

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

August 23, 2013

**CHANGE NOTICE NO. 4**  
 to  
**CONTRACT NO. 071B8200253**  
 between  
**THE STATE OF MICHIGAN**  
 and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Meyercord Revenue, Inc. 475 Village Drive Carol Stream, IL 60188	Jason Tarlton	<a href="mailto:Jason.Tarlton@sicpa.com">Jason.Tarlton@sicpa.com</a>
	TELEPHONE	CONTRACTOR #, MAIL CODE
	(703) 785-1847	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR	TREA	Doug Miller	517-636-4112	<a href="mailto:millerdo@michigan.gov">millerdo@michigan.gov</a>
BUYER	DTMB	Jim Wilson	517-241-1916	<a href="mailto:wilsonj4@michigan.gov">wilsonj4@michigan.gov</a>

CONTRACT SUMMARY:			
DESCRIPTION: Tobacco Stamps, Machines, Scanners and Related Services – Department of Treasury			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
August 15, 008	August 14, 2011	5, 1 Yr. Options	August 14, 2013
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
Net 30	Delivered	30 days ARO	Meyercord Revenue, Inc.
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MiDEAL PARTICIPANTS
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS:			
N/A			

DESCRIPTION OF CHANGE NOTICE:				
EXTEND CONTRACT EXPIRATION DATE	EXERCISE CONTRACT OPTION YEAR(S)	EXTENSION BEYOND CONTRACT OPTION YEARS	LENGTH OF OPTION/EXTENSION	EXPIRATION DATE AFTER CHANGE
<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1 Year	August 14, 2014.
VALUE/COST OF CHANGE NOTICE:		ESTIMATED AGGREGATE CONTRACT VALUE REMAINS:		
\$0.00		\$3,007.654.67		

Effective immediately, this Contract is utilizing an option year. The new Contract end date is August 14, 2014. Please note the buyer to Jim Wilson.

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

Per agency and vendor agreement and DTMB Procurement approval.

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

July 17, 2012

**CHANGE NOTICE NO. 3**  
 to  
**CONTRACT NO. 071B8200253**  
 between  
**THE STATE OF MICHIGAN**  
 and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Meyercord Revenue, Inc. 475 Village Drive Carol Stream, IL 60188	Jason Tarlton	<a href="mailto:Jason.Tarlton@sicpa.com">Jason.Tarlton@sicpa.com</a>
	TELEPHONE	CONTRACTOR #, MAIL CODE
	(703) 785-1847	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR:	TREA	Doug Miller	(517) 636-4112	<a href="mailto:millerdo@michigan.gov">millerdo@michigan.gov</a>
BUYER:	DTMB	Kristen Robel	(517) 373-7396	<a href="mailto:roblek@michigan.gov">roblek@michigan.gov</a>

CONTRACT SUMMARY:			
DESCRIPTION: <b>Tobacco Stamps, Machines, Scanners and Related Services – Department of Treasury</b>			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	AVAILABLE OPTIONS	CURRENT EXPIRATION DATE
August 15, 008	August 14, 2011	5, 1 Yr. Options	August 14, 2013
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
Net 30	Delivered	30 days ARO	Meyercord Revenue, Inc.
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MIdeal PARTICIPANTS
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
MINIMUM DELIVERY REQUIREMENTS:			
N/A			

DESCRIPTION OF CHANGE NOTICE:		
OPTION EXERCISED: <input checked="" type="checkbox"/> NO <input type="checkbox"/> YES	IF YES, EFFECTIVE DATE OF CHANGE:	NEW EXPIRATION DATE:
Effective July 13, 2012, items I-A and I-E of Attachment A is hereby changed to \$0.82/thousand. Items I-A and I-E of Attachment B is hereby changed to \$2.00/thousand.		
Section 1.201 is hereby amended to include United Silicone as a subcontractor for stamping machines and machine maintenance.		
In addition, the vendor contact has been changed to Jason Tarlton.		
All other terms, conditions, specifications, and pricing remain the same.		
Per agency and vendor agreement (email from Mike Riley on 6/7/2012 and iTRAC dated 6/7/2012) and DTMB-Procurement's approval.		
VALUE/COST OF CHANGE NOTICE:	\$0.00	
ESTIMATED AGGREGATE CONTRACT VALUE REMAINS:	\$3,007.654.67	

