred (100) pages or less and ten (10) Business Days for Written Deliverables of more than one hundred (100) pages). The duration of the State Review Periods will be doubled if the State has not had an opportunity to review an interim draft of the Written Deliverable prior to its submission to the State. The State agrees to notify Contractor in writing by the end of the State Review Period either stating that the Deliverable is approved in the form delivered by Contractor or describing any deficiencies that must be corrected prior to approval of the Deliverable (or at the State's election, subsequent to approval of the Deliverable). If the State delivers to Contractor a notice of deficiencies, Contractor will correct the described deficiencies and within thirty (30) Business Days resubmit the Deliverable in a form that shows all revisions made to the original version delivered to the State. Contractor's correction efforts will be made at no additional charge. Upon receipt of a corrected Deliverable from Contractor, the State will have a reasonable additional period of time, not to exceed the length of the original State Review Period, to review the corrected Deliverable to confirm that the identified deficiencies have been corrected.

2.086 Process for Approval of Services

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

2.087 Process for Approval of Physical Deliverables

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

2.088 Final Acceptance

Unless otherwise stated in the Statement of Work or Purchase Order, "Final Acceptance" of each Deliverable shall occur when each Deliverable/Service has been approved by the State following the State Review Periods identified in **Sections 2.080-2.087**. Payment will be made for Deliverables installed and accepted. Upon acceptance of a Service, the State will pay for all Services provided during the State Review Period that conformed to the acceptance criteria.

2.090 Financial**2.091 Pricing****(a) Fixed Prices for Services/Deliverables**

Each Statement of Work/PO issued under this Contract shall specify (or indicate by reference to the appropriate Contract Exhibit) the firm, fixed prices for all Services/Deliverables, and the associated payment milestones and payment amounts.



To the extent the parties agree that certain specific Services will be provided on a time and materials basis, such Services shall be provided at the Amendment Labor Rates (**Article 1, Attachment C**). The State may make progress payments to the Contractor when requested as work progresses, but not more frequently than monthly, in amounts approved by the Contract Administrator, after negotiation. Contractor must show verification of measurable progress at the time of requesting progress payments.

(b) Adjustments for Reductions in Scope of Services/Deliverables

If the scope of the Services/Deliverables under any Statement of Work issued under this Contract is subsequently reduced by the State, the parties shall negotiate an equitable reduction in Contractor's charges under such Statement of Work commensurate with the reduction in scope, using the rates in **Article 1, Attachment** unless specifically identified in an applicable Statement of Work.

(c) Services/Deliverables Covered

For all Services/Deliverables to be provided by Contractor (and its Subcontractors, if any) under this Contract, the State shall not be obligated to pay any amounts in addition to the charges specified in this Contract.

(d) Labor Rates

All time and material charges will be at the rates specified in **Article 1, Attachment C**.

2.092 Invoicing and Payment Procedures and Terms

(a) Invoicing and Payment – In General

- (i) Each Statement of Work issued under this Contract shall list (or indicate by reference to the appropriate Contract Exhibit) the prices for all Services/Deliverables, equipment and commodities to be provided, and the associated payment milestones and payment amounts.
- (ii) Each Contractor invoice will show details as to charges by Service/Deliverable component and location at a level of detail reasonably necessary to satisfy the State's accounting and charge-back requirements. The charges for Services billed on a time and materials basis shall be determined based on the actual number of hours of Services performed, at the applicable Labor Rates specified in **Article 1, Attachment C**. Invoices for Services performed on a time and materials basis will show, for each individual, the number of hours of Services performed during the billing period, the billable skill/labor category for such person and the applicable hourly billing rate. Prompt payment by the State is contingent on the Contractor's invoices showing the amount owed by the State minus any holdback amount to be retained by the State in accordance with **Section 2.094**.
- (iii) Correct invoices will be due and payable by the State, in accordance with the State's standard payment procedure as specified in 1984 Public Act No. 279, MCL 17.51 et seq., within forty-five (45) days after receipt, provided the State determines that the invoice was properly rendered.

(b) Taxes (See Section 2.305 and Article 3, Section 3.022-3.024 for additional)

The State is exempt from Federal Excise Tax, State and Local Sales Taxes, and Use Tax with respect to the sale to and use by it of tangible personal property. Such taxes shall not be included in Contract prices as long as the State maintains such exemptions. Copies of all tax exemption certificates shall be supplied to Contractor, if requested.

(c) Out-of-Pocket Expenses

Contractor acknowledges that the out-of-pocket expenses that Contractor expects to incur in performing the Services/ providing the Deliverables (such as, but not limited to, travel and lodging, document reproduction and shipping, and long distance telephone) are included in Contractor's fixed price for each Statement of Work. Accordingly, Contractor's out-of-pocket expenses are not separately reimbursable by the State unless, on a case-by-case basis for unusual expenses, the State has agreed in advance and in writing to reimburse Contractor for such an expense at the State's current travel reimbursement rates. See http://www.mi.gov/dmb/0,1607,7-150-9141_13132---,00.html for current rates.



- (d) **Pro-ration**
To the extent there are any Services that are to be paid for on a monthly basis, the cost of such Services shall be pro-rated for any partial month.
- (e) **Antitrust Assignment**
The Contractor assigns to the State any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to the Contractor, toward fulfillment of this Contract.
- (f) **Final Payment**
The making of final payment by the State to Contractor does not constitute a waiver by either party of any rights or other claims as to the other party's continuing obligations under the Contract, nor will it constitute a waiver of any claims by one party against the other arising from unsettled claims or failure by a party to comply with this Contract, including claims for Services and Deliverables not reasonably known until after acceptance to be defective or substandard. Contractor's acceptance of final payment by the State under this Contract shall constitute a waiver of all claims by Contractor against the State for payment under this Contract, other than those claims previously filed in writing on a timely basis and still unsettled.

2.093 State Funding Obligation

The State's obligation under this Contract is payable only and solely from funds appropriated for the purpose of this Contract. Contractor acknowledges and agrees that all funds for payments after the end of the current fiscal year are subject to the availability of a legislative appropriation for the purpose of this Contract. Events of non-appropriation are addressed further in **Section 2.210** of this Contract.

2.094 Holdback

The State shall have the right to hold back, as a retainage, an amount equal to one hundred percent (100%) of all amounts invoiced by Contractor for Services/Deliverables. The amounts held back shall be released to Contractor after the State has granted Final Acceptance.

2.095 Electronic Payment Availability

Electronic transfer of funds is available to State contractors. Contractor is required to register with the State electronically at <http://www.cpexpress.state.mi.us>. Public Act 533 of 2004, requires all payments be transitioned over to EFT by October 2005.

2.100 Contract Management

2.101 Contract Management Responsibility

- (a) Contractor shall have overall responsibility for managing and successfully performing and completing the Services/Deliverables, subject to the overall direction and supervision of the State and with the participation and support of the State as specified in this Contract. Contractor's duties will include monitoring and reporting the State's performance of its participation and support responsibilities (as well as Contractor's own responsibilities) and providing timely notice to the State in Contractor's reasonable opinion if the State's failure to perform its responsibilities in accordance with **Article 1, Attachment E** (Project Plan) is likely to delay the timely achievement of any Contract tasks.
- (b) The Services/Deliverables will be provided by the Contractor either directly or through its affiliates, subsidiaries, subcontractors or resellers. Regardless of the entity providing the Service/Deliverable, the Contractor will act as a single point of contact coordinating these entities to meet the State's need for Services/Deliverables. Nothing in this Contract, however, shall be construed to authorize or require any party to violate any applicable law or regulation in its performance of this Contract.

2.102 Problem and Contract Management Procedures

Problem Management and Contract Management procedures will be governed by the Contract and the applicable Statements of Work.

2.103 Reports and Meetings

- (a) **Reports.**
Within thirty (30) days after the Effective Date, the parties shall determine an appropriate set of periodic reports to be issued by Contractor to the State. Such reports may include:



- (i) separately address Contractor's performance in each area of the Services;
- (ii) for each area of the Services, assess the degree to which Contractor has attained or failed to attain the pertinent objectives in that area, including on-time completion and delivery of Deliverables;
- (iii) explain the reasons for any failure to achieve on-time completion and delivery of Deliverables and include a plan for corrective action where appropriate;
- (iv) describe any circumstances that Contractor anticipates will impair or prevent on-time completion and delivery of Deliverables in upcoming reporting periods;
- (v) include plans for corrective action or risk mitigation where appropriate and describe the status of ongoing problem resolution efforts;
- (vi) provide reports setting forth a comparison of actual hours spent by Contractor (including its augmented personnel and Subcontractors) in performing the Project versus hours budgeted by Contractor.
- (vii) set forth a record of the material personnel changes that pertain to the Services and describe planned changes during the upcoming month that may affect the Services.
- (viii) include such documentation and other information may be mutually agreed to verify compliance with, and meeting the objectives of, this Contract.
- (ix) set forth an updated schedule that provides information on the status of upcoming Deliverables, expected dates of delivery (or redelivery) of such Deliverables and estimates on timing for completion of the Project.

(b) Meetings.

Within thirty (30) days after the Effective Date, the parties shall determine an appropriate set of meetings to be held between representatives of the State and Contractor. Contractor shall prepare and circulate an agenda sufficiently in advance of each such meeting to give participants an opportunity to prepare for the meeting. Contractor shall incorporate into such agenda items that the State desires to discuss. At the State's request, Contractor shall prepare and circulate minutes promptly after a meeting.

2.104 System Changes

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

2.105 RESERVED

2.106 Change Requests

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

If the State requests or directs the Contractor to perform any Services/Deliverables that are outside the scope of the Contractor's responsibilities under the Contract ("New Work"), the Contractor must notify the State promptly, and before commencing performance of the requested activities, that it believes the requested activities are New Work. If the Contractor fails to notify the State before commencing performance of the requested activities, any such activities performed before notice is given by the Contractor shall be conclusively considered to be in-scope Services/Deliverables, not New Work.

If the State requests or directs the Contractor to perform any services or provide deliverables that are consistent with and similar to the Services/Deliverables being provided by the Contractor under the Contract, but which the Contractor reasonably and in good faith believes are not included within the Statements of Work, then before performing such services or providing such deliverables, the Contractor shall notify the State in writing that it considers the services or deliverables to be an Additional Service/Deliverable for which the Contractor should receive additional compensation.



If the Contractor does not so notify the State, the Contractor shall have no right to claim thereafter that it is entitled to additional compensation for performing that service or providing that deliverable. If the Contractor does so notify the State, then such a service or deliverable shall be governed by the Change Request procedure in this Section.

In the event prices or service levels are not acceptable to the State, the Additional Services or New Work shall be subject to competitive bidding based upon the specifications.

- (a) Change Requests
 - (i) State Requests

If the State should require Contractor to perform New Work, Additional Services or make changes to the Services that would affect the Contract completion schedule or the amount of compensation due Contractor (a "Change"), the State shall submit a written request for Contractor to furnish a proposal for carrying out the requested Change (a "Change Request").
 - (ii) Contractor Recommendations

Contractor shall be entitled to propose a Change to the State, on its own initiative, should it be of the opinion that this would benefit the Contract.
 - (iii) Upon receipt of a Change Request or on its own initiative, Contractor shall examine the implications of the requested Change on the technical specifications, Contract schedule and price of the Deliverables and Services and shall submit to the State without undue delay a written proposal for carrying out the Change. Contractor's proposal will include any associated changes in the technical specifications, Contract schedule and price and method of pricing of the Services. If the Change is to be performed on a time and materials basis, the Amendment Labor Rates shall apply to the provision of such Services. If Contractor provides a written proposal and should Contractor be of the opinion that a requested Change is not to be recommended, it shall communicate its opinion to the State but shall nevertheless carry out the Change as specified in the written proposal if the State directs it to do so.
 - (iv) By giving Contractor written notice within a reasonable time, the State shall be entitled to accept a Contractor proposal for Change, to reject it or to reach another agreement with Contractor. Should the parties agree on carrying out a Change, a written Contract Change Notice shall be prepared and issued under this Contract, describing the Change and its effects on the Services and any affected components of this Contract (a "Contract Change Notice").
 - (v) No proposed Change shall be performed until the proposed Change has been specified in a duly executed Contract Change Notice issued by the Department of Management and Budget, Office of Acquisition Services.
 - (vi) If the State requests or directs Contractor to perform any activities that Contractor believes constitute a Change, Contractor must notify the State that it believes the requested activities are a Change prior to commencing the performance of the requested activities. If Contractor fails to so notify the State prior to commencing performance of the requested activities, such activities shall be considered to be performed gratuitously by Contractor, and Contractor shall not have any right thereafter to assert any claim for additional compensation or time for the performance of such activities. If Contractor commences performance of gratuitous services outside the scope of this Contract and subsequently elects to stop performing such out-of-scope services, Contractor must, at the request of the State, back out or reverse any changes resulting from such performance that would adversely affect the Contract.

2.107 Management Tools

Contractor will use an automated tool for planning, monitoring and tracking the Contract's progress. In addition, Contractor shall use automated project management tools as reasonably necessary to perform the Services, which tools shall include the capability to produce through the end of the Contract: (i) staffing tables with names of personnel assigned to Contract tasks, (ii) project plans showing tasks, subtasks, Deliverables and the resources required and allocated to each (including detailed plans for all Services to be performed within the next sixty (60) days, updated semi-monthly) and (iii) graphs showing critical events, dependencies and decision points during the course of the Contract.



Any tool(s) used by Contractor for such purposes must produce information of a type and in a manner and format that will support reporting in compliance with the State's standard to the extent such information is described with reasonable detail in the Statements of Work and to the extent the related work is of sufficient project complexity and duration to warrant such reporting.

2.110 Records and Inspections

2.111a Records and Inspections

- (a) Inspection of Work Performed. The State's authorized representatives shall at all reasonable times and with ten (10) days prior written request, have the right to enter Contractor's premises, or any other places, where the Services are being performed, and shall have access, upon reasonable request, to interim drafts of Deliverables or work-in-progress. Upon ten (10) Days prior written notice and at all reasonable times, the State's representatives shall be allowed to inspect, monitor, or otherwise evaluate the work being performed and to the extent that such access will not reasonably interfere or jeopardize the safety or operation of the systems or facilities. Contractor must provide all reasonable facilities and assistance for the State's representatives.
- (b) Examination of Records. Contractor agrees that the State, including its duly authorized representatives, until the expiration of seven (7) years following the creation of the material (collectively, the "Audit Period"), shall, upon twenty (20) days prior written notice, have access to and the right to examine and copy any of Contractor's books, records, documents and papers pertinent to establishing Contractor's compliance with the Contract and with applicable laws and rules, including the State's procurement rules, regulations and procedures, and actual performance of the Contract for the purpose of conducting an audit, examination, excerpt and/or transcription but the State shall not have access to any information deemed confidential to Contractor to the extent such access would require such confidential information to become publicly available. This provision also applies to the books, records, accounts, documents and papers, in print or electronic form, of any parent, affiliated or subsidiary organization of Contractor, or any Subcontractor of Contractor performing services in connection with the Contract.
- (c) Retention of Records. Contractor shall maintain at least until the end of the Audit Period all pertinent financial and accounting records (including time sheets and payroll records, and information pertaining to the Contract and to the Services, equipment, and commodities provided under the Contract) pertaining to the Contract in accordance with generally accepted accounting principles and other procedures specified in this Section. Financial and accounting records shall be made available, upon request, to the State at any time during the Audit Period. If an audit, litigation, or other action involving Contractor's records is initiated before the end of the Audit Period, the records must be retained until all issues arising out of the audit, litigation, or other action are resolved or until the end of the Audit Period, whichever is later.
- (d) Audit Resolution. If necessary, the Contractor and the State shall meet to review each audit report promptly after issuance. The Contractor will respond to each audit report in writing within thirty (30) days from receipt of such report, unless a shorter response time is specified in such report. The Contractor and the State shall develop, agree upon and monitor an action plan to promptly address and resolve any deficiencies, concerns, and/or recommendations in such audit report.

2.112 Errors

- (a) If the audit demonstrates any errors in the statements provided to the State, then the amount in error shall be reflected as a credit or debit on the next invoice and in subsequent invoices until the amount is paid or refunded in full. However, a credit or debit may not be carried for more than four (4) quarterly statements. If a balance remains after four (4) quarterly statements, then the remaining amount will be due as a payment or refund within forty-five (45) days of the last quarterly statement that the balance appeared on or termination of the contract, whichever is earlier.
- (b) In addition to other available remedies, the difference between the payment received and the correct payment amount is greater than ten percent (10%), then the Contractor shall pay all of the reasonable costs of the audit.