**Article 1, Pricing  
Attachment A**

Products and Services Provided Directly to State (Item)	Unit	FUSON® Description	Unit Price Fuson Stamps
I-A	TH	Heat Applied Serial Numbered "20" Cigarette Tax Stamps	\$0.82
I-B	TH	Heat Applied Serial Numbered "20" Cigarette Tax Stamps	\$3.54
I-C	TH	Heat Applied Serial Numbered "25" Cigarette Tax Stamps	\$4.50
I-D	TH	Heat Applied Serial Numbered Single Stick Cigarette Tax Stamps	\$4.50
I-E	TH	Tribal Heat Applied Serial Numbered "20" Cigarette Tax Stamps	\$4.50
I-F	TH	Tribal Heat Applied Serial Numbered "20" Cigarette Tax Stamps	\$4.50
I-G	TH	Tribal Heat Applied Serial Numbered "25" Cigarette Tax Stamps	\$4.50
I-H	EA	Reader Pens (Price above 20 per Year)	N/A
I-I	YR	Stamps Storage by Contractor (Optional)	\$3,000.00
I-J	YR	Stamp Delivery Directly to Distributors (Optional)	\$150,000.00
I-K	TH	Microprint Security Feature (Optional)	Included
I-L	TH	Taggant Plus Security Feature (Optional)	N/A
I-M	TH	Forensic Marker (Optional)	N/A
I-N	EA	Taggant Tester (Optional)	\$200.00
I-O	EA	Taggant Test Plus (Optional)	\$200.00

**Article 1, Pricing  
Attachment B**

Products and Services Provided Directly to State (Item)	Unit	FUSON® Description	Unit Price Fuson Stamps
I-A	TH	Heat Applied Serial Numbered "20" Cigarette Tax Stamps	\$2.00
I-B	TH	Heat Applied Serial Numbered "20" Cigarette Tax Stamps	\$4.00
I-C	TH	Heat Applied Serial Numbered "25" Cigarette Tax Stamps	\$4.00
I-D	TH	Heat Applied Serial Numbered Single Stick Cigarette Tax Stamps	\$4.50
I-E	TH	Tribal Heat Applied Serial Numbered "20" Cigarette Tax Stamps	\$2.00
I-F	TH	Tribal Heat Applied Serial Numbered "20" Cigarette Tax Stamps	\$4.50
I-G	TH	Tribal Heat Applied Serial Numbered "25" Cigarette Tax Stamps	\$4.50
I-H	EA	Reader Pens (Price above 20 per Year)	N/A
I-I	YR	Stamps Storage by Contractor (Optional)	\$4,000.00
I-J	YR	Stamp Delivery Directly to Distributors (Optional)	\$150,000.00
I-K	TH	Microprint Security Feature (Optional)	Included
I-L	TH	Taggant Plus Security Feature (Optional)	N/A
I-M	TH	Forensic Marker (Optional)	N/A
I-N	EA	Taggant Tester (Optional)	\$200.00
I-O	EA	Taggant Test Plus (Optional)	N/A

STATE OF MICHIGAN  
DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET      October 19, 2011  
PURCHASING OPERATIONS  
P.O. BOX 30026, LANSING, MI 48909  
OR  
530 W. ALLEGAN, LANSING, MI 48933