2.120 State Responsibilities

2.121 State Performance Obligations

- (a) Equipment and Other Resources. To facilitate Contractor's performance of the Services/Deliverables, the State shall provide to Contractor such equipment and resources as identified in the Statements of Work or other Contract Exhibits as items to be provided by the State.



- (b) Facilities. The State shall designate space as long as it is available and as provided in the Statement of Work, to house Contractor's personnel whom the parties agree will perform the Services/Deliverables at State facilities (collectively, the "State Facilities"). Contractor shall have reasonable access to, and unless agreed otherwise by the parties in writing shall observe and comply with all rules and regulations relating to, each of the State Facilities (including hours of operation) used by Contractor in the course of providing the Services. Contractor agrees that it will not, without the prior written consent of the State, use any State Facilities or access any State information systems provided for Contractor's use, or to which Contractor otherwise gains access in the course of performing the Services, for any purpose other than providing the Services to the State.
- (c) Return. Contractor shall be responsible for returning to the State any State-furnished equipment, facilities and other resources when no longer required for the Contract in the same condition as when provided by the State, reasonable wear and tear excepted.
- (d) Except as otherwise provided in **Section 2.220**, the State's failure to perform its responsibilities, as set forth in this Contract shall not be deemed to be grounds for termination by Contractor. However, Contractor will not be liable for any default or delay in the performance of its obligations under this Contract to the extent such default or delay is caused by nonperformance of the State's obligations under this Contract, provided Contractor provides the State with reasonable written notice of such nonperformance and Contractor uses commercially reasonable efforts to perform notwithstanding the State's failure to perform. In addition, if the State's nonperformance of its responsibilities under this Contract materially increases the time required for Contractor's performance or Contractor's cost of performance, Contractor shall be entitled to seek an equitable extension via the Change Request process described in **Section 2.106**.

2.130 Security

2.131 Background Checks

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

All Contractor personnel will also be expected to comply with the State's security and acceptable use policies for State IT equipment and resources. See <http://www.michigan.gov/ditservice/0,1607,7-179-25781-73760--,00.html>. Furthermore, Contractor personnel will be expected to agree to the State's security and acceptable use policies before the Contractor personnel will be accepted as a resource to perform work for the State. It is expected the Contractor will present these documents to the prospective employee before the Contractor presents the individual to the State as a proposed resource. Contractor staff will be expected to comply with all Physical Security procedures in place within the facilities where they are working.

2.140 Reserved

2.150 Confidentiality

2.151 Freedom of Information

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

**2.152 Confidentiality**

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

2.153 Protection of Confidential Information

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

2.154 Exclusions

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

2.155 No Implied Rights

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

2.156 Remedies

Each party acknowledges that, if it breaches (or attempts or threatens to breach) its obligations under this Section, the other party may be irreparably harmed. Accordingly, if a court of competent jurisdiction should find that a party has breached (or attempted or threatened to breach) any such obligations, the non-breaching party shall be entitled to seek an injunction preventing such breach (or attempted or threatened breach).

**2.157 Security Breach Notification**

In the event of a breach of this Section, Contractor shall take (i) prompt corrective action to cure any such deficiencies and (ii) any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations. Contractor and the State will cooperate to mitigate, to the extent practicable, the effects of any breach, intrusion, or unauthorized use or disclosure. Contractor shall report to the State in writing any use or disclosure of Confidential Information, whether suspected or actual, other than as provided for by the Contract within ten (10) days of becoming aware of such use or disclosure or such shorter time period as is reasonable under the circumstances.

2.158 Survival

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

2.159 Destruction of Confidential Information

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

2.160 Proprietary Rights**2.161a Ownership - RESERVED****2.161b Cross-License - RESERVED****2.161c License - RESERVED****2.162 Source Code Escrow - RESERVED****2.163 Rights in Data**

- (a) The State will be and remain the owner of all data made available by the State to Contractor or its agents, Subcontractors or representatives pursuant to the Contract. Contractor will not use the State's data for any purpose other than providing the Services, nor will any part of the State's data be disclosed, sold, assigned, leased or otherwise disposed of to the general public or to specific third parties or commercially exploited by or on behalf of Contractor, nor will any employee of Contractor other than those on a strictly need to know basis have access to the State's data. Contractor will not possess or assert any lien or other right against the State's data. Without limiting the generality of this Section, Contractor shall only use personally identifiable information as strictly necessary to provide the Services and shall disclose such information only to its employees who have a strict need to know such information. Contractor shall comply at all times with all laws and regulations applicable to such personally identifiable information.
- (b) The State is and shall remain the owner of all State-specific data pursuant to the Contract. The State may use the data provided by the Contractor for any purpose. The State will not possess or assert any lien or other right against the Contractor's data. Without limiting the generality of this Section, the State shall only use personally identifiable information as strictly necessary to utilize the Services and shall disclose such information only to its employees who have a strict need to know such information, except as provided by law. The State shall comply at all times with all laws and regulations applicable to such personally identifiable information. Other material developed and provided to the State shall remain the State's sole and exclusive property.

2.164 Ownership of Materials - RESERVED**2.165 Standard Software - RESERVED****2.166 Pre-existing Materials for Custom Software Deliverables - RESERVED**

**2.167 General Skills**

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

2.170 Warranties And Representations**2.171 Warranties and Representations**

The Contractor represents and warrants:

- (a) It is capable in all respects of fulfilling and shall fulfill all of its obligations under this Contract. The performance of all obligations under this Contract shall be provided in a timely, professional, and workman-like manner and shall meet the performance and operational standards required under this Contract.
- (b) The Contract Appendices, Attachments and Exhibits identify the equipment and software and services necessary for the Deliverable(s) to perform and Services to operate in compliance with the Contract's requirements and other standards of performance.
- (c) It is the lawful owner or licensee of any Deliverable licensed or sold to the State by Contractor or developed by Contractor under this Contract, and Contractor has all of the rights necessary to convey to the State the ownership rights or licensed use, as applicable, of any and all Deliverables. None of the Deliverables provided by Contractor to the State under this Contract, nor their use by the State, will infringe the patent, copyright, trade secret, or other proprietary rights of any third party.
- (d) If, under this Contract, Contractor procures any equipment, software or other Deliverable for the State (including equipment, software and other Deliverables manufactured, re-marketed or otherwise sold by Contractor under Contractor's name), then in addition to Contractor's other responsibilities with respect to such items in this Contract, Contractor shall assign or otherwise transfer to the State or its designees, or afford the State the benefits of, any manufacturer's warranty for the Deliverable.
- (e) The contract signatory has the power and authority, including any necessary corporate authorizations, necessary to enter into this Contract, on behalf of Contractor.
- (f) It is qualified and registered to transact business in all locations where required.
- (g) Neither the Contractor nor any Affiliates, nor any employee of either, has, shall have, or shall acquire, any contractual, financial, business, or other interest, direct or indirect, that would conflict in any manner or degree with Contractor's performance of its duties and responsibilities to the State under this Contract or otherwise create an appearance of impropriety with respect to the award or performance of this Agreement. Contractor shall notify the State within two (2) days of any such interest that may be incompatible with the interests of the State.
- (h) Neither Contractor nor any Affiliates, nor any employee of either has accepted or shall accept anything of value based on an understanding that the actions of the Contractor or Affiliates or employee on behalf of the State would be influenced. Contractor shall not attempt to influence any State employee by the direct or indirect offer of anything of value.
- (i) Neither Contractor nor any Affiliates, nor any employee of either has paid or agreed to pay any person, other than bona fide employees and consultants working solely for Contractor or such Affiliate, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract.



- (j) The prices proposed by Contractor were arrived at independently, without consultation, communication, or agreement with any other bidder for the purpose of restricting competition; the prices quoted were not knowingly disclosed by Contractor to any other bidder; and no attempt was made by Contractor to induce any other person to submit or not submit a proposal for the purpose of restricting competition.
- (k) All financial statements, reports, and other information furnished by Contractor to the State as part of its response to the RFP or otherwise in connection with the award of this Contract fairly and accurately represent the business, properties, financial condition, and results of operations of Contractor as of the respective dates, or for the respective periods, covered by such financial statements, reports, other information. Since the respective dates or periods covered by such financial statements, reports, or other information, there have been no material adverse change in the business, properties, financial condition, or results of operations of Contractor.
- (m) All written information furnished to the State by or behalf of Contractor in connection with this Contract, including its bid, is true, accurate, and complete, and contains no untrue statement of material fact or omits any material fact necessary to make such information not misleading.
- (n) It is not in material default or breach of any other contract or agreement that it may have with the State or any of its departments, commissions, boards, or agencies. Contractor further represents and warrants that it has not been a party to any contract with the State or any of its departments that was terminated by the State or such department within the previous five (5) years for the reason that Contractor failed to perform or otherwise breached an obligation of such contract.

2.172 Software Warranties - RESERVED

2.173 Equipment Warranty

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

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

Within 30 business days of notification from the State, the Contractor shall adjust, repair or replace all equipment that is defective or not performing in compliance with the Contract. The Contractor shall assume all costs for replacing parts or units and their installation including transportation and delivery fees, if any.

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

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

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

2.174 Physical Media Warranty - RESERVED

2.175a Disclaimer

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



2.175b Standard Warranties

- (a) **Warranty of Merchantability**
Deliverables shall be merchantable. All Deliverables shall be of good quality within the description given by the State, shall be fit for their ordinary purpose, shall be adequately contained and packaged within the description given by the State, shall conform to the agreed upon specifications, and shall conform to the affirmations of fact made by the Contractor on the container or label.
- (b) **Warranty of fitness for a particular purpose**
When Contractor has reason to know or knows any particular purpose for which the Deliverables are required, and when the State is relying on the Contractor's skill or judgment to select or furnish suitable Deliverables, the Contractor warrants that the Deliverables are fit for such purpose.
- (c) **Warranty of title**
Contractor shall convey good title in those Deliverables, whose transfer is right and lawful. All Deliverables provided by Contractor shall be delivered free from any security interest, lien, or encumbrance. Deliverables shall be delivered free of any rightful claim of any third person of ownership, interest, lien or encumbrance.

2.176 Consequences For Breach

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

2.180 Insurance

2.181 Liability Insurance

- (a) **Liability Insurance**

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

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

All insurance coverages provided relative to this Contract/Purchase Order are PRIMARY and NON-CONTRIBUTING to any comparable liability insurance (including self-insurances) carried by the State.

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

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

See http://www.mi.gov/cis/0,1607,7-154-10555_22535---,00.html.

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

Before the Contract is signed by both parties or before the purchase order is issued by the State, the Contractor must furnish to the Director of Acquisition Services, certificate(s) of insurance verifying insurance coverage ("Certificates"). The Certificate must be on the standard "accord" form or equivalent. **THE CONTRACT OR PURCHASE ORDER NO. MUST BE SHOWN ON THE CERTIFICATE OF INSURANCE TO ASSURE CORRECT FILING.**



All Certificate(s) are to be prepared and submitted by the Insurance Provider. All Certificate(s) shall contain a provision indicating that coverages afforded under the policies WILL NOT BE CANCELLED, MATERIALLY CHANGED, OR NOT RENEWED without THIRTY (30) days prior written notice, except for ten (10) days for non-payment of premium, having been given to the Director of Acquisition Services, Department of Management and Budget. The notice must include the Contract or Purchase Order number affected and be mailed to: Director, Acquisition Services, Department of Management and Budget, P.O. Box 30026, Lansing, Michigan 48909. Failure to provide evidence of coverage, may, at the State's sole option, result in this Contract's termination.

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

1. Commercial General Liability with the following minimum coverage:

\$2,000,000 General Aggregate Limit other than Products/Completed Operations
 \$2,000,000 Products/Completed Operations Aggregate Limit
 \$1,000,000 Personal & Advertising Injury Limit
 \$1,000,000 Each Occurrence Limit
 \$500,000 Fire Damage Limit (any one fire)

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

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

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

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

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

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

4. Employers liability insurance with the following minimum limits:

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

b) Subcontractors

Except where the State has approved in writing a Contractor subcontract with other insurance provisions, Contractor shall require all of its Subcontractors under this Contract to purchase and maintain the insurance coverage as described in this Section for the Contractor in connection with the performance of work by those Subcontractors.



Alternatively, Contractor may include any Subcontractors under Contractor's insurance on the coverage required in this Section. Subcontractor(s) shall fully comply with the insurance coverage required in this Section. Failure of Subcontractor(s) to comply with insurance requirements does not limit Contractor's liability or responsibility.

(c) Certificates of Insurance and Other Requirements

Contractor shall furnish to the Office of Acquisition Services certificate(s) of insurance verifying insurance coverage or providing satisfactory evidence of self-insurance as required in this Section (the "Certificates"). Before the Contract is signed, and not less than 20 days before the insurance expiration date every year thereafter, the Contractor shall provide evidence that the State and its agents, officers and employees are listed as additional insureds under each commercial general liability and commercial automobile liability policy. In the event the State approves the representation of the State by the insurer's attorney, the attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.

Contractor shall maintain all required insurance coverage throughout the term of the Contract and any extensions thereto and, in the case of claims-made Commercial General Liability policies, shall secure tail coverage for at least three (3) years following the expiration or termination for any reason of this Contract. The minimum limits of coverage specified above are not intended, and shall not be construed, to limit any liability or indemnity of Contractor under this Contract to any indemnified party or other persons. Contractor shall be responsible for all deductibles with regard to such insurance. If Contractor fails to pay any premium for required insurance as specified in this Contract, or if any insurer cancels or significantly reduces any required insurance as specified in this Contract without the State's written consent, at the State's election (but without any obligation to do so) after the State has given Contractor at least thirty (30) days written notice, the State may pay such premium or procure similar insurance coverage from another company or companies; and at the State's election, the State may deduct the entire cost (or part thereof) from any payment due Contractor, or Contractor shall pay the entire cost (or any part thereof) upon demand by the State.

2.190 Indemnification

2.191 Indemnification

(a) General Indemnification

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

(b) Code Indemnification

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

(c) Employee Indemnification

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



(d) Patent/Copyright Infringement Indemnification

To the extent permitted by law, the Contractor shall indemnify, defend and hold harmless the State from and against all losses, liabilities, damages (including taxes), and all related costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest and penalties) incurred in connection with any action or proceeding threatened or brought against the State to the extent that such action or proceeding is based on a claim that any piece of equipment, software, commodity or service supplied by the Contractor or its subcontractors, or the operation of such equipment, software, commodity or service, or the use or reproduction of any documentation provided with such equipment, software, commodity or service infringes any United States patent, copyright, trademark or trade secret of any person or entity, which is enforceable under the laws of the United States.

In addition, should the equipment, software, commodity, or service, or its operation, become or in the State's or Contractor's opinion be likely to become the subject of a claim of infringement, the Contractor shall at the Contractor's sole expense (i) procure for the State the right to continue using the equipment, software, commodity or service or, if such option is not reasonably available to the Contractor, (ii) replace or modify to the State's satisfaction the same with equipment, software, commodity or service of equivalent function and performance so that it becomes non-infringing, or, if such option is not reasonably available to Contractor, (iii) accept its return by the State with appropriate credits to the State against the Contractor's charges and reimburse the State for any losses or costs incurred as a consequence of the State ceasing its use and returning it.

Notwithstanding the foregoing, the Contractor shall have no obligation to indemnify or defend the State for, or to pay any costs, damages or attorneys' fees related to, any claim based upon (i) equipment developed based on written specifications of the State; or (ii) use of the equipment in a configuration other than implemented or approved in writing by the Contractor, including, but not limited to, any modification of the equipment by the State; or (iii) the combination, operation, or use of the equipment with equipment or software not supplied by the Contractor under this Contract.

2.192 Continuation of Indemnification Obligations

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

2.193 Indemnification Procedures

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

- (a) After receipt by the State of notice of the action or proceeding involving a claim in respect of which it will seek indemnification, the State shall promptly notify Contractor of such claim in writing and take or assist Contractor in taking, as the case may be, any reasonable action to avoid the imposition of a default judgment against Contractor. No failure to notify Contractor shall relieve Contractor of its indemnification obligations except to the extent that Contractor can demonstrate damages attributable to such failure. Within ten (10) days following receipt of written notice from the State relating to any claim, Contractor shall notify the State in writing whether Contractor agrees to assume control of the defense and settlement of that claim (a "Notice of Election"). After notifying Contractor of a claim and prior to the State receiving Contractor's Notice of Election, the State shall be entitled to defend against the claim, at Contractor's expense, and Contractor will be responsible for any reasonable costs incurred by the State in defending against the claim during such period.
- (b) If Contractor delivers a Notice of Election relating to any claim: (i) the State shall be entitled to participate in the defense of such claim and to employ counsel at its own expense to assist in the handling of such claim and to monitor and advise the State about the status and progress of the defense; (ii) Contractor shall, at the request of the State, demonstrate to the reasonable satisfaction of the State, Contractor's financial ability to carry out its defense and indemnity obligations under this Contract; (iii) Contractor shall periodically advise the State about the status and progress of the defense and shall obtain the prior written approval of the State before entering into any settlement of such claim or ceasing to defend against such claim and (iv) to the extent that any principles of Michigan governmental or public law may be involved or challenged, the State shall have the right, at its own expense, to control the defense of that portion of such claim involving the principles of Michigan governmental or public law.



Notwithstanding the foregoing, the State may retain control of the defense and settlement of a claim by written notice to Contractor given within ten (10) days after the State's receipt of Contractor's information requested by the State pursuant to clause (ii) of this paragraph if the State determines that Contractor has failed to demonstrate to the reasonable satisfaction of the State Contractor's financial ability to carry out its defense and indemnity obligations under this Section. Any litigation activity on behalf of the State of Michigan, or any of its subdivisions pursuant to this Section, must be coordinated with the Department of Attorney General. In the event the insurer's attorney represents the State pursuant to this Section, the insurer's attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.

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

2.200 Limits of Liability and Excusable Failure

2.201 Limits of Liability

The Contractor's liability for damages to the State shall be limited to two times the value of the Contract or \$200,000 which ever is higher. The foregoing limitation of liability shall not apply to claims for infringement of United States patent, copyright, trademarks or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of this Contract calling for liquidated damages; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on this Contract.

The State's liability for damages to the Contractor shall be limited to the value of the Contract.

Neither the Contractor nor the State shall be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages. This limitation of liability shall not apply to claims for infringement of United States patent, copyright, trademark or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of this Contract calling for liquidated damages; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on this Contract.

2.202 Excusable Failure

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

In such event, the non-performing party will be excused from any further performance or observance of the obligation(s) so affected for as long as such circumstances prevail and such party continues to use its commercially reasonable efforts to recommence performance or observance whenever and to whatever extent possible without delay and provided further that such party promptly notifies the other party in writing of the inception of the excusable failure occurrence, and also of its abatement or cessation.

If any of the above-enumerated circumstances substantially prevent, hinder, or delay Contractor's performance of the Services/provision of Deliverables for more than ten (10) Business Days, and the State determines that performance is not likely to be resumed within a period of time that is satisfactory to the State in its reasonable discretion, then at the State's option:



(a) the State may procure the affected Services/Deliverables from an alternate source, and the State shall not be liable for payment for the unperformed Services/ Deliverables not provided under the Contract for so long as the delay in performance shall continue; (b) the State may terminate any portion of the Contract so affected and the charges payable there under shall be equitably adjusted to reflect those Services/Deliverables terminated; or (c) the State may terminate the affected Statement of Work without liability to Contractor as of a date specified by the State in a written notice of termination to Contractor, except to the extent that the State shall pay for Services/Deliverables provided through the date of termination.

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

2.203 Disaster Recovery

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

2.210 Termination/Cancellation by the State

The State may terminate this Contract without further liability or penalty to the State, its departments, divisions, agencies, offices, commissions, officers, agents and employees for any of the following reasons:

2.211 Termination for Cause

- (a) In the event that Contractor breaches any of its material duties or obligations under this Contract (including a Chronic Failure to meet any particular SLA as defined in **Section 2.076**), which are either not capable of or subject to being cured, or are not cured within the time period specified in the written notice of breach provided by the State (such time period not to be less than thirty (30) days), or pose a serious and imminent threat to the health and safety of any person, or the imminent loss, damage or destruction of any real or tangible personal property, the State may, having provided written notice of termination to Contractor, terminate this Contract in whole or in part, for cause, as of the date specified in the notice of termination.
- (b) In the event that this Contract is terminated for cause, in addition to any legal remedies otherwise available to the State by law or equity, Contractor shall be responsible for all costs incurred by the State in terminating this Contract, including but not limited to, State administrative costs, reasonable attorneys' fees and court costs, and any reasonable additional costs the State may incur to procure the Services/Deliverables required by this Contract from other sources. Re-procurement costs shall not be considered by the parties to be consequential, indirect or incidental damages, and shall not be excluded by any other terms otherwise included in this Contract, provided such costs are not in excess of fifty percent (50%) more than the prices for such Service/Deliverables provided under this Contract.
- (c) In the event the State chooses to partially terminate this Contract for cause, charges payable under this Contract will be equitably adjusted to reflect those Services/Deliverables that are terminated and the State shall pay for all Services/Deliverables for which Final Acceptance has been granted provided up to the termination date. Services and related provisions of this Contract that are terminated for cause shall cease on the effective date of the termination.
- (d) In the event this Contract is terminated for cause pursuant to this Section, and it is determined, for any reason, that Contractor was not in breach of contract pursuant to the provisions of this section, that termination for cause shall be deemed to have been a termination for convenience, effective as of the same date, and the rights and obligations of the parties shall be limited to that otherwise provided in this Contract for a termination for convenience.

**2.212 Termination for Convenience**

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

2.213 Non-Appropriation

- (a) Contractor acknowledges that, if this Contract extends for several fiscal years, continuation of this Contract is subject to appropriation or availability of funds for this Contract. If funds to enable the State to effect continued payment under this Contract are not appropriated or otherwise made available, the State shall have the right to terminate this Contract and all affected Statements of Work, in whole or in part, at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of termination to Contractor. The State shall give Contractor at least thirty (30) days advance written notice of termination for non-appropriation or unavailability (or such time as is available if the State receives notice of the final decision less than thirty (30) days before the funding cutoff).
- (b) If funding for the Contract is reduced by law, or funds to pay Contractor for the agreed-to level of the Services or production of Deliverables to be provided by Contractor are not appropriated or otherwise made available, the State may, upon thirty (30) days written notice to Contractor, reduce the level of the Services or the change the production of Deliverables in such manner and for such periods of time as the State may elect. The charges payable under this Contract will be equitably adjusted to reflect any equipment, services or commodities not provided by reason of such reduction.
- (c) In the event the State terminates this Contract, eliminates certain Deliverables, or reduces the level of Services to be provided by Contractor pursuant to this Section, the State shall pay Contractor for all Work-in-Process performed through the effective date of the termination or reduction in level, as the case may be and as determined by the State, to the extent funds are available. For the avoidance of doubt, this Section will not preclude Contractor from reducing or stopping Services/Deliverables and/or raising against the State in a court of competent jurisdiction, any claim for a shortfall in payment for Services performed or Deliverables finally accepted before the effective date of termination.

2.214 Criminal Conviction

The State may terminate this Contract immediately and without further liability or penalty in the event Contractor, an officer of Contractor, or an owner of a 25% or greater share of Contractor is convicted of a criminal offense incident to the application for, or performance of, a State, public or private Contract or subcontract; convicted of a criminal offense, including any of the following: embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, attempting to influence a public employee to breach the ethical conduct standards for State of Michigan employees; convicted under State or federal antitrust statutes; or convicted of any other criminal offense which in the sole discretion of the State reflects upon Contractor's business integrity.

2.215 Approvals Rescinded

The State may terminate this Contract without further liability or penalty in the event any final administrative or judicial decision or adjudication disapproves a previously approved request for purchase of personal services pursuant to Constitution 1963, Article 11, § 5, and Civil Service Rule 7-1. Termination may be in whole or in part and may be immediate as of the date of the written notice to Contractor or may be effective as of the date stated in such written notice.

2.216 Rights and Obligations Upon Termination

- (a) If this Contract is terminated by the State for any reason, Contractor shall (a) stop all work as specified in the notice of termination, (b) take any action that may be necessary, or that the State may direct, for preservation and protection of Deliverables or other property derived or resulting from this Contract that may be in Contractor's possession, (c) return all materials and property provided directly or indirectly to Contractor by any entity, agent or employee of the State,



- (d) in the event that the Contractor maintains title in Deliverables that is intended to be transferred to the State at the termination of the Contract, Contractor will transfer title in, and deliver to, the State, unless otherwise directed, all Deliverables intended to be transferred to the State at the termination of the Contract and which are resulting from the Contract (which shall be provided to the State on an "As-Is" basis except to the extent the amounts paid by the State in respect of such items included compensation to Contractor for the provision of warranty services in respect of such materials), and (e) take any action to mitigate and limit any potential damages, or requests for Contractor adjustment or termination settlement costs, to the maximum practical extent, including terminating or limiting as otherwise applicable those subcontracts and outstanding orders for material and supplies resulting from the terminated Contract.
- (b) In the event the State terminates this Contract prior to its expiration for its own convenience, the State shall pay Contractor for all charges due for Services provided prior to the date of termination and, if applicable, as a separate item of payment pursuant to this Contract, for Work In Process, on a percentage of completion basis at the level of completion determined by the State. All completed or partially completed Deliverables prepared by Contractor pursuant to this Contract shall, at the option of the State, become the State's property, and Contractor shall be entitled to receive equitable fair compensation for such Deliverables. Regardless of the basis for the termination, the State shall not be obligated to pay, or otherwise compensate, Contractor for any lost expected future profits, costs or expenses incurred with respect to Services not actually performed for the State.
- (c) Upon a good faith termination, the State shall have the right to assume, at its option, any and all subcontracts and agreements for services and deliverables provided under this Contract, and may further pursue completion of the Services/Deliverables under this Contract by replacement contract or otherwise as the State may in its sole judgment deem expedient.

2.217 Reservation of Rights

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

2.218 Contractor Transition Responsibilities

In the event this contract is terminated, for convenience or cause, dissolved, voided, rescinded, nullified, expires or is otherwise rendered unenforceable, the Contractor agrees to comply with direction provided by the State to assist in the orderly transition of equipment, services, software, leases, etc. to the State or a third party designated by the State. In the event of termination or the expiration of this Contract, the Contractor agrees to make all reasonable efforts to effect an orderly transition of services within a reasonable period of time that in no event will exceed ninety (90) days. These efforts shall include, but are not limited to, the following:

- (a) Personnel - The Contractor shall work with the State, or a specified third party, to develop a transition plan setting forth the specific tasks and schedule to be accomplished by the parties, to effect an orderly transition. The Contractor shall allow as many personnel as practicable to remain on the job to help the State, or a specified third party, maintain the continuity and consistency of the services required by this Contract. In addition, during or following the transition period, in the event the State requires the Services of the Contractor's subcontractors or vendors, as necessary to meet its needs, Contractor agrees to reasonably, and with good-faith, work with the State to use the Services of Contractor's subcontractors or vendors. Contractor will notify all of Contractor's subcontractors of procedures to be followed during transition.
- (b) Information - The Contractor agrees to provide reasonable detailed specifications for all Services/Deliverables needed by the State, or specified third party, to properly provide the Services/Deliverables required under this Contract. The Contractor will provide the State with asset management data generated from the inception of this Contract through the date on which this Contractor is terminated in a comma-delineated format unless otherwise requested by the State. The Contractor will deliver to the State any remaining owed reports and documentation still in Contractor's possession subject to appropriate payment by the State.



- (c) Software. - The Contractor shall reasonably assist the State in the acquisition of any Contractor software required to perform the Services/use the Deliverables under this Contract. This shall include any documentation being used by the Contractor to perform the Services under this Contract. If the State transfers any software licenses to the Contractor, those licenses shall, upon expiration of the Contract, transfer back to the State at their current revision level. Upon notification by the State, Contractor may be required to freeze all non-critical changes to Deliverables/Services.
- (d) Payment - If the transition results from a termination for any reason, reimbursement shall be governed by the termination provisions of this Contract. If the transition results from expiration, the Contractor will be reimbursed for all reasonable transition costs (i.e. costs incurred within the agreed period after contract expiration that result from transition operations) at the rates specified by **Exhibit D**. The Contractor will prepare an accurate accounting from which the State and Contractor may reconcile all outstanding accounts.

2.219 State Transition Responsibilities

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

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

2.220 Termination by Contractor

2.221 Termination by Contractor

If the State materially breaches its obligation to pay Contractor undisputed amounts due and owing under this Contract in accordance with **Section 2.090**, or if the State breaches its other obligations under this Contract to an extent that makes it impossible or commercially impractical for Contractor to perform the Services, and if the State does not cure the breach within the time period specified in a written notice of breach provided to the State by Contractor (such time period not to be less than thirty (30) days), then Contractor may terminate this Contract, in whole or in part based on Statement of Work for cause, as of the date specified in the notice of termination; provided, however, that Contractor must discharge its obligations under **Section 2.250** before any such termination.

2.230 Stop Work

2.231 Stop Work Orders

The State may, at any time, by written stop work order to Contractor, require that Contractor stop all, or any part, of the work called for by the Contract for a period of up to ninety (90) calendar days after the stop work order is delivered to Contractor, and for any further period to which the parties may agree. The stop work order shall be specifically identified as such and shall indicate that it is issued under this **Section 2.230**. Upon receipt of the stop work order, Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the stop work order during the period of work stoppage. Within the period of the stop work order, the State shall either: (a) cancel the stop work order; or (b) terminate the work covered by the stop work order as provided in **Section 2.210**.

2.232 Cancellation or Expiration of Stop Work Order

If a stop work order issued under this **Section 2.230** is canceled or the period of the stop work order or any extension thereof expires, Contractor shall resume work. The parties shall agree upon an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract shall be modified, in writing, accordingly, if: (a) the stop work order results in an increase in the time required for, or in Contractor's costs properly allocable to, the performance of any part of the Contract; and (b) Contractor asserts its right to an equitable adjustment within thirty (30) calendar days after the end of the period of work stoppage; provided that, if the State decides the facts justify the action, the State may receive and act upon a Contractor proposal submitted at any time before final payment under the Contract. Any adjustment will conform to the requirements of **Section 2.106**.



2.233 Allowance of Contractor Costs

If the stop work order is not canceled and the work covered by the stop work order is terminated for reasons other than material breach, such termination shall be deemed to be a termination for convenience under **Section 2.212**, and the State shall allow reasonable costs resulting from the stop work order in arriving at the termination settlement. For the avoidance of doubt, the State shall not be liable to Contractor for loss of profits because of a stop work order issued under this **Section 2.230**.

2.240 Reserved

2.250 Dispute Resolution

2.251 In General

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

2.252 Informal Dispute Resolution

- (a) All operational disputes between the parties shall be resolved under the Contract Management procedures developed pursuant to **Section 2.100**. If the parties are unable to resolve any disputes after compliance with such processes, the parties shall meet with the Director of Acquisition Services, DMB, or designee, for the purpose of attempting to resolve such dispute without the need for formal legal proceedings, as follows:
- (i) The representatives of Contractor and the State shall meet as often as the parties reasonably deem necessary in order to gather and furnish to each other all information with respect to the matter in issue which the parties believe to be appropriate and germane in connection with its resolution. The representatives shall discuss the problem and negotiate in good faith in an effort to resolve the dispute without the necessity of any formal proceeding.
 - (ii) During the course of negotiations, all reasonable requests made by one party to another for non-privileged information reasonably related to the Contract will be honored in order that each of the parties may be fully advised of the other's position.
 - (iii) The specific format for the discussions will be left to the discretion of the designated State and Contractor representatives, but may include the preparation of agreed upon statements of fact or written statements of position.
 - (iv) Following the completion of this process within sixty (60) calendar days, the Director of Acquisition Services, DMB, or designee, shall issue a written opinion regarding the issue(s) in dispute within thirty (30) calendar days. The opinion regarding the dispute shall be considered the State's final action and the exhaustion of administrative remedies.
- (b) This **Section 2.250** will not be construed to prevent either party from instituting, and a party is authorized to institute, formal proceedings earlier to avoid the expiration of any applicable limitations period, to preserve a superior position with respect to other creditors, or pursuant to **Section 2.253**.
- (c) The State will not mediate disputes between the Contractor and any other entity, except state agencies, concerning responsibility for performance of work pursuant to the Contract.