**CHANGE NOTICE NO. 2**  
**TO**  
**CONTRACT NO. 071B8200253**  
**between**  
**THE STATE OF MICHIGAN**  
**and**

NAME & ADDRESS OF CONTRACTOR <b>Meyercord Revenue, Inc.</b> <b>475 Village Drive</b> <b>Carol Stream, IL 60188</b>		TELEPHONE - Mike Riley <b>(703) 455-8050</b>
		CONTRACTOR NUMBER/MAIL CODE
Email: <a href="mailto:mike.riley@sicpa.com">mike.riley@sicpa.com</a>		BUYER/CA (517) 241-7233 <b>Donald Mandernach</b>
CONTRACT COMPLIANCE INSPECTOR: Doug Miller (517) 636-4112 Email: millerdo@michigan.gov <b>Tobacco Stamps, Machines, Scanners and Related Services – Department of Treasury</b>		
CONTRACT PERIOD:                      From: <b>August 15, 2008</b>		To: <b>August 14, 2013</b>
TERMS <b>Net 30</b>	SHIPMENT <b>30 Days ARO</b>	
F.O.B. <b>Delivered</b>	SHIPPED FROM <b>Meyercord Revenue, Inc.</b>	
ALTERNATE PAYMENT OPTIONS: <input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other		
MINIMUM DELIVERY REQUIREMENTS <b>N/A</b>		

**NATURE OF CHANGE(S):**

**Effective October 19, 2011, this Contract is hereby EXTENDED to August 14, 2013 and an additional \$1,000,000.00 has been added to the Contract Value.**

**All other Terms and Conditions, and Pricing remain unchanged.**

**AUTHORITY/REASON:**

**Per Department of Treasury Request dated 7/20/2011, DTMB Purchasing Operations approval and State AdBoard approval dated 10/18/2011.**

**INCREASE: \$1,000,000.00**

**TOTAL REVISED ESTIMATED CONTRACT VALUE: \$2,934,297.04**

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

August 9, 2011

**CHANGE NOTICE NO. 1**  
**TO**  
**CONTRACT NO. 071B8200253**  
**between**  
**THE STATE OF MICHIGAN**  
**and**

NAME & ADDRESS OF CONTRACTOR  <b>Meyercord Revenue Inc.</b> <b>475 Village Drive</b> <b>Carol Stream, IL 60188</b>  Email: <a href="mailto:Mike.Riley@sicpa.com">Mike.Riley@sicpa.com</a>	TELEPHONE Mike Riley <b>(703) 455-8050</b>
	CONTRACTOR MAIL CODE
	BUYER/CA (517) 241-7233 <b>Donald Mandernach</b>
Contract Compliance Inspector: Mary Ann Vicini (517) 636-4415 <b>Tobacco Stamps, Machines, Scanners and Related Services – Department of Treasury</b>	
CONTRACT PERIOD: From: <b>August 15, 2008</b> To: <b>August 14, 2011</b>	
TERMS  <b>Net 30</b>	SHIPMENT  <b>30 Days ARO</b>
F.O.B.  <b>Delivered</b>	SHIPPED FROM <b>Meyercord Revenue Inc.</b>
MINIMUM DELIVERY REQUIREMENTS <b>N/A</b>	
MISCELLANEOUS INFORMATION:	

**NATURE OF CHANGE (S):**

Effective August 14, 2011, this Contract is hereby EXTENDED to August 14, 2012.

Also, the vendor contact has been changed to Mike Riley and the Buyer has been changed to Donald Mandernach.

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

**AUTHORITY/REASON:**

Per agency request (PRF dated 7/20/2011), vendor agreement (email from Shelley Vereen on 7/26/2011) and DTMB-Purchasing Operations approval.