2.253 Injunctive Relief

The only circumstance in which disputes between the State and Contractor will not be subject to the provisions of **Section 2.252** is where a party makes a good faith determination that a breach of the terms of the Contract by the other party is such that the damages to such party resulting from the breach will be so immediate, so large or severe and so incapable of adequate redress after the fact that a temporary restraining order or other immediate injunctive relief is the only adequate remedy.

**2.254 Continued Performance**

Each party agrees to continue performing its obligations under the Contract while a dispute is being resolved except to the extent the issue in dispute precludes performance (dispute over payment shall not be deemed to preclude performance) and without limiting either party's right to terminate the Contract as provided in **Section 2.210** and **2.220**, as the case may be.

2.260 Federal and State Contract Requirements**2.261 Nondiscrimination**

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

2.262 Unfair Labor Practices

Pursuant to 1980 PA 278, MCL 423.231, *et seq.*, the State shall not award a Contract or subcontract to an employer whose name appears in the current register of employers failing to correct an unfair labor practice compiled pursuant to section 2 of the Act. This information is compiled by the United States National Labor Relations Board. A Contractor of the State, in relation to the Contract, shall not enter into a contract with a Subcontractor, manufacturer, or supplier whose name appears in this register. Pursuant to section 4 of 1980 PA 278, MCL 423.324, the State may void any Contract if, subsequent to award of the Contract, the name of Contractor as an employer or the name of the Subcontractor, manufacturer or supplier of Contractor appears in the register.

2.263 Workplace Safety and Discriminatory Harassment

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

2.270 Litigation**2.271 Disclosure of Litigation**

- (a) Disclosure. Contractor must disclose any material criminal litigation, investigations or proceedings involving the Contractor (and each Subcontractor) or any of its officers or directors or any litigation, investigations or proceedings under the Sarbanes-Oxley Act. In addition, each Contractor (and each Subcontractor) must notify the State of any material civil litigation, arbitration or proceeding which arises during the term of the Contract and extensions thereto, to which Contractor (or, to the extent Contractor is aware, any Subcontractor hereunder) is a party, and which involves: (i) disputes that might reasonably be expected to adversely affect the viability or financial stability of Contractor or any Subcontractor hereunder; or (ii) a claim or written allegation of fraud against Contractor or, to the extent Contractor is aware, any Subcontractor hereunder by a governmental or public entity arising out of their business dealings with governmental or public entities. Any such litigation, investigation, arbitration or other proceeding (collectively, "Proceeding") must be disclosed in a written statement to the Contract Administrator within thirty (30) days of its occurrence. Details of settlements which are prevented from disclosure by the terms of the settlement may be annotated as such. Information provided to the State from Contractor's publicly filed documents referencing its material litigation will be deemed to satisfy the requirements of this Section.
- (b) Assurances. In the event that any such Proceeding disclosed to the State pursuant to this Section, or of which the State otherwise becomes aware, during the term of this Contract would cause a reasonable party to be concerned about:



- (i) the ability of Contractor (or a Subcontractor hereunder) to continue to perform this Contract in accordance with its terms and conditions, or
- (ii) whether Contractor (or a Subcontractor hereunder) in performing Services for the State is engaged in conduct which is similar in nature to conduct alleged in such Proceeding, which conduct would constitute a breach of this Contract or a violation of Michigan law, regulations or public policy, then Contractor shall be required to provide the State all reasonable assurances requested by the State to demonstrate that:
 - (A) Contractor and/or its Subcontractors hereunder will be able to continue to perform this Contract and any Statements of Work in accordance with its terms and conditions, and
 - (B) Contractor and/or its Subcontractors hereunder have not and will not engage in conduct in performing the Services which is similar in nature to the conduct alleged in such Proceeding.
- (c) Contractor shall make the following notifications in writing:
 - (1) Within thirty (30) days of Contractor becoming aware that a change in its ownership or officers has occurred, or is certain to occur, or a change that could result in changes in the valuation of its capitalized assets in the accounting records, Contractor shall notify the Office of Acquisition Services.
 - (2) Contractor shall also notify the Office of Acquisition Services within thirty (30) days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership or officers.
 - (3) Contractor shall also notify Acquisition Services within thirty (30) days whenever changes to company affiliations occur.

2.272 Governing Law

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

2.273 Compliance with Laws

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

2.274 Jurisdiction

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

2.280 Environmental Provision

2.281 Environmental Provision

For the purposes of this Section, "Hazardous Materials" is a generic term used to describe asbestos, ACBMs, PCBs, petroleum products, such construction materials as paint thinners, solvents, gasoline, oil, etc., and any other material the manufacture, use, treatment, storage, transportation or disposal of which is regulated by the federal, state or local laws governing the protection of the public health, natural resources or the environment. This includes, but is not limited to, materials such as batteries and circuit packs, and other materials that are regulated as (1) "Hazardous Materials" under the Hazardous Materials Transportation Act, (2) "chemical hazards" under the Occupational Safety and Health Administration standards, (3) "chemical substances or mixtures" under the Toxic Substances Control Act, (4) "pesticides" under the Federal Insecticide Fungicide and Rodenticide Act, and (5) "hazardous wastes" as defined or listed under the Resource Conservation and Recovery Act. This Contract does not cover the handling, removal, or disposal of all Hazardous Materials.



- (a) The Contractor shall use, handle, store, dispose of, process, transport and transfer any material considered a Hazardous Material in accordance with all federal, State and local laws. The State shall provide a safe and suitable environment for performance of Contractor's Work. Prior to the commencement of Work, the State shall advise Contractor of the presence at the work site of any Hazardous Material to the extent that the State is aware of such Hazardous Material. If the Contractor encounters material reasonably believed to be a Hazardous Material and which may present a substantial danger, the Contractor shall immediately stop all affected Work, give written notice to the State of the conditions encountered, and take appropriate health and safety precautions.
- (b) Upon receipt of a written notice, the State will investigate the conditions. If (a) the material is a Hazardous Material that may present a substantial danger, and (b) the Hazardous Material was not brought to the site by the Contractor, or does not result in whole or in part from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Materials, the State shall order a suspension of Work in writing. The State shall proceed to have the Hazardous Material removed or rendered harmless. In the alternative, the State shall terminate the affected Work for the State's convenience.
- (c) Once the Hazardous Material has been removed or rendered harmless by the State, the affected Work shall be resumed as directed in writing by the State. Any determination by the Michigan Department of Community Health and/or the Michigan Department of Environmental Quality (whichever is applicable) that the Hazardous Material has either been removed or rendered harmless shall be binding upon the State and Contractor for the purposes of resuming the Work. If any such incident with Hazardous Material results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Work will not be counted in **Section 2.076** for a time as mutually agreed by the parties.
- (d) If the Hazardous Material was brought to the site by the Contractor, or results in whole or in part from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Material, or from any other act or omission within the control of the Contractor, the Contractor shall bear its proportionate share of the delay and costs involved in cleaning up the site and removing and rendering harmless the Hazardous Material in accordance with Applicable Laws to the condition approved by applicable regulatory agency(ies). If the Contractor fails to take appropriate action pursuant to Applicable Laws and consistent with the State requirements, then the State may take appropriate action.

2.290 *General*

2.291 Amendments

The Contract may not be modified, amended, extended, or augmented, except by a writing executed by the parties.

2.292 Assignment

- (a) Neither party shall have the right to assign the Contract, or to assign or delegate any of its duties or obligations under the Contract, to any other party (whether by operation of law or otherwise), without the prior written consent of the other party; provided, however, that the State may assign the Contract to any other State agency, department, division or department without the prior consent of Contractor and Contractor may assign the Contract to an affiliate so long as such affiliate is adequately capitalized and can provide adequate assurances that such affiliate can perform the Contract. Any purported assignment in violation of this Section shall be null and void. It is the policy of the State of Michigan to withhold consent from proposed assignments, subcontracts, or novations when such transfer of responsibility would operate to decrease the State's likelihood of receiving performance on the Contract or the State's ability to recover damages.
- (b) Contractor may not, without the prior written approval of the State, assign its right to receive payments due under the Contract. In the event of any such permitted assignment, Contractor shall not be relieved of its responsibility to perform any duty imposed upon it herein, and the requirement under the Contract that all payments shall be made to one entity shall continue.

**2.293 Entire Contract; Order of Precedence**

- (a) The Contract, including any Statements of Work and Exhibits, to the extent not contrary to the Contract, each of which is incorporated for all purposes, constitutes the entire agreement between the parties with respect to the subject matter and supersedes all prior agreements, whether written or oral, with respect to such subject matter and as additional terms and conditions on the purchase order shall apply as limited by **Section 2.061**.
- (b) In the event of any inconsistency between the terms of the Contract and a Statement of Work, the terms of the Statement of Work will take precedence (as to that Statement of Work only); provided, however, that a Statement of Work may not modify or amend the terms of **Sections 2.110 through 2.220** of the Contract, which may be modified or amended only by a formal Contract amendment.

2.294 Headings

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

2.295 Relationship of the Parties (Independent Contractor Relationship)

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

2.296 Notices

- (a) Any notice given to a party under the Contract shall be deemed effective, if addressed to such party as addressed below, upon: (i) delivery, if hand delivered; (ii) receipt of a confirmed transmission by facsimile if a copy of the notice is sent by another means specified in this Section; (iii) the third (3rd) Business Day after being sent by U.S. mail, postage pre-paid, return receipt requested; or (iv) the next Business Day after being sent by a nationally recognized overnight express courier with a reliable tracking system.

State of Michigan
Office of Acquisition Services
Attention: Kevin Dunn
PO Box 30026
530 West Allegan
Lansing, Michigan 48909

with a copy to:

State of Michigan
Department of Corrections
Attention: Laura Campbell
P.O. Box 30003
Lansing, Michigan 48909

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

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

2.297 Media Releases and Contract Distribution

- (a) **Media Releases**
Neither Contractor nor the State will make any news releases, public announcements or public disclosures, nor will they have any conversations with representatives of the news media,



pertaining to the Contract, the Services or the Contract without the prior written approval of the other party, and then only in accordance with explicit written instructions provided by that party. In addition, neither Contractor nor the State will use the name, trademarks or other proprietary identifying symbol of the other party or its affiliates without such party's prior written consent. Prior written consent of the Contractor must be obtained from authorized representatives.

(b) **Contract Distribution**

Acquisition Services shall retain the sole right of Contract distribution to all State agencies and local units of government unless other arrangements are authorized by Acquisition Services.

2.298 Reformation and Severability

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

2.299 Consents and Approvals

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

2.300 No Waiver of Default

The failure of a party to insist upon strict adherence to any term of the Contract shall not be considered a waiver or deprive the party of the right thereafter to insist upon strict adherence to that term, or any other term, of the Contract.

2.301 Survival

Any provisions of the Contract that impose continuing obligations on the parties including the parties' respective warranty, indemnity and confidentiality obligations, shall survive the expiration or termination of the Contract for any reason. Specific references to survival in the Contract are solely for identification purposes and not meant to limit or prevent the survival of any other section.

2.302 Covenant of Good Faith

Each party agrees that, in its dealings with the other party or in connection with the Contract, it shall act reasonably and in good faith. Unless stated otherwise in the Contract, the parties will not unreasonably delay, condition or withhold the giving of any consent, decision or approval that is either requested or reasonably required of them in order for the other party to perform its responsibilities under the Contract.

2.303 Permits

Contractor shall obtain and pay any associated costs for all required governmental permits, licenses and approvals for the delivery, installation and performance of the Services. The State shall pay for all costs and expenses incurred in obtaining and maintaining any necessary easements or right of way.

2.304 Website Incorporation

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

2.305 Taxes

Vendors are expected to collect and pay all applicable federal, state, and local employment taxes, including the taxes defined in Section 3.022 for all persons involved in the resulting Contract.

The State may refuse to award a contract to any Vendor who has failed to pay any applicable State taxes. The State may refuse to accept Vendor's bid, if Vendor has any outstanding debt with the State. Prior to any award, the State will verify whether Vendor has any outstanding debt with the State.



2.306 Prevailing Wage

The rates of wages and fringe benefits to be paid each class of individuals employed by the Contractor, its subcontractors, their subcontractors, and all persons involved with the performance of this Contract in privity of contract with the Contractor shall not be less than the wage rates and fringe benefits established by the Michigan Department of Labor and Economic Development, Wage and Hour Bureau, schedule of occupational classification and wage rates and fringe benefits for the local where the work is to be performed. The term Contractor shall include all general contractors, prime contractors, project managers, trade contractors, and all of their contractors or subcontractors and persons in privity of contract with them.

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

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

2.307 Call Center Disclosure

Contractor and/or all subcontractors involved in the performance of this Contract providing call or contact center services to the State must disclose the location of its call or contact center services to inbound callers. Failure to disclose this information shall be a material breach of this Contract.

2.308 Future Bidding Preclusion

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

2.310 Reserved

2.320 Extended Purchasing

2.321 MiDEAL

Public Act 431 of 1984 permits DMB to provide purchasing services to any city, village, county, township, school district, intermediate school district, non-profit hospital, institution of higher education, community, or junior college. A current listing of approved program members is available at: <http://www.michigan.gov/doingbusiness/0,1607,7-146-6586-16656--,00.html>. Unless otherwise stated, it is the responsibility of the Contractor to ensure that the non-state agency is an authorized purchaser before extending the Contract pricing.

The Contractor will supply Contract Services and equipment at the established State of Michigan contract prices and terms to the extent applicable and where available. Inasmuch as these are non-state agencies, all invoices will be submitted to and payment remitted by the local unit of government on a direct and individual basis.

To the extent that authorized local units of government purchase quantities of Services and/or equipment under this Contract, the quantities of Services and/or equipment purchased will be included in determining the appropriate rate wherever tiered pricing based on quantity is provided.

2.322 State Employee Purchases - RESERVED

2.330 Federal Grant Requirements

**2.331 Federal Grant Requirements**

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

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

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

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

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

<http://www.epls.gov/epls/servlet/EPLSSearchMain/1>



Appendix A

**Excerpts from TransCor proposal
dated 12/9/05**

**Article 1 – Statement of Work (SOW)****1.0 Project Identification****1.001 Project Request**

This is a formal request to prospective vendors soliciting the submission of proposals for out-of-state prisoner transport services necessary to complete prisoner transportation. Proposal evaluation and contract award will depend upon which vendor represents the best value, response times and best solution for the State.

RESPONSE: TransCor America, LLC (TransCor) acknowledges the intent and purpose of this invitation to bid, and is fully equipped and ready to provide out-of-state prisoner transportation service for the State. We are proud of the partnership we have had with the State to provide these services for the last five years, and stand ready to continue to serve the State without interruption.

1.002 Background

The primary responsibility of the Michigan Department of Corrections (MDOC) is to protect society from those individuals who are sentenced to its care. Security must never be compromised. It must remain constant and become a primary duty of the Contractor providing services required by this Contract. It is essential to realize that every confined prisoner may consider escape at one time or another, and the greatest opportunity may occur during the transportation process. To lessen the probability of escape attempts, the transportation of prisoners must be viewed as a serious undertaking, demanding the highest level of professionalism, competence, and diligence.

The MDOC contracts for the transport of male and female escapees, parole violators and parole absconders from out-state locations back to Michigan. Male prisoners will be returned to the Reception and Guidance Center in Jackson, Michigan. Female prisoners will be returned to the Scott Correctional Facility in Plymouth, Michigan. This is to be accomplished by law enforcement trained, professional, custodial personnel so as to minimize the risk of escape during transportation. Such transportation is to be performed in a timely manner in keeping with the policies, procedures, rules, regulations and guidelines set forth by the MDOC. The MDOC Transportation Manual is to be the standard used for guidelines concerning this Contract, and will be issued to the Contractor.

WHEN TRANSPORTING FEMALE PRISONERS, THE MDOC REQUIRES THAT FEMALE STAFF PERSONNEL ACCOMPANY THE TRIP AND BE PRESENT THROUGHOUT TRANSPORT. This means the Contractor must retain a sufficient number of trained female agents to cover the entire transport of female escapees, parole violators and absconders.

The MDOC has determined that ground transport of prisoners is acceptable and



TransCor

the preferred method of transport. The use of air transport is to be used only in extreme circumstances to be determined by the MDOC due to high cost. Such extreme circumstances would include, but not be limited to: pregnancy, AIDS/HIV infected prisoners, or special requirements on medications such as temperature and administration of the drug, or certain high profile prisoners with specific security needs. Commercial air transportation will be used in the following instances: 1) When the movement of a prisoner by air is requested by the MDOC; or 2) When a prisoner is medically unfit to travel on the ground; or 3) When short notice is given with a deadline and ground travel is impractical; or 4) A special move is required by a department head of the Contractor to meet that department's special needs.

The MDOC anticipates requiring approximately 500 pickups/transportations during the first year, 515 pickup/transportations during the second year and 530 pickups/transportations during the third year, for a total of 1,545 pickups/transportations for the total three-year Contract. These quantities are estimates only, based on current figures. The State is not obligated to purchase in these or any other quantities.

RESPONSE: TransCor's goal is to provide safe, secure and humane prisoner transportation services. Our operations are in full compliance with the Interstate Transportation of Dangerous Criminals Act of 2000, as well as applicable Department of Transportation regulations. Additional details on TransCor's compliance can be found in Section 2, Tab A.

TransCor Policy 7-2: Legal Rights of Prisoners On Board prohibits the mistreatment of prisoners, including prohibitions against any form of discrimination; personal, physical, verbal or sexual abuse; corporal punishment; harassment; and, damage to prisoner property. TransCor's training curriculum includes instruction on company policy, procedure and practice, including Policy 7-2 and the use of force continuum.

The company performs prisoner transports across the country, for more than 900 law enforcement and corrections agencies. We recognize the need for constant vigilance to safety and security, and make constant efforts to ensure that our training programs and policy and procedure properly address the challenges that face our staff while performing prisoner transports.

In addition to secure en route operations, TransCor also uses technology to help safeguard and enhance the security of the prisoners in our custody. Each TransCor vehicle is equipped with a global positioning system (GPS) that enables real-time



communications between our operations center and the teams on the road. This system also allows the company to pinpoint the location of individual vehicles to within one-tenth of a mile of their current location.

Likewise, TransCor is committed to protecting the prisoner information provided to us by the State, and all our customers, during the ordering process. Our online ordering capabilities were the first such convenience in the industry, and it remains the most secure. Once entered by the customer, the personal information provided about the prisoners, social security number, health information, birth date, etc, is saved on a secure server and remains there. As email is not a secure means of transmitting information, email is not utilized in this process.

With a staff of over 220 and an average of 32 teams on the road each day, TransCor is appropriately staffed to meet the ongoing needs of the State, as well as all of our customers. Each transport is staffed to comply with the Interstate Transportation of Dangerous Criminals Act of 2000, and it is company policy that a female agent always be present when a female prisoner is being transported.

TransCor maintains the most comprehensive nationwide ground network in the industry. The core backbone of our operations is ground transports, although for the convenience and requirements of our customers, we do offer special transport options. These options include dedicated ground transport, as well as transport via commercial or charter aircraft. Arrangements for transport outside our normal system will be discussed with the State, and the decision to utilize air or dedicated ground services would be made in concert with the State's approval.

Should the State feel that a decision to transport a prisoner outside of the normal ground system not be in the State's best interest or the most appropriate solution, the State is free to appeal the decision to the highest level of our organization's management.

1.1 Scope of Work and Deliverables

1.101 In Scope

3

PROPERTY OF TRANSCOR AMERICA, LLC



TransCor

The MDOC anticipates requiring approximately 500 transports during the first year, 515 transports during the second year and 530 transports during the third year, for a total of 1,545 transports for the total three-year Contract. These quantities are estimates only, based on current figures. The State is not obligated to purchase in these or any other quantities.

RESPONSE: TransCor securely moves over 35,000 prisoners per year for customers across the country. Our staffing, vehicle and support resources are sufficient to address this current volume, and we stand ready to expand where needed should an increase in our customer base be achieved.

Over the past 18 months, TransCor has transported approximately 750 prisoners for the State, and we are prepared to continue providing this level of service going forward. From our largest customer who places in excess of 680 orders annually, to those agencies who only require a single move a year, TransCor makes its services available on an as-needed basis and sets no volume requirements on any customer.

1.102 Out of Scope

Any medical costs incurred during transport due to a physical examination or hospital stay is not included in this contract.

RESPONSE: TransCor acknowledges that any medical costs incurred during transport is the responsibility of MDOC.

In the event of a medical emergency, TransCor agents proceed to the nearest medical center. If the medical stop is of significant duration, a local jail is utilized to house the remaining prisoners on board while the situation is addressed. TransCor policy is to immediately notify the customer when any prisoner is taken to the hospital, no matter the length of stay. All medical expenditures will be reported to the State in detail, with documentation, for full payment by the State.

1.103 Environment

OBJECTIVES

General:

4

PROPERTY OF TRANSCOR AMERICA, LLC



TransCor

The objective is to ensure that the MDOC utilizes the most economical means for returning escapees, parole violators, and absconders to Michigan, while not compromising the personal rights or safety and security of the prisoner being returned, nor enhancing the risk of escape while in transit.

Specific:

To obtain prisoner transport services under the circumstances outlined in this Contract, with clear standards for appropriate action in all cases. This includes, but is not limited to: proper notification, arrangement of pickups, uncontrolled circumstances such as inclement weather or breakdown of vehicles, and misconduct on the part of escapees. Other specific objectives are to provide specifications for the proper food, lodging, security (vehicle requirements, use of force, restraints, etc.), humane treatment, and medical transfer of prisoners.

RESPONSE: As stated previously, TransCor's goal is to provide safe, secure and humane prisoner transportation services. We strive to continue to provide reliable services at a cost effective rate, while still offering value added features not found elsewhere in the industry. From having the premier training program in our industry, to a proprietary technology program that includes secure online ordering, and the most varied and well-maintained vehicle fleet, TransCor aims to work in partnership with government to provide a quality service.

TransCor has existing policy and procedures that agents are to follow should an emergency or catastrophic situation arise. The procedure is part of the *Emergency Procedures* portion of the agent operations manual, which is covered during initial agent training and subsequent annual training. The reporting procedures and requirements are part of *TransCor Policy 4-1: Incident Reporting Procedures*. The severity of an incident is categorized into various levels that affect the reporting procedures and timelines included in *TransCor Policy 4-1*.

In the event of unusual incidents, emergencies, and/or controversial situations that arise in the performance of our services to the MDOC, TransCor shall report such incidents to the MDOC in accordance with MDOC's directives. For purpose of this paragraph "unusual incident, emergency, or controversial situations" include but are not limited to any act of violence by a prisoner or other passengers, any escape or attempted escape of a prisoner or any other breach of security, any excessive delay in the transportation of a



TransCor

prisoner, any medical condition of a prisoner or other passenger requiring emergency medical treatment, any mechanical failure that would normally require formal reports to the cognizant regulatory agency and any refusal of law enforcement agencies to release a prisoner to TransCor as authorized or directed by the MDOC.

CONTRACTOR TASKS AND REQUIREMENTS

The following is a preliminary analysis of the major tasks involved in this Contract. The Contractor is not, however, constrained from supplementing this listing with additional steps, alternate methods or equipment, sub-tasks or elements deemed necessary to permit the carrying out of these tasks:

1. Contractor Personnel

To ensure that all personnel employed by the Contractor (carrier) engaged in transporting prisoners for the MDOC are:

- a. At least 21 years of age;
- b. Have successfully passed a background check of driving record, criminal history, former and present employers and personal references;
- c. Successfully passed CPR;
- d. Successfully passed weapons qualifications;
- e. Successfully passed transportation training;
- f. Successfully passed a drug screen test.

RESPONSE: All TransCor agent candidates must be at least 21 years of age; meet established education and literacy requirements; experience in corrections, security, law enforcement or the military is preferred. All candidates must pass a background check of driving record, criminal history, former and present employers and personal references. In addition, all candidates must pass an initial drug test and DOT physical examination, and are subject to random drug screening throughout their tenure with TransCor. TransCor is an equal opportunity employer (EEO/AA).

TransCor is by policy a drug-free workplace. TransCor has a pre-employment drug testing program and a random drug-testing program to monitor this policy and to enforce the Federal Omnibus Transportation Employee Testing Act, which mandates



TransCor

random drug and alcohol testing for all Commercial Driver's Licensed employees. Additionally, all employees who transport prisoners involved in a vehicle accident while on duty must submit to a drug test no later than four hours after the accident. The company's policy, practice and procedure towards enforcing and ensuring a drug-free work environment are ongoing and strictly adhered to.

TransCor maintains a comprehensive pre-service and in-service training program, which operates under the direction of a full-time Training Director. All extradition agents must successfully complete our 100-plus hour Basic Agent Initial Training Program and successfully pass the final exam. All trainees are certified in First Aid, CPR, blood and airborne pathogens, firearms, and use of force.

Following is an outline, of the areas of instruction covered during our 100 plus hours of Initial Basic Agent Training:

- Corporate Vision and Values
- EEOC/Harassment/Sexual Harassment
- Ethics & Professionalism
- Extradition Overview
- Agent Documentation
- Prisoner Property
- Legal Issues
- Policy and Procedures
- CPR/First Aid
- Communicable Diseases
- Introduction to GPS & IVCS
- Emergency Preparedness & Risk Management
- Incident Reporting & Report Writing
- Defensive Driving
- Map Reading
- Driving Prepared
- D.O.T New Entrant Training
- Use of Force
- Firearms Qualification
- Prisoner/Vehicle Searches
- Use of Restraints
- Defensive Tactics
- Chemical Agents
- Mock Trips
- D.O.T Motor Coach Maneuvers



TransCor

In addition to initial training, TransCor requires its extradition agents to successfully complete 40 hours of annual in-service training in order to continue their employment.

2. Prior Notification of Arrival

The Contractor shall provide the MDOC with prior notice of their arrival at the home location to allow the MDOC a reasonable time to meet with the Contractor at the home location and prepare to take custody of the prisoner.

- a. The Contractor shall provide an estimated date of return to the home location at the time the pickup is called in. Arrangements shall be confirmed by fax.

RESPONSE: TransCor will make every effort to provide the Michigan Department of Corrections (MDOC) with accurate pick and delivery estimates. It is TransCor's policy that prisoners are delivered within ten days of being picked up. Unless agreed to at the time an order is placed, TransCor does not guarantee delivery of prisoners in less than ten (10) days. The organization of our ground network does enable our planning staff to estimate the approximate pick up date and anticipated transit time from a designated pick-up location to the destination facility.

TransCor will confirm each order by facsimile.

- b. The Contractor shall notify the MDOC at least 72 hours in advance if they will not be picking up the prisoner on or before the deadline date so the MDOC can determine whether other arrangements are necessary.

RESPONSE: TransCor agrees to notify MDOC of our ability to meet a deadline date at least 72 hours in advance of a pick up. TransCor should be able to tell MDOC at the time of order, or soon thereafter, that a deadline date is in jeopardy. Should such a situation occur, TransCor would discuss alternatives and solutions with the MDOC.

- c. The Contractor shall notify the MDOC at least 72 hours in advance if they will not be returning the prisoner to the home location on or before the estimated date of return.

RESPONSE: TransCor tracks its performance and has the visibility to foresee how long

**TransCor**

prisoners will be in our system. As discussed above, should such a situation arise, TransCor will discuss the circumstances with the MDOC and develop a plan of action to appropriately address the situation. Throughout this process, TransCor plans to keep the MDOC informed.

TransCor customers can also access tracking information via our secure online system, PECS, to view scheduling information. Additional information can be reviewed in our response to Item 5 (a).

3. Proper Surrender of Custody

To ensure the proper surrender of custody by the Contractor to the MDOC or its duly authorized agents:

- a. The Contractor shall not surrender custody of prisoner(s) without first verifying the identification of the person(s) to whom custody of the prisoner(s) is to be transferred as being an employee of, or duly authorized agent of, the MDOC.

RESPONSE: Prior to surrendering custody of a prisoner, TransCor agents will first verify the identification of the person(s) to whom custody is being transferred. Upon arrival at the drop off destination, TransCor will surrender custody of said prisoners to the MDOC or appropriate law enforcement personnel as designated by the MDOC.

- b. The MDOC or its duly authorized agent shall present bona fide articles of identification upon request by the Contractor at the home destination.

RESPONSE: Upon arrival at the prisoner's destination facility, TransCor shall surrender custody of such prisoners to the State or to the law enforcement agency as designated by the Department. To ensure that TransCor surrenders prisoners to the custody of the Department or its duly authorized agents, corroborative identification of Department personnel designated to accept custody of the prisoner shall be presented to TransCor personnel at the place and time of surrender of custody. TransCor shall not surrender custody of prisoners without first verifying the identification of persons to whom custody of prisoner is being transferred.



TransCor

- c. If the MDOC or its apparent agent, in the opinion of the Contractor, fails to provide bona fide articles of identification upon request by the Contractor, the Contractor shall make appropriate inquiry with the MDOC to verify identification of the apparent agent prior to surrendering custody.

RESPONSE: If at the time and place of drop off such bona fide articles of identification are not readily available at the request of TransCor agents, TransCor will contact the MDOC to verify the identity of the personnel at the destination facility prior to transferring custody.

4. Transportation Upon Request

The Contractor shall furnish transportation for prisoners and official passengers of the MDOC within, or out of, the State of Michigan upon request. However, the MDOC shall notify the Contractor within ten days in advance of desired departure time, unless emergency or special circumstances require transport arrangements sooner.

RESPONSE: Upon the request of the MDOC, TransCor agents shall assume custody of prisoners from authorized agents of the MDOC and provide secure transport to and from the facilities designated by the MDOC. In assuming custody of such prisoners TransCor agents shall perform their responsibilities for security and control of offenders in accordance with all state and federal requirements, as well as TransCor established policies, procedures and practices.

The level of staff and vehicle resources that TransCor maintains allows us to respond to an order within ten (10) days under normal circumstances. While TransCor cannot guarantee a pick up with less than ten (10) days' notice, we will always work with MDOC to make arrangement to ensure that an emergency or special circumstance transport is available.

5. Delays in Departure or Arrival

- a. The Contractor shall immediately notify the MDOC of actual delay in departure or arrival of departmental prisoners. In addition:



RESPONSE: Should there be a delay in the departure or arrival of MDOC prisoners TransCor will notify appropriate MDOC personnel, as decided during contract negotiations.

TransCor works to ensure that all prisoners are picked up and moved through our system to their final destination in a safe and timely manner. Toward this goal, our planning staff works constantly to refine trips during the planning stage, as well as those trips that are already on the road. As such, adjustments to the timing of the pick up or delivery of a MDOC prisoner may occur.

Over the past three years, TransCor has invested significant budget and manpower resources in a proprietary technology system. The Prisoner Extradition and Control System (PECS) went online in June 2003, and enables TransCor to more accurately track prisoner, employee and transport information, but also enhances the efficiencies of the routes we plan. PECS allows greater report generation, which gives TransCor the means to provide a more detailed accounting of our performance on both a general, company wide scale, down to our performance for a specific customer.

In addition to internal functionality and benefits, PECS also features an external component that brings benefits and convenience to our customers. Through our website (www.transcor.com) registered customers can access the PECS system to place and track orders. This secure online ordering system is unique to the industry and adds a simple, convenient way for TransCor customers to place orders.

To track an order within our system, a user customer simply logs onto the system and accesses the Query Orders option from the top menu bar. By clicking on the Query Orders tab, the screen will display that customer's 15 most recent orders in reverse chronological order. A customer can also query, or search for, any order using either the transport number, or the prisoner's name.

For each of the orders displayed, a customer can review an assortment of information, including the Transport Number, the Status of the order, the Prisoner Name, Customer and Order Notes, Holding Facility, Destination Facility, the Date the Order was Created



chronological order. A customer can also query, or search for, any order using either the transport number, or the prisoner's name.

For each of the orders displayed, a customer can review an assortment of information, including the Transport Number, the Status of the order, the Prisoner Name, Customer and Order Notes, Holding Facility, Destination Facility, the Date the Order was Created (placed), the Pickup Deadline, the Amount or Cost of the Order and a summary Report. Depending on the Status of the individual order, Pickup and Dropoff Dates might also be displayed. Status options are: Ordered, Verified, Unscheduled, Scheduled, On Board, Billed or Cancelled. The Status information allows you to track a particular prisoner as he moves through the TransCor system.