**TOTAL ESTIMATED CONTRACT VALUE REMAINS: \$1,934,297.04**

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

August 8, 2008

**NOTICE  
 OF  
 CONTRACT NO. 071B8200253  
 between  
 THE STATE OF MICHIGAN  
 and**

NAME & ADDRESS OF CONTRACTOR  <b>Meyercord Revenue Inc.</b> <b>475 Village Drive</b> <b>Carol Stream, IL 60188</b>  Email: <a href="mailto:jsprawka@meyercord.com">jsprawka@meyercord.com</a>	TELEPHONE John Sprawka <b>(630) 682-6239</b>
	CONTRACTOR MAIL CODE
	BUYER/CA (517) 241-1647 <b>Irene Pena</b>
Contract Compliance Inspector: Mary Ann Vicini (517) 636-4415 <b>Tobacco Stamps, Machines, Scanners and Related Services – Department of Treasury</b>	
CONTRACT PERIOD: From: <b>August 15, 2008</b> To: <b>August 14, 2011</b>	
TERMS <p style="text-align: center;"><b>Net 30</b></p>	SHIPMENT <p style="text-align: center;"><b>30 Days ARO</b></p>
F.O.B. <p style="text-align: center;"><b>Delivered</b></p>	SHIPPED FROM <p style="text-align: center;"><b>Meyercord Revenue Inc.</b></p>
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;"><b>N/A</b></p>	
MISCELLANEOUS INFORMATION:	

The terms and conditions of this Contract are those of ITB #07118200035, this Contract Agreement and the vendor's quote. In the event of any conflicts between the specifications, term and conditions indicated by the State and those indicated by the vendor, those of the State take precedence.

Estimated Contract Value: **\$1,934,297.04**

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

**CONTRACT NO. 071B8200253**  
**between**  
**THE STATE OF MICHIGAN**  
**and**

NAME & ADDRESS OF CONTRACTOR  <b>Meyercord Revenue Inc.</b> <b>475 Village Drive</b> <b>Carol Stream, IL 60188</b>  Email: <a href="mailto:jsprawka@meyercord.com">jsprawka@meyercord.com</a>	TELEPHONE John Sprawka <b>(630) 682-6239</b> CONTRACTOR MAIL CODE  BUYER/CA (517) 241-1647 <b>Irene Pena</b>
Contract Compliance Inspector: Mary Ann Vicini (517) 636-4415 <b>Tobacco Stamps, Machines, Scanners and Related Services – Department of Treasury</b>	
CONTRACT PERIOD: From: <b>August 15, 2008</b> To: <b>August 14, 2011</b>	
TERMS <p style="text-align: center;"><b>Net 30</b></p>	SHIPMENT <p style="text-align: center;"><b>30 Days ARO</b></p>
F.O.B. <p style="text-align: center;"><b>Delivered</b></p>	SHIPPED FROM <p style="text-align: center;"><b>Meyercord Revenue Inc.</b></p>
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;"><b>N/A</b></p>	
MISCELLANEOUS INFORMATION:  <p><b>The terms and conditions of this Contract are those of ITB #07118200035, this Contract Agreement and the vendor's quote. In the event of any conflicts between the specifications, term and conditions indicated by the State and those indicated by the vendor, those of the State take precedence.</b></p> <p><b>Estimated Contract Value: \$1,934,297.04</b></p>	

**THIS IS NOT AN ORDER:** This Contract Agreement is awarded on the basis of our inquiry bearing the ITB No. 07118200035. Orders for delivery of equipment will be issued directly by the Department of Treasury through the issuance of a Purchase Order Form.

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

<p><b>FOR THE CONTRACTOR:</b></p> <p style="text-align: center;"><b>Meyercord Revenue Inc.</b></p> <hr/> <p style="text-align: center;">Firm Name</p> <hr/> <p style="text-align: center;">Authorized Agent Signature</p> <hr/> <p style="text-align: center;">Authorized Agent (Print or Type)</p> <hr/> <p style="text-align: center;">Date</p>	<p><b>FOR THE STATE:</b></p> <hr/> <p style="text-align: center;">Signature</p> <p style="text-align: center;"><b>Anthony Des Chenes, Director</b></p> <hr/> <p style="text-align: center;">Name/Title</p> <p style="text-align: center;"><b>Commodities Division, Purchasing Operations</b></p> <hr/> <p style="text-align: center;">Division</p> <hr/> <p style="text-align: center;">Date</p>
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## **Article 1 – Statement of Work (SOW)**