MDOC currently utilizes our online system, and below is a screen shot of their current Query Orders page.

For each order, a customer also has the option of viewing the Report, which is a comprehensive summary of the details of each order. The customer accesses the Report by clicking on the icon in the RPT column of the order display table. In addition to the prisoner and facility information at the time the Order was placed, the Report also



reflects details on billing information and documents the dates and times that the prisoner was picked up and dropped off.

Below is a snapshot of how the Report for a recent MDOC Order appeared online.

TransCor America, Inc.				
Order Detail November 3, 2005				
Transport Number : 47	Order Entered: PRISONER@MIMICHI.COM			
Date / Time: 2005-11-02 15:21:36.0				
Customer Information				
Customer Number : MIMICHI	Customer Name : MICHIGAN DEPARTMENT OF CORRECTION			
Assignor Name : Lau	Business Development Rep : AFROCTOR			
Phone Number : 517	Purchase Order : 4 6			
Customer Notes				
Note Type	Message			
TRIP_MANAGER_SUPERVISOR	The D/O facility needs at least 24 hrs, preferably 48 hrs notice before we D/O inmate. AP-6/11/04			
Prisoner Information				
Last : M	First : A	Middle : Marie		
Sex : F	Race : W			
Inmate # : 428	Booking # :			
Birth Date : 1 79	Age : 26	Social Security # : 265		
Height : 5 feet 7 inches	Weight : 120 lbs	Hair : Brown		
Description : None		Eyes : Hazel		
Aka #1 :	Aka #2 :			
Offense : Vis Cr Card Law				
Type of Move : Pre-signed Waiver		Order Type : STANDARD		
Date Signed :		Pickup Between Date 1 :		
Pickup on Date :		Pickup Between Date 2 :		
Paperwork Required ? N				
Order Notes				
Note Type	Message			
CUSTOMER_SERVICE_MANAGER	called and got 1 day extension until 11/13/05 approved by corp mcnell and jerry meagher. 11/03/05 ej			
MEDICAL_FORM	PER HF REPORT IS 5 DAYS POST DELIVERY, MEDS ARE LEXAPRO, COLACE, MTV, VALIUM, DUE TO LENGTH OF TRIP AND RECENT CHILDBIRTH RECOMMEND MOVE BE MADE AT 10 TO 14 DAYS POSTPARTUM, GIVEN TO EJESSE FOR REVIEW 110305 CSP			
MEDICAL_FORM	FAXED MEDICAL FORM ON November 2, 2005 BY SBURNS			
Holding Agency Information				
Holding Agency : MOGREE10	Greene County Jail			
Contact : Jal	Telephone # : 417-868-4048 4040			
24 Hour Phone : 417-868-4048 4040	Address : 1000 North Boonville Road			
Pick Up Hours : MS 24 HR	Springfield MO 65801			
Holding Agency Medical Contacts				
First Name	Last Name	Phone	Fax	Email
Cynthia		417-829-6631		
Holding Agency Notes				
Note Type	Message			
GENERAL	Please contact MIKE of hospital runs with 24 hrs // FOR MEDICAL- CYNTHIA AT 417-829-6631. WE DONT HAVE TO CALL D/O PER DEP COLEMAN. MUST D/O PW W/ INMATE			
MEDICAL	fax # 417-829-6679			
TRIP_CALLER	FOR PICKUPS, NEED TO TALK TO BOOKING (NOT RELEASING)@ EXT. 3474			
Destination Agency Information				
Destination Agency : MISCO20	Scott Correctional Facility/Females			
Contact : Dunn Anne	Telephone # : 734-459-7400 319			



TransCor

TransCor intends to keep appropriate MDOC personnel notified and aware of any unusual incidents, emergencies or controversial situations, which occur during a transport and involves one of their prisoners.

1. Delay in Departure: The Contractor shall notify the law enforcement agency currently holding the prisoner of such delay in departure for the destination location. Such notice shall be given within 24 hours so as to give holding law enforcement agency a reasonable time to reschedule prisoner out-processing and avoid delay to the holding law enforcement agency in delivery and transfer of custody to the Contractor at the destination location.

RESPONSE: The holding facility is notified of our scheduled arrival time twenty-four (24) hours before our team is scheduled to pick up the prisoner. It is TransCor's policy for teams to call the facility again two hours prior to their arrival.

2. Delay in Arrival: The Contractor shall notify the MDOC of such delay in arrival at the home location. Such notice shall be given within 24 hours so as to give the MDOC a reasonable time to reschedule departmental personnel so as to avoid delay in receiving transfer of custody to the MDOC at the home location.

RESPONSE: As with the holding facility, the destination facility shall be notified of our scheduled arrival time twenty-four (24) hours before a TransCor team is scheduled to drop off a prisoner. It is TransCor's policy for teams to call the destination facility again two hours prior to their arrival.

- b. In the event of delays such as inclement weather conditions or mechanical failure of the Contractor's vehicle(s), the Contractor shall bear all costs related to such layover. Such costs shall include food and lodging costs of the Contractor's personnel and prisoners in their custody.

RESPONSE: In the event of delays whether or not beyond TransCor's control, including inclement weather or mechanical malfunctions, TransCor shall provide for all prisoner costs, except medical, related to such delays including, but not limited to, food and lodging.

All prisoners' medical costs, including, but not limited to, the costs of transportation to or from any medical facility and any required security service shall be paid by the MDOC.

**TransCor**

TransCor shall be authorized to obtain emergency and/or routine medical treatment for prisoners whenever deemed necessary. All such expenditures shall be reported to the MDOC in detail and shall be reimbursed by the MDOC. TransCor will not be liable for medical costs associated with pre-existing medical conditions or emergencies while in TransCor's custody unless the medical incident is caused by TransCor.

- c. In the event of delays necessitating lodging of prisoners for one or more nights, the Contractor shall arrange for safe and healthful lodging in an appropriate local detention facility. Such lodging shall be in accordance with the standards set forth in the MDOC Transportation Manual.

RESPONSE: The interim housing of prisoners during transit occurs at secure detention facilities throughout the country. TransCor has housing contracts that set requirements for the treatment of prisoners being housed for TransCor, as well as standards for the condition of the facilities in which they are kept.

Such appropriate secure housing would also be utilized in the event of a lengthy delay in transport.

- d. Only under circumstances where different efforts have been made to lodge prisoners in an appropriate local detention facility and such efforts have failed, shall the Contractor lodge prisoners in a private/public motel or hotel. In such cases, no more than two (2) prisoners may be lodged in a room together, and a Contractor employee shall at all times be present and alert. Security arrangements shall be in keeping with the standards set forth in the MDOC Transportation Manual.

RESPONSE: TransCor does not utilize non-secure locations for the housing of prisoners while en route. TransCor maintains housing agreements with strategically located facilities throughout the United States.

- e. In the event the Contractor, for reasons other than inclement weather conditions or mechanical failure, lodges the prisoners for one or more nights in a detention facility other than the original detention facility, the Contractor shall notify the Contract Compliance Inspector immediately of the new holding location and the length of time the prisoner will be held there.

**TransCor**

RESPONSE: TransCor intends to keep appropriate customer personnel notified and aware of any unusual incidents, emergencies or controversial situations, which occur during a transport and involves one of their prisoners.

TransCor's ground network is organized into a hub and spoke network, meaning that each prisoner picked up by TransCor is likely to be housed temporarily in one of our hub facility locations while they wait for the next scheduled departure of the team assigned to cover their destination area location. Additionally, in compliance with DOT regulations that limit on duty hours for our agent staff, prisoners are housed in secure detention facilities throughout the country as needed during a trip.

1. The new detention facility shall provide safe and healthful lodging in accordance with standards set forth in the MDOC Transportation Manual.

RESPONSE: TransCor has housing agreements that require the provision of safe and healthful lodging.

2. The Contractor shall bear all costs related to such layover.

The agreed to rates in the contract and any surcharges or fees agreed to by MDOC personnel at the time of order placement include all costs associated with the transport of a prisoner, excluding medical expenses.

- f. The Contractor's inability to comply with specifications for reason of weather, acts of God, or other causes beyond their control shall not be considered a breach of Contract.

RESPONSE: TransCor acknowledges and agrees to the above specification.

6. Refusal to Transport Prisoner by Agent When Requested by Michigan Department of Corrections
 - a. The Contractor reserves the right to refuse any prisoner transport for good cause. In the event of such refusal, the Contractor shall notify the MDOC within four hours of receiving such transport request.

RESPONSE: TransCor reserves the right to refuse to transport any prisoner whose

**TransCor**

health or behavior, in the opinion of TransCor staff, poses a threat to the safety, security and well being of our staff, the other prisoners in our care or the community at large. MDOC shall receive notification of such a decision within four (4) hours of receiving the transport request.

TransCor's goal is to provide safe, secure and reliable prisoner transportation services to our law enforcement and corrections partners. It is our objective to perform moves in the most secure and safe way, meaning that some transports are better accomplished outside of our normal ground network. Such special transports may be required for Special Needs prisoner, such as those with special health conditions; i.e. contagious diseases. When necessary and appropriate, TransCor will work directly with the MDOC as to the best method of transportation to be utilized, as well as to determine the exact scheduling of the move. These moves will typically be accomplished using secure escort via a ground flex or aboard a commercial aircraft. Such moves are subject to written medical clearance from a licensed medical professional and pending the authorization of the airline and the pilot of the aircraft.

TransCor has included its *Special Needs Prisoner Protocol* in Section 2, Tab E for MDOC's review and reference.

- b. Profit margin or purely economic consideration regarding a particular transport shall not constitute good cause for refusal to accept a transportation request.

RESPONSE: TransCor acknowledges and agrees to this specification.

- c. The person-in-command of Contractor's vehicle shall have the right to refuse to transport any individual whose condition or behavior, in the opinion of the person-in-command, would be detrimental or dangerous to the safety of any such individual. The MDOC shall be notified immediately of such refusal and there shall be no charge to the MDOC.

RESPONSE: If upon arrival at the holding facility TransCor finds that a prisoner has a condition or behavior it feels poses a threat to the safety and security of our agents, the



TransCor

other prisoners in our care, or the public at large, TransCor reserves the right to refuse to transport the prisoner. This could include persons with medical conditions when there is risk of acute or chronic medical condition(s) worsening as a result of motor vehicle transport or a prisoner whose behavior or security concerns could compromise the safety and security of the prisoner, our staff or the transport as a whole.

It is TransCor's operating practice and procedure to have its agents contact Trip Management in the company's headquarters when the medical condition of a prisoner falls outside of the protocol listed above, including medication questions or issues. Trip Management then conferences in TransCor's on-call nurse to decide on a course of action. When necessary, senior operations staff are also included in the decision process.

When medical status or behavior of the individual is prohibitive to ground transport, TransCor will offer MDOC escorted transport by commercial or charter air at applicable rates if a written release for such travel is available from licensed medical personnel. TransCor has learned through years of experience and many miles of prisoner transport that seemingly minor medical conditions can worsen or require immediate medical attention during extended ground trips. In such cases, there is potential for unnecessary discomfort or suffering by the passenger and added cost to the requesting agency. TransCor's *Special Needs Prisoner Protocol* has been included in this proposal in Section 2, Tab E.

Should TransCor refuse to transport a prisoner, MDOC will be notified immediately.

7. Transportation Vehicles

NOTE: The MDOC does not dictate transportation vehicles to Contractors. The following are suggested guidelines only, based on MDOC standards:

- a. For emergency purposes, each vehicle used to transport prisoners must carry first-aid kit and approved fire extinguisher.

A log book shall be maintained to record all emergency contacts with law enforcement agencies and/or any unusual occurrences.

After each stop, a count will be made and recorded. Each person occupying a vehicle must wear the safety belt, if provided, while the vehicle is in motion. The number of occupants shall not exceed the



TransCor

vehicle's designated seating capacity. A prisoner will not be handcuffed, chained or secured, other than by a seat belt to a stationary object inside a moving vehicle, unless in an emergency. Deviation from this provision shall require that the agent-in-command submit a written statement within 48 hours of the completion of the transfer.

When a prisoner transportation trip is scheduled and the expected distance traveled during one day will be greater than 200 miles, a relief driver shall be available.

RESPONSE: TransCor maintains in excess of 90 specially equipped vehicles to transport prisoners. All TransCor vehicles are in good operating condition, with an average age of the fleet at two years, and all necessary maintenance and repairs is the contractor's responsibility. TransCor's vehicle fleet includes buses, transporters, cars and vans; all of which are equipped with First Aid and blood-spill cleanup kits and a fire extinguisher.

TransCor meets all applicable DOT requirements for pre-and post-trip inspections and takes corrective action as appropriate. In addition, TransCor maintains an internal, fully documented vehicle preventative maintenance program. Additionally, all TransCor vehicles operate in compliance with applicable Federal Motor Carrier Safety Regulations (FMCSR). TransCor's USDOT number is 426551 and our MC number is 239934.

All trips are staffed to comply with DOT regulations relative to on-duty time requirements, as well as drive-time regulations.

Every vehicle in the TransCor fleet is equipped with a global positioning system. This system allows us to track each and every vehicle anywhere in the United States to within one-tenth of a mile of its current position. In addition each vehicle is equipped with a computer keyboard also tied in to the system, which allows our headquarters real time communication with agents in the field. We operate 24 hours a day, seven days a week, 365 days a year. All OICs also carry cellular telephones as part of their standard trip issue equipment.

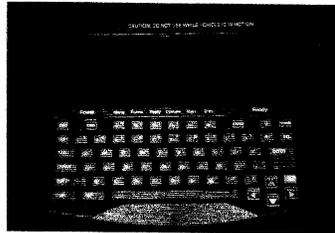
Each TransCor vehicle is equipped with a global positioning system (GPS). This system



Every vehicle in the TransCor fleet is equipped with a global positioning system. This system allows us to track each and every vehicle anywhere in the United States to within one-tenth of a mile of its current position. In addition each vehicle is equipped with a computer keyboard also tied in to the system, which allows our headquarters real time communication with agents in the field. We operate 24 hours a day, seven days a week, 365 days a year. All OICs also carry cellular telephones as part of their standard trip issue equipment.

Each TransCor vehicle is equipped with a global positioning system (GPS). This system allows us to track each and every vehicle anywhere in the United States to within one-tenth of a mile of its current position. In addition, each vehicle is equipped with a computer keyboard also tied in to the system, which allows our headquarters real time communication with agents in the field.

As illustrated by a sequence of screen shots on the following pages, TransCor's GPS system, Mercury Messenger, allows staff in the Operations Center to monitor each TransCor vehicle location. Trip management staff are able to view both the location of all active vehicles, as well as isolate a single vehicle. The system then allows TransCor staff to access more and more detail by zooming in on the vehicle, until ultimately, the real-time location of the vehicle can be identified to within one-tenth of a mile.

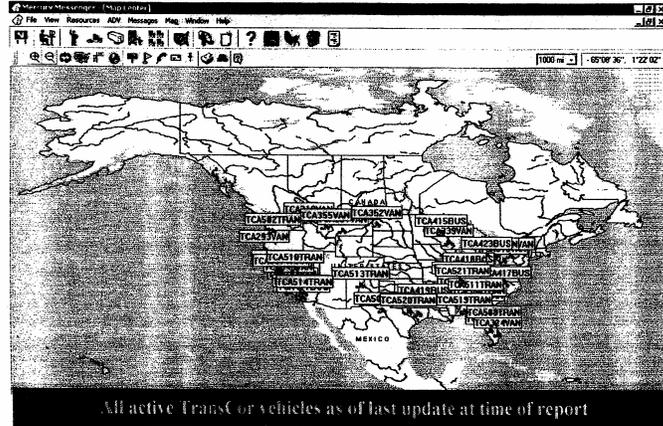


Each TransCor vehicle is equipped to for continuous real-time communications with the company's Operations Center in Nashville.

In addition to the tracking functionality, the GPS system also allows for real-time communication between TransCor's agents and staff in the Operations Center. This In-Vehicle Communications System (IVCS) enables messages to be sent to and from either individual vehicles or the entire fleet. IVCS includes the ability to send distress signals from the vehicles to the operations center.

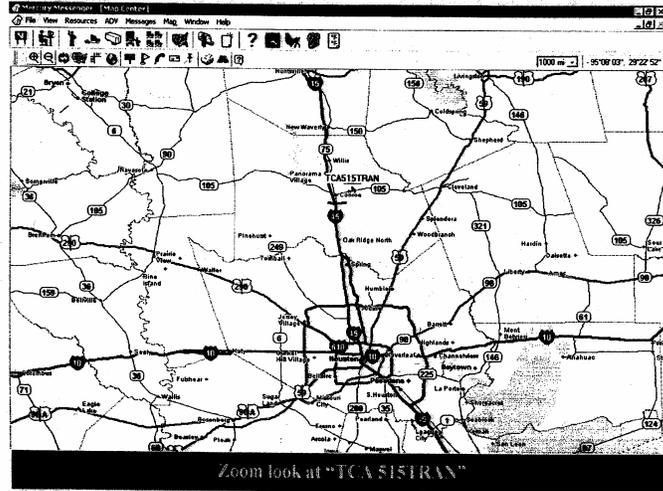


The following screenshots illustrate the level of detail and functionality of TransCor's GPS system.

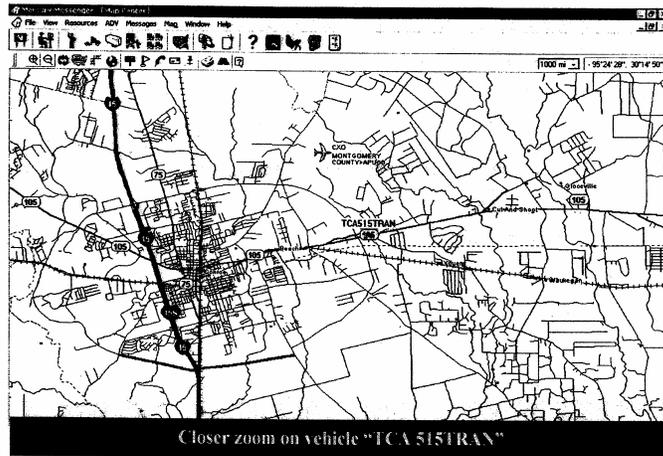


Tractor ID	Transceiver Alias	Transceiver Number	Team ID	Location	City	State	Location Time
TCAP	077	TC		2.6 mi	✓	Idaho	10/ 00 PM
TCAP	593	TC		0.8 mi	A	Fresno	CA 10/ 6:00 AM
TCAP	862	TC		9.2 mi		James West Sacramento	CA 10/ 00 PM
TCAP	186	TC		63.8 m	MT	Billings	MT 10/ 5:00 AM
TCAP	188	TC		19.4 m		on ND Dickinson	ND 2/11 00 PM
TCAP	697	TC		3.8 mi		Cucum Rancho Cucamonga	CA 10/ 00 AM
TCAP	812	TC		28.7 m		4000-Arroyo Over Lodge	MT 10/ 00 AM
TCAP	824	TC		0 miles		vila, TI TGA Nashville	TN 9/3 00 PM
TCAP	516	TC		44.2 m		wa Fall Chippewa Falls	WI 10/ 6:00 AM
TCAP	143	TC		5.6 mi	N	Cullman	AL 10/ 7:00 AM
TCAP	121	TC		3.4 mi	JC	Raleigh	NC 10/ 3:00 PM
TCAP	684	TC		1.2 mi	e, IN	Chattville	IN 10/ 00 AM
TCAP	934	TC		4.1 mi	TX	Marshall	TX 10/ 8:00 AM
TCAC	225	TC		2.2 mi		Jhb, TGA Nashville	TN 9/2 00 PM
TCAC	587	TC		2.4 mi	ida, CA	Escondido	CA 9/2 00 PM
TCAC	232	TC		3.2 mi	X	Corvse	TX 10/ 5:00 AM
TCAC	247	TC		2.9 mi	RI	Ejms	OH 10/ 3:00 AM
TCAS	104	TC		2.1 mi	Ho, CA	Sacramento	CA 9/9 00 PM
TCAS	256	TC		67.4 m	Jessa, WI	Odeasa	TX 10/ 4:00 AM
TCAS	306	TC		2.4 mi	I, OR	Portland	OR 10/ 8:00 PM
TCAS	378	TC		0 miles	vila, TI TGA	Nashville	TN 10/ 00 PM
TCAS	754	TC		5.9 mi	CA	Stockton	CA 10/ 6:30 AM
TCAS	8848	TC		1.7 mi	A	Albany	GA 10/ 00 PM
TCAS	152	TC		13.5 m		r Robt Warner Robins	GA 9/9 00 AM
TCAS	395	TC		1.8 mi	CA	Monroca	CA 10/ 2:00 AM
TCAS	472	TC		5 miles		Cocoo	FL 9/2 4:00 PM
TCAS	211	TC		0.8 mi	X	Corvse	TX 10/ 8:00 AM
TCAS	184	TC		79.2 m	NY	Canton	NY 10/ 8:00 AM
TCAS	883	TC		2.7 mi	sk, GA	Fossil Park	GA 10/ 2:00 PM
TCAS	16233	TC		0.9 mi	JA	Ontario	CA 10/ 00 AM

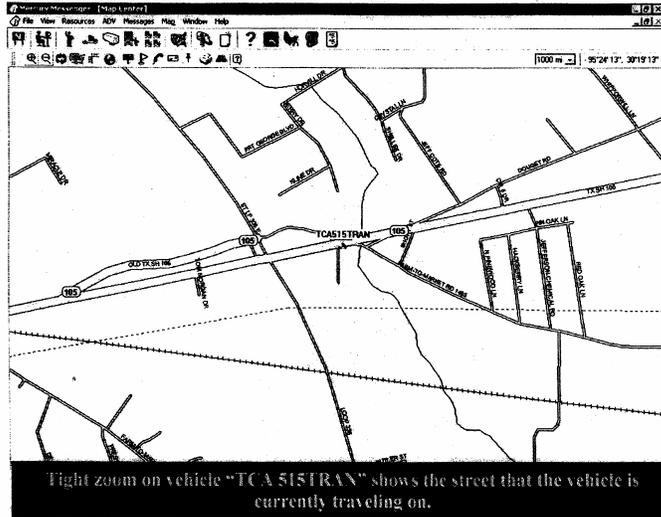
Data view of all TransCor vehicles, current locations and time of last update



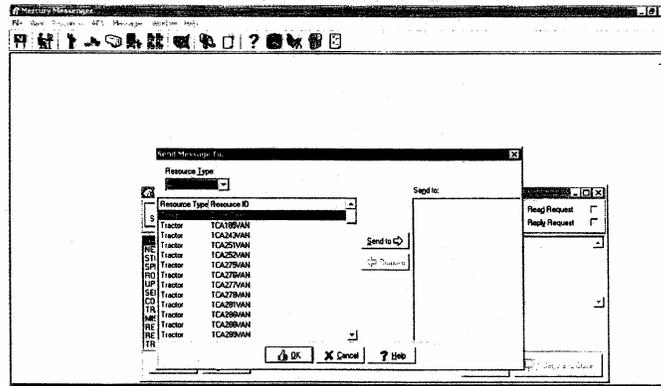
Zoom look at "TCA 5151RAN"



Closer zoom on vehicle "TCA 5151RAN"



Tight zoom on vehicle "TCA515TRAN" shows the street that the vehicle is currently traveling on.



Trip Management can issue messages to individual vehicles, mobile vehicles or the entire fleet. The screen above is the one that allows the roster of vehicles to be browsed for the one to receive the message.



TransCor

construct the secure interior compartments on our vehicles actually forms a protective shell in the event of collisions or vehicle rollovers. TransCor policy, procedure and practice prohibit a prisoner from being secured to any stationary object inside a moving vehicle.

All vehicles are modified to:

- i. Separate, and safely secure the driving team from the prisoners.
- ii. Doors and windows are unable to be opened from the inside of the prisoner compartment.
- iii. Welded steel screens cover windows.
- iv. Vehicles are equipped with some form of mobile communications.
- v. All vehicles have operational heater and air conditioner for the entire vehicle.
- vi. All vehicles are compartmentalized to separate male and female prisoners.
- vii. All buses, transporters and vans have tinted windows.

All vehicles are equipped with efficient communications systems capable of immediate notification of state and local law enforcement in the event of an emergency. Also, all TransCor vehicles are equipped with First Aid kits, CPR micro shields, biohazard spill kits, biohazard disposal bags, sharps containers, motion sickness bags, disposable gloves, and no less than one fire extinguisher and emergency triangle.

b. Passenger Sedan and Van

The standard passenger sedan, station wagon or van, with a screened cage separating the front and rear passenger area, shall be used for the transportation of prisoners whose custody level is Secure Level I or higher. Any additional employees (other than the driver) will ride in the front seat or appropriate caged area facing at an angle that allows visual contact with the prisoner(s). The rear passenger door and window controls are to be removed, thus leaving the responsibility of exiting the prisoner(s) to the officer in case of emergency.

All drivers of vans must have a valid operator or chauffeur's license. Vans are not to be loaded beyond their rated capacity. Staff shall not ride in the prisoner compartment. Under no circumstances shall a weapon or chemical agent be placed in the same compartment as the prisoner. When personal property is carried on the van, transportation staff must be diligent to ensure that property is not within the prisoner's reach.

RESPONSE: All TransCor vehicles feature a secure configuration, including the specifications outlined in our response to Item 7 (a) above.



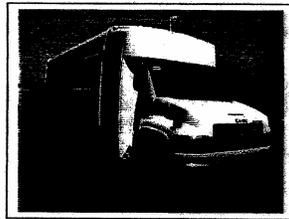
RESPONSE: All TransCor vehicles feature a secure configuration, including the specifications outlined in our response to Item 7 (a) above.



Each of TransCor's vans accommodates eight prisoners in the rear section and four prisoners in the front section.

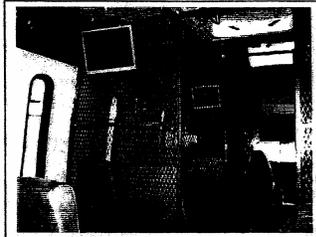
The front section features a swing gate, which can be

utilized to segregate one prisoner. Having separate compartments allows for the transportation of male and female prisoners in the same vehicle. Each van is also equipped with a dual air conditioning system.



TransCor has more than 20 transporters, which accommodate 18 and 24 prisoners and three and four agents respectively, allowing TransCor to maintain the federally mandated 6:1 ratio. The secure inside configuration of

the transporters allows for the segregation of two, four or five prisoners and two agent seats. Of the staff on board, all agents hold commercial drivers licenses. The addition of the transporters is significant in enabling TransCor to remain compliant with DOT operating regulations, while keeping our system efficient and allowing us to keep our rates competitive. Like the buses, each transporter is equipped with multiple televisions, a VCR and toilet facilities. Also, the transporters have a sleeping berth, which allows an agent to rest.





TransCor

c. Transportation Bus

When transporting 21 or more Level IV and V custody prisoners, specially constructed buses shall be used. The driver's compartment shall be protected by a heavy screen partition. Another screened cage shall be located at the rear of the bus to protect other transportation staff. These areas shall not be left unattended when prisoners are on board. A female agent must accompany female prisoners throughout the transport. Anytime an agent enters the area of the prisoners, the agent shall be unarmed and without keys. The security gates to the area where the prisoners are riding shall be locked. When relief of the armed officer in the cage is in effect, the armed officer shall step out the rear door. The relief officer shall step in the rear, both officers keeping possession of their own weapons. The armed front cage agent shall observe the prisoners during this exchange. Keys to the caged area shall always remain with the agent in the cage that shall remain locked. When the front officers are exchanged, the back cage officer will observe the prisoner compartment. At the completion of the exchange, an accurate prisoner count shall be made.

Lighting is to be provided inside the bus at night to allow constant observation of the prisoners. All prisoners shall be attached to the "long chain" which will prevent any prisoner movement while the bus is in motion.

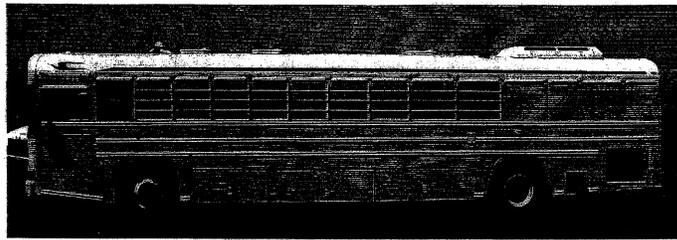
Staff operating the transportation bus shall possess a valid Commercial Driver's License with appropriate endorsement in accordance with the MDOC Policy Directive 01/03/120, Vehicle Use.

A Contractor bus shall be operated in accordance with State motor vehicle laws governing bus operations. A bus transporting prisoners shall stop before proceeding at each railroad crossing and shall clearly display a cautionary sign on the back of the bus which reads: "This vehicle will stop at all railroad crossings."

RESPONSE: All TransCor buses are configured to carry a total of 30 prisoners, and always maintain the 6:1 ratio mandated by federal regulations. Of the staff on board, no less than two agents hold commercial drivers licenses. Each bus is equipped with television, VCR and toilet facilities. Also, the buses have two sleeping berths, which allow one agent and one of the commercial licensed drivers a place to rest.



TransCor
Because your officers have better things to do.



TransCor properly trains its transport staff on procedures and practices for conducting prisoner movements within, onto and off of the vehicles, as well as supervision practices while onboard the vehicle. TransCor's transporters and buses are equipped with interior lighting that enables staff to continuously supervise the prisoners onboard.

All TransCor transports, no matter the vehicle type, are staffed in full compliance with the Interstate Transportation of Dangerous Criminals Act of 2000 and DOT regulations. This includes a 6:1 prisoner to staff ratio, the presence of a female agent whenever a female prisoner is onboard and sufficient properly licensed drivers. TransCor policy, procedure and practice require that female prisoners be transported in separate compartments from male prisoners.

Metal mesh screening is used to create segregation areas within the prisoner area, as well as to create a secure barrier between the prisoner area and designated staff areas onboard TransCor vehicles. For the vans and transporters, this is a single barrier at the front of the vehicle behind the driver area and on the buses, it is two secure staff areas; one in the front and one in the rear of the vehicle.

As a requirement for employment with TransCor, our agents must possess a valid driver's license and the proper commercial driver's license and endorsement when operating our higher occupancy vehicles



TransCor

training in the proper usage of the books and completed DOT physicals to ensure TransCor drivers are currently operating in compliance with the new regulations. In addition to soliciting outside expertise to help ensure compliance, TransCor is also taking ongoing internal steps to keep our operations in line with DOT regulations. Trips are scheduled to keep drivers within the mandated on-duty times, training on the regulations and driver logbooks has been incorporated into our basic training curriculum, logbooks have been distributed to all drivers, as well and DOT physicals have been completed on all drivers and all new hires.

TransCor has in place a policy to ensure a drug-free workplace. TransCor has a pre-employment drug testing program and a random drug-testing program to monitor this policy and to enforce the Federal Omnibus Transportation Employee Testing Act, which mandates random drug and alcohol testing for all Commercial Driver's Licensed employees.

d. Air Transportation

Air transport is to be used only in extreme circumstances to be determined by the MDOC due to high cost. Such extreme circumstances would include, but not be limited to: pregnancy, AIDS/HIV infected prisoners, or special requirements on medications such as temperature and administration of the drug, or certain high profile prisoners with specific needs.

Commercial air transportation will be used when one or more of the following criteria are met: 1) When the movement of a prisoner by air is requested by the MDOC; or 2) When a prisoner is medically unfit to travel on the ground; or 3) When short notice is given with a deadline and ground travel is impractical; or 4) A special move is required by a department head of the Contractor to meet that department's special needs.

If the Contractor determines that air transportation is required, and it does not meet one of the four criteria shown above, then the Contractor must provide supporting documentation as to why they feel the prisoner should be air-flexed rather than regular ground transport. The final decision as to whether air transportation will be used or not will be at the sole discretion of the MDOC.

RESPONSE: TransCor acknowledges MDOC's requirement that the use of air transports to be limited to those specific moves that cannot be accomplished safely, timely or economically by any other means. The decision to move via aircraft will be

30

PROPERTY OF TRANSCOR AMERICA, LLC



TransCor

made at the request of MDOC or at the recommendation of TransCor with approval from MDOC. Should MDOC not agree with TransCor's recommendation for an air transport, they are welcome to appeal the decision to the highest level of management at TransCor. Should a consensus not be reached through this appeal process, TransCor reserves the right to refuse the transport if, in its opinion, accomplishing the move poses a risk to the safety and security of the prisoner, our staff or the public at large.