### **1.0 Project Identification**

#### **1.001 PROJECT REQUEST**

The purpose of this Contract is for cigarette stamps, stamping machines, scanners and related services on an ongoing basis. Exact quantities to be purchased are unknown; however, the Contractor will be required to furnish all such materials and services as may be ordered during the Contract period. Quantities specified are estimates based on prior purchases, and the State is not obligated to purchase in these or any other quantities (see Article 1, Attachment A for estimated annual quantities and see Exhibit E for the number and location of licensed wholesalers and unclassified acquirers who apply Michigan cigarette stamps). Orders for delivery will be issued directly to the Contractor by Department of Treasury on the Purchase Order Contract Release Form.

The Contract is a Unit Price per Cigarette Stamp Contract. All costs are to be included in the total Unit Price, including but not limited to computer hardware, software, applications service provider costs and interfacing costs to any State of Michigan or its designees' computer systems.

#### **1.002 BACKGROUND**

The Tobacco Products Tax Act (Act 327 of 1993) provides for a tax upon the sale of tobacco products. The State of Michigan (State), Act 327 restricts the application of cigarette stamps to currently licensed cigarette wholesalers and unclassified acquirers (herein after referred to as Distributors). Department of Treasury administers the collection and disposition of the tax. Currently, stamps are produced via a heat applied process and contain multiple layers.

### **1.1 Scope of Work and Deliverables**

#### **1.101 IN SCOPE**

The Contractor will provide the following:

1. Stamps or equivalent indicia as approved at the sole discretion of the Michigan Department of Treasury
2. Stamping Machines (Machines)
3. Machine Maintenance
4. Scanning Devices for inspections of stamps by designated representatives of the Michigan Department of Treasury (verify security features)

#### **1.102 OUT OF SCOPE**

The following services are out-of-scope at this time; however, the State may potentially require these services in the future, and Contractor's capability/cost to provide these services is requested (cost information should be provided in Article 1, Attachment A):

1. Other Tobacco Product (OTP) stamping (i.e. moist tobacco, cigars, roll-your-own, etc.). Describe any products/services Contractor may be able to provide for OTP (i.e. moist tobacco, cigars, roll-your-own, etc.).



Contractor Response to Task:

Meyercord in conjunction with SICPA and United Silicone is developing a system for stamping OTP.

### 1.103 ENVIRONMENT

#### A. State IT Standards and Policies

1. Information technology (IT) standards, procedures and policies are referenced in section 2.051; additionally, they are located at <http://michigan.gov/dit/0,1607,7-139-34305---.00.html>.

#### B. State Workstations

1. Pentium III 800 Mhz – Pentium 4 2.3 Ghz workstations
2. 256 MB to 512 MB memory
3. Microsoft Windows XP operating system
4. 100 megabit/1 gigabit network connection
5. 15" to 22" high resolution monitors.

#### C. State Software

1. Microsoft Office XP
2. Microsoft Internet Explorer 6.0
3. Database Standard is at [http://www.michigan.gov/documents/1310\\_163055\\_7.34.doc](http://www.michigan.gov/documents/1310_163055_7.34.doc) (policy 1310.34 [Database Management Systems]).

### 1.104 WORK AND DELIVERABLE

The following is a preliminary listing of the major tasks involved for developing the end deliverables of this project. However, the Contractor is not constrained from supplementing this listing through additional steps, sub tasks, or elements deemed necessary to permit the development of alternative approaches, or the application of proprietary techniques.

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

#### A. Stamps

1. Describe the value-added by providing heat-applied stamps [strengths/weaknesses and opportunities/threats of heat-applied stamps (e.g. delivery method(s), application method(s), unapplied stamps storage method(s), applied stamps, machinery, forgery risks, field inspection methods, enforcement, etc.]. Include supporting documentation.

Contractor Response to this Task:

Meyercord will provide a cost-effective solution to maximize the collection of cigarette taxes and deter illicit activity, including counterfeiting of cigarette tax stamps.