TransCor recognizes the criteria for air transport outlined by MDOC in this specification, and again references our *Special Needs Prisoner Protocol*, which has been included in our response in Section 2, Tab E.

Should transport by aircraft be determined by TransCor and MDOC to be the appropriate method for a prisoner movement, TransCor will comply with Federal Aviation Authority (FAA), Transportation Security Administration (TSA) and individual airline regulations relative to the secure movement of prisoner via commercial aircraft. To achieve compliance with all regulations in the airline industry, TransCor recently formed and completed training for a team of Air Extradition Specialists. Composed of full-time and part-time employees, this team represents law enforcement officers (LEOS) who are authorized to fly armed by meeting the requirements of 49 CFR § 1544.219.

TransCor's ability to complete each air transport is pending the authorization of the airline and the pilot of the aircraft.

8. Preparing for the Transportation Assignment

a. Equipment Checklist:

The following equipment must be obtained and ready to go:

- Driver's license
- ID Card
- Duty belt with keepers
- Seat belt cutter
- Chemical agent with case
- 12 gauge shotguns
- Double speed loader with additional 12 rounds of ammunition



TransCor

- Glock
- Handcuffs with case
- Approved chemical agent mask (if applicable)
- CCW Permit
- CPR mask and gloves

b. Vehicle Checklist:

The following is a checklist of things to do and items needed:

- Make sure fuel and oil levels are full
- Make sure all emergency breakdown reflectors are in good condition
- Radios must be in proper working order
- First Aid kit in full and in good condition
- Up-to-date road maps
- Extra restraints available and in good working condition
- A box of latex gloves for spills, especially body fluids
- Blood spill kit
- Trip sheet
- Vehicle log
- Fire extinguisher
- SCBA with mount, plus backup units in the trail vehicles (when transportation bus is used)

RESPONSE: Each TransCor team and vehicle is properly and fully equipped for each transport trip. By policy, procedure and practice, TransCor agents must perform pre- and post-trip vehicle inspections that exceed DOT requirements.

All TransCor employees involved in the pick up and transport of prisoners are required by policy to wear a company-issued uniform bearing the company logo and carry identification that includes such information as company name, and employee name, photograph, signature and thumb print. This identification must be presented or displayed properly when requested by the holding facility prior to the release of any prisoner.

TransCor policy requires that all prisoners to be transported in full restraints. Prisoners are also interconnected for additional security. All TransCor vehicles carry a supply of prisoner restraints.

All TransCor vehicles are equipped with 12-gauge Mossburg shotguns, model 88 or 500A. Each TransCor agent in California carries a 9mm or 45-caliber semi-automatic



TransCor

weapon under the authority of Penal Code 831.6. Similarly, per state requirements TransCor agents in Florida carry sidearms as their primary weapon under the authority of their D and G security licensure. Each agent is equipped with a chemical agent.

Prisoner property is secured in individual, sealed property bags and stored out of the prisoners' reach during transport. Likewise, while in transit, weapons are secured in the vehicle outside of the access of the prisoners on board. At all times staff retain possession and control of their assigned chemical agent.

9. Security Level and Restraints Used

The importance of the proper use of restraints cannot be overemphasized. The application of restraints is a necessary skill and a vital part of the transportation agent's duty. Restraint equipment, although useful in securing the prisoner, is not a substitute for employee vigilance and performance. **It is the responsibility of the Contract staff to see that the appropriate restraint equipment is applied in the required manner.** Faulty application of restraints can result in an escape or injury to staff or the prisoner. Restraint equipment is not to be applied as punishment or in a manner that causes physical pain, reduces blood circulation or restricts breathing.

Restraints **shall not be** removed during the transfer except in an extreme emergency. Caution must be taken when restraints are applied and removed. When possible, at least two officers should be present when this task is performed.

The following specifications are those used for in-State MDOC transports. The Contractor should employ comparable methods using highest security deemed appropriate, while maintaining humane treatment and refraining from unnecessary force.

RESPONSE: During initial training, TransCor agents receive four (4) hours of instruction on the correct application and use of restraints. A qualified instructor provides training to the new employees in the required skills and techniques for the proper use of restraints and proper escort procedures. The session also teaches the conditions under which restraints are considered excessive use of force. The course curriculum includes both classroom and hands on instruction, and all students must demonstrate the proper application of all restraints.

- a. Handcuffs



TransCor

The basic principle of handcuffs is that hands secured together are rendered harmless. This is usually true if the cuffs are applied correctly and the following precautions are taken.

1. Install the cuffs between the hand and the wrist bone, ensuring that the cuff will barely slide over the wrist bone. This will prevent the normal movement of the hand without restricting circulation.
2. Cuffing the backs of the hands together behind the back can further restrict motion.
3. When applying cuffs, never allow the free end to leave your hand. It can be used as a very dangerous weapon.
4. Cuffs should be applied with the double bar "up" and the keyhole "in" to prevent picking of the lock. Cuffs will always be double locked.
5. If the prisoner has extremely small hands that may slip through the cuffs, firmly compress the hands and adjust the cuffs to a point at which they cannot slide over the hand.
6. Never let the prisoner know the location of the handcuff key.

RESPONSE: As referenced above, all TransCor agents receive training on the proper application of restraints. All prisoners remain fully restrained during the duration of the transport. Restraints are applied inside the pick up location and are only removed inside any secure housing location used or at the destination facility. The restraints are removed immediately prior to the transfer of custody and only once the prisoner is inside the secure location.

To provide additional security, prisoners are interconnected in pairs. Prisoners are restrained with standard restraining devices including handcuffs, leg irons, waist chains and black boxes. Should an alternative be required for special situations, such as medical issues, TransCor agents are also trained on the correct usage of The Grip restraint system

b. Handcuff Cover

The handcuff cover (black box) covers the keyhole and is used to prevent picking or tampering with the lock. The closed plastic cover has space for a metal clop that the security link passes through. This allows the officer to use the security link chain to restrict movement of



TransCor

the prisoner's hands. A small padlock close to the snap, placed through the chain links, completes the assembly procedure. Handcuff covers may be placed in the position desired depending on the degree of risk and security presented by the prisoner.

RESPONSE: As stated in our response above, TransCor does utilize handcuff covers (black boxes) in the restraint of prisoners in our custody.

c. Belly Chains

These are strong, welded link chains with two handcuffs attached. The proper procedure for application is to have the prisoner face away from the employee applying the belly chains. Make certain the chain is secure on the prisoner's hip bond prior to placing the padlock through the ends of the chain to finish securing the chain. After applying handcuffs to wrist, the employee shall make a double check to ensure there is not extra slack in the belly chain. The second employee should conduct this check.

RESPONSE: As stated in our response above, TransCor does utilize belly chains (waist chains) in the restraint of prisoners in our custody.

d. Leg Irons

Leg irons are large cuffs at the end of an 18-inch welded link chain. After the belly chain or handcuff cover and linked chain have been applied and while standing at one side of the prisoner, apply one cuff to the nearest leg. **Leg irons are not to be applied from the front while facing the prisoner.** This places the officer in a dangerous position. Be careful not to lose control of the opposite end of the chain while placing the first cuff. Remove the leg irons in reverse order.

RESPONSE: As stated in our response above, TransCor does utilize leg irons in the restraint of prisoners in our custody.

e. Chemical Agents

Transportation officers may use chemical agents during the transport of prisoners, at the discretion of the supervising agent. Chemical agents may be used in the following situations:

- Controlling disruptive prisoners
- Protecting staff from serious injury
- Preventing the taking of hostages



TransCor

- Preventing escapes
- Preventing major destruction to transportation vehicle

Before using chemical agents, and if time and circumstances permit, the prisoner should be heard and informed of alternatives which will occur if s/he does not comply. **Use of a chemical agent in a moving vehicle is not permitted.**

RESPONSE: Each agent is equipped with Oleoresin Capsicum (OC). A certified chemical agents instructor discusses the chemical/inflammatory agents that are authorized for use; outlines the circumstances under which such agents may be used; and instructs the decontamination techniques required after use. The new employees are certified by the company to carry OC, and must experience the effect of the chemical during training. TransCor policy prohibits the use of OC when the vehicle is moving.

All agents also receive instruction in the use of force continuum.

10. Meals, Lodging and Miscellaneous Costs

- a. The Contractor shall be responsible for all costs that may occur for its employees, offenders and/or prisoners (inmates), excluding medical costs for the offenders and prisoners, during the term of this Contract.

RESPONSE: The agreed rates in the contract, plus any appropriate surcharges or fees agreed to by the MDOC personnel at the time of order placement includes all costs associated with the transport of a prisoner, excluding medical expenses.

TransCor shall indemnify, defend and hold harmless MDOC, its agents, officers and employees from liability for any claims, suits, judgments and damages to the extent such claims, suits, judgments and damages arise as a result of the Contractor's acts and/or omissions in the performance of this Contract. Nothing herein shall be construed to require Contractor to defend or indemnify any party for any claims, lawsuits, damages, expenses, costs or losses arising from the actions or omissions of the MDOC, its departments, its officers, agents or employees or allegations regarding the MDOC's authority to enter into this Contract.

- b. Three hot meals per 24 hours shall be required for the offenders and

**TransCor**

prisoners during transport. Meals from fast food-type restaurants shall be acceptable.

RESPONSE: Three meals per day are supplied to the prisoners while en route and consist of fast-food meals or standard institutional fare. At least two of these meals are served hot. Meals during transit are consumed in the vehicle. Prisoners are fed at normal mealtimes whenever possible, i.e. 0600-0700 for breakfast, 1200-1300 for lunch, and 1800-1900 for dinner. TransCor staff record each meal provided during transit on the activity log.

- c. Any delay during transport that results in lodging requirements for offenders and prisoners shall be arranged with the appropriate local detention facility.

RESPONSE: The interim housing of inmates during transit occurs at secure detention facilities throughout the country. TransCor utilizes county jails and prisons across the country on an as needed basis to provide a bed, shower, meals and laundry services for prisoners in our custody. All TransCor agent teams comply with the Interstate Transportation of Dangerous Criminals Act of 2000 and DOT regulations, which specify that no agent team may exceed 15 hours on duty to be followed by no less than eight hours off duty. This excludes our bus and transporter teams, which are designed and staffed for long distance, non-stop travel in compliance with DOT regulations. During that time, agents obtain lodging in order to rest, shower and complete necessary paperwork.

- d. All medical costs of offenders and prisoners, including cost of transportation to or from any medical facility, shall be paid by the MDOC. The Contractor shall be authorized to obtain emergency and routine medical treatment for offenders and prisoners.

RESPONSE: In the event of a medical emergency, TransCor agents proceed to the nearest medical center. If the medical stop is of significant duration, a local jail is utilized to house the remaining prisoners on board while the situation is addressed. TransCor policy is to immediately notify the customer when any prisoner is taken to the hospital, no matter the length of stay. All medical expenditures, including transport to a medical facility and any necessary guard services, will be reported to the MDOC in

**TransCor**

detail, with documentation, for full payment by MDOC. The MDOC will also be provided with a detailed written report about the medical problem, which will be faxed or emailed to the designated MDOC contact.

11. Medical Transports

The Correctional Facilities Administration (CFA), Deputy Director or designee, determines medical and custody coverage for special circumstances during transport. For any special circumstance, use of local jails for drop-offs shall be subject to the approval of the CFA Deputy Director, and will also determine the chain of custody.

Agents must notify the MDOC, CFA, Deputy Director when an inmate is out of their custody. This must be person-to-person contact, and not a message left by voice mail, e-mail, or other electronic methods. In the event a transport takes more than three days, the MDOC must be notified.

In the case of medical emergency, the MDOC shall be notified for appropriate arrangements including chain of custody, transfer of custody, and responsibility for custody responsibilities at the hospital or medical facility. The MDOC shall incur all costs for any transport involving medical or emergency health care treatment, and shall be charged accordingly. These charges shall be quoted in advance, unless emergency nature prohibits advance pricing. In the case of a medical transport known at the onset, any special pricing shall be quoted and approved by the MDOC prior to transport.

RESPONSE: TransCor is proud of being a full-service prisoner extradition/transportation company. Our goal is to move all types of prisoners, including those with special needs. Many special needs prisoners, however, cannot be moved in our normal system due to their health care issues. Consequently, we want to offer an alternative whenever possible.

Prisoners who cannot be moved in our normal system due to medical issues require special consideration, which we call a "flex" transport. This flex alternative method can be either by ground or by air, depending on the specifics of the individual prisoner being moved. Flex moves are quoted on an individual basis.

When an order is received, TransCor faxes a medical authorization form to the holding facility and requests the information to be returned within twenty-four (24) hours. This information is reviewed by our Special Needs Medical Staff to assist in determining any special transport requirements.



TransCor

All prisoners who are transported in the normal system must be able to ride seated in a vehicle for up to a maximum of five (5) days without making more than normal stops for meals and restroom breaks; be able, with only minimal assistance, to walk short distances and board and disembark from a vehicle in full restraints; they cannot have a contagious condition or have dietary restrictions that preclude eating meals from fast food establishments. Normal stops for restroom breaks are made every three to four hours. (Bus and transporter vehicles also have a restroom onboard.)

For moves in the normal system, a ten (10) day supply of medication or a prescription for a ten (10) day supply must be provided by the holding facility, unless otherwise noted. A prescription for HIV/AIDS medication must have prior approval by the customer due to the expense.

All flex transports (air or ground) require a three (3) day supply of medication. Prescriptions are not sufficient and will not be accepted in lieu of medication for flex moves. All prescriptions filled by TransCor will be billed to the customer.

An appropriate MDOC representative will be notified directly should a prisoner require emergency medical attention during transport. Such notification shall consist of a person-to-person conversation and not a voice or electronic message or a facsimile.

TransCor cannot guarantee delivery of prisoners within our normal ground system in less than ten (10) days unless specifically agreed to at the time an order is placed. In the case of the transport of special needs prisoners that require transport beyond our normal ground system, a move timeline is typically much shorter and will normally fall within the three-day timeframe referenced in this specification.

12. High Notoriety Cases

In the event the transport of a prisoner is required involving a high notoriety case, it will be determined by the MDOC as to whether the MDOC will pickup the prisoner, or have the Contractor carry out the transport. Such cases must have prior approval of the MDOC, CFA, Deputy Director, or designee.

RESPONSE: TransCor acknowledges and agrees to this specification.



TransCor

CONTRACT PAYMENT

The specific payment schedule for this Contract will be mutually agreed upon by the MDOC and the Contractor. The schedule should show payment amount and should reflect actual work done by the payment dates, less any penalty cost charges accrued by those dates. As a general policy, statements shall be forwarded to the designated representative by the 15th day of the following month.

RESPONSE: TransCor prepares and submits an invoice for each move that is performed.

In addition to individual invoices, TransCor also publishes a monthly summary of the prisoner transports completed in the previous 30 days with payment still outstanding.

Compensation to Contractor

a. Ground Transportation: The Contractor shall be compensated by the MDOC for transportation of prisoners or passengers authorized by the MDOC. Compensation shall be based on a per mileage rate in accordance with the Michigan Department of Management and Budget, Vehicle and Travel Services, Standardized Travel Regulations, as approved by the Michigan Civil Service Commission. For Ground Transportation, price per mile per male offender and/or prisoner; and price per mile per female offender and/or prisoner shall be quoted. In addition, discount per individual offender in the case of multiple pickups from one location shall be quoted. PC* Miler/Streets 2000/Beta will be used to compute transport mileage, and to confirm any invoice discrepancies in mileage charged.

RESPONSE: Prices for routine ground transportation services provided by TransCor are based on the direct mileage between pick-up and drop-off points. Mileage is determined by the computer program PC*MILER/STREETS Version 16.1 or the most recent version. All per mile rates and any fees charged shall be in accordance with the rate schedule agreed to between TransCor and MDOC during the bid and contracting process.

b. Air Transportation: In the case where air transport is the most viable means of returning a prisoner, the Contractor shall use the lowest airfare available at time of transport and bill accordingly, submitting appropriate documentation to support the ticket cost. All air transports must be approved in advance by the MDOC.