As cigarette tax rates continue to rise the incentive to evade cigarette taxes rises dramatically along with the tax rates.

Millions of dollars are lost from

- Cigarette smuggling
- Export cigarette diversion (gray market)
- Stamp counterfeiting



- Cigarette counterfeiting
- Internet Sales

Our solution will help the State;

- Protect its existing tax revenue stream
- Ensure collection of future cigarette tax increases
- Deter illicit criminal activity

With the cooperation of the State and its Licensed Cigarette Distributors, we will provide:

- Secure stamp manufacturing and distribution processes
- Multiple layered security technologies that will protect the Michigan Cigarette Tax Stamp from counterfeiting.
- A system for authentication of cigarette tax stamps
- Upgraded stamp application machinery that will improve stamp application and throughput at Licensed Tobacco Distributors.
- Upgraded tools for Michigan enforcement agents to authenticate cigarette tax stamps utilizing multi-layered security features inherent in the tax stamp.

Meyercord's Fuson® Tax Stamping System has proven to be the most reliable method for maximizing the collection of cigarette taxes. Meyercord's System is essentially an inexpensive insurance policy protecting the State's revenue stream.

Meyercord's Fuson® Tax Stamping System is a proven system.

Meyercord's Fuson® Tax Stamping System, is a total system designed to maximize the collection of cigarette taxes, consisting of four main components;

*Stamps* – Meyercord provides heat- applied, counterfeit resistant stamps to State & Local Governments. Meyercord's tax stamps provide tangible evidence that the tax has been paid.

*Authentication Devices* - Meyercord has also developed authentication devices to that enable enforcement agents to validate the authenticity of the tax stamp. These authentication devices provide instantaneous validation of the authenticity of the stamp.

*Machines* – Meyercord's tax stamping machines are leased to licensed tobacco distributors throughout the United States, to apply Meyercord's cigarette tax stamps easily and accurately at a high rate of speed.

*Service* – Meyercord's application machines are supported by a service organization dedicated to maintaining the equipment to insure uninterrupted stamping and protecting the revenue stream.

Meyercord's Fuson® Tax Stamping System is widely used.

Meyercord's Fuson® Tax Stamping System maximizes revenues.

Cigarette packs bearing Meyercord's cigarette tax stamps offer positive and tangible evidence that the cigarette tax has been paid while protecting taxing authorities from tax evasion schemes. Meyercord's tax stamping system is a proven system designed to maximize the collection of cigarette tax revenues.



Meyercord's Revenue Inc. utilizes state-of-the-art printing and finishing processes. At the heart of Meyercord's technology is a state-of-the-art printing and finishing process that allows Meyercord the capability to design and include various security and anti-counterfeiting features into the printed tax stamps. The printing press has the capability to run a wide range of inks and substrates. The stamp finishing area is geared to keep pace with high volume production output, using sophisticated equipment. This arrangement maximizes Meyercord's ability to produce, finish and ship stamps without costly delays and/or backlogs.

Meyercord's printing facility was designed to efficiently move the flow of raw materials through the manufacturing process, minimizing constraints on productivity in a high security environment. Digital video cameras monitor all access points to the building as well as throughout the production and shipping areas. Entry into the building is limited to employees and invited guests via secure entry points. Access to the secure production areas within the building is restricted to personnel who are integral to the stamp printing and finishing processes.

Meyercord's Fuson® heat-applied cigarette tax stamps are produced in a state-of-the-art secure environment.

Meyercord has taken extraordinary measures to protect its cigarette tax stamps from being counterfeited.

Meyercord is keenly aware of and sensitive to potential threats that could potentially compromise the security of the tax stamp. Our full effort is designed to ensure against potential counterfeiting of the stamps or fraud. Our thrust on this program is to protect the interests of the State and, to do that, we draw upon our successes providing stamps to other states and municipalities.

All of these efforts are designed to ensure complete accountability of the products we will provide to the Treasury.

Meyercord Revenue Inc. uses recognized and specialized security precautions and protocols to protect against alteration of, and unlawful and/or unauthorized access to, the production, storage and distribution of tax stamps and the critical components in their production. This Security Plan is a high level description of the elements in use for this program that include:

- The production facilities and people who use or visit those facilities,
- Accountability for raw materials used in the manufacturing process the production of the stamps,
- The shipping of the stamps to the Licensed Cigarette Distributors
- The security of and access to the computers that provide the tools to assist in production, production controls, records and audit trail.
- The uncompromised accountability for the security of the program

For more information regarding Meyercord's security system please refer to our response to sections A8a-c, A11, and A12





2. General Stamp Specifications

- a. Stamps are heat applied and made up of at least five impressions or layers (including safety tint lettering).

Contractor Response to this Task:

We understand and agree to this specification. Stamps will consist of at least five impressions including the safety tint lettering

- b. Stamps must be produced by the intaglio process and be suitable for positive application with heat to the cellophane, mylar or polypropylene cigarette package wrapper material.

Contractor Response to this Task:

We understand and agree to this specification with the point of clarification that the stamps are printed using the Gravure process. Although stamps can be applied to other substrates, stamps are specifically designed for positive application to polypropylene with a minimum dyne level of 38 dynes.

- c. Stamps must be printed on paper with a special safety tint lettering which will transfer with the stamp during application and become part of the stamp. When exposed to ultraviolet light, the safety tint must fluoresce.

Contractor Response to this Task:

We understand and agree to this specification. The paper will be printed with a special safety tint lettering that will transfer with the stamp during application and fluoresce when exposed to ultraviolet light.

- d. Each stamp on rolls, sheets or pads must be uniquely numbered, and the roll/pad shall contain a roll/pad number and all stamps shall be sequentially numbered on every stamp. Individual stamp numbers roll numbers and pad numbers respectively must not be duplicated, regardless of whether the stamps are on a cigarette pack. Each stamped pack of cigarettes must be traceable by the distinct serial number on each stamp to the licensee. Package marker systems are not acceptable. Additional visual or hidden security features may be proposed (e.g., information on the date of affixing the stamp).

Contractor Response to this Task:

We understand and agree with this specification. A unique two line 10 digit numeric will be printed on each stamp, indicating the stamp roll number on the first line i.e. 12345 and the individual stamp number on the second line 00001 through 30,000. Stamp designs would be changed to accommodate the larger numbering window. Stamp numbers would not be repeated for 10 years based on an annual volume of 600,000,000 stamps. This unique number will allow the State to trace the stamp to the wholesaler that applied it.

- e. Stamps must be provided in various denominations and layouts per section 1.104.A.4.

Contractor Response to this Task:

We understand and agree to this specification

- f. Stamps on sheets must be padded or stapled in agreed upon quantity per pad and numbered to comply with section 1.104.A.4. All sheets must be consecutively numbered, and there will be no duplicate sheet numbers. Each pad must be



individually and uniquely numbered. Pad numbers must not be duplicated, and stamp numbers must not be duplicated.

Contractor Response to this Task:

We understand and agree to this specification.

- g. The stamps must readily and permanently adhere to all cigarette package wrapper materials or the package within the wrapper in such a manner that they cannot be removed without either being destroyed or rendered unusable as an indicator of tax payment or destroying the wrapper.

Contractor Response to this Task:

Fuson stamps are designed to permanently adhere to most cigarette package wrapper materials in such a manner that they cannot be easily removed intact by hand without either being destroyed or rendered unusable as an indicator of tax payment. (Provided that the minimum surface tension (dyne) of the wrapper is the industry standard of 38 dynes.) Wrappers with dynes of less than 38 will compromise stamp application quality. Meyercord's Fuson stamps are designed so that they cannot be manually peeled off. However, the stamp can be removed with tape and re-applied. Our experience indicates that reapplication using this method is readily apparent to enforcement agents based on the evidence of tape on the polypropylene and the partial application of the stamp. Reapplication still leaves one pack without tangible evidence that the tax has been paid.

- h. Stamps furnished for machine application must be demonstrated by the Contractor to meet all specification requirements of this section and all other provisions of this Contract described in sections, including but not limited to, 1.104.A.2.d and A.2.g, and apply to machines proposed at minimum application rate identified in section 1.104.B.

Contractor Response to this Task:

We understand and agree to this specification. Machines will be capable of applying stamps up to 120 cartons per minute. The machines will be capable of applying stamps to the great majority of cigarettes that are packaged in a 2 x 5 carton configuration. Other carton configurations or products produced or marketed in a manner inconsistent with industry standards may not be capable of being processed on new equipment; this is consistent with current equipment stamping capabilities.

New center stamping equipment will have overall improved transfer when compared to existing machines that do not center stamp, in that the stamps are applied to the center area of the packs in most cases. Certain brands outside the standards mentioned above may be processed on the machine, but may experience compromised stamp transfer due to particular characteristics of the product, such as a non-standard carton length that results in partial stamp application on the seams of the cigarette packs polypropylene wrapper.

- i. Spoiled rolls and pads shall be identified as "not in circulation." A certified listing of all rolls "not in circulation" must be provided to Contract Compliance Inspector or designee prior to delivery.

Contractor Response to this Task:

We understand and agree to this specification. Rolls/pads shall be coded in sequential order. Spoiled rolls/pads shall be identified as "not in circulation." The beginning and ending roll number shall be clearly indicated on the outside of the box of 25 stamp rolls. For example: "Roll #1 - Roll #26." A certified listing of all rolls/pads "not in circulation"



shall be provided to the State.

- j. All negatives, plates, color separations and other materials and information submitted to or produced by the Contractor in fulfillment of the resulting Contract are the property of the State of Michigan and must be returned to the Contract Compliance Inspector or designee when final invoice is submitted.

Contractor Response to this Task:

We understand and agree to this specification. Plates, designs, patterns, films, negatives, cylinders, and the like will be used solely for this order and subsequent orders if any. At the completion of this order, or at the termination of this contract, or at any time if the State so desires, all such plates, designs, films, etc., will be destroyed and disposed of as directed by the State.

Cylinders used in the manufacturing process are recycled when design changes are made. All cylinders are stored in the secure area of the plant. All cylinders will be defaced when Contract expires or is terminated so that they cannot be used for printing. Design proofs are password and firewall protected. The graphic Art processes are located in the secure area of the plant and physical access is protected by biometrics, user id and passwords. All design proofs will be returned to the Contract Compliance Inspector or designee when Contract expires or is terminated.

- k. Contractor must notify Contract Compliance Inspector or designee at least 60 days in advance prior to implementation of proposed specification changes, and its effect on stamp application including, but not limited to, necessary adjustments of machines to ensure proper stamp adhesion and an implementation plan.

Contractor Response to this Task:

We understand and agree to this specification.

3. Stamp Carrier Stock

Stamps must be made on unique, safety tinted, mill controlled, colored paper CARRIER furnished by the Contractor AND SUITABLE FOR PROPOSED EQUIPMENT. The Contractor must render an accurate accounting of all paper used in the production of machine applied stamps, including spoilage, and verify such accounting record by affidavit to the Contract Compliance Inspector or designee.

Contractor Response to this Task:

We understand and agree to this specification. Stamps will be printed on, mill controlled paper provided by our paper supplier. All paper is used for the manufacturing of heat-applied stamps. The same paper is used for production of all heat-applied tax stamps utilized in 46 States and is suitable for all Meyercord stamp application machines.

All paper and stamps will be strictly accounted for and kept in a secure area and destroyed in the presence of a duly authorized agent of the State.

Complete and accurate accounting of each and every stamp and all paper and any other material used in the production of these stamps will be given to authorized representatives of the State upon demand at any time. Inspection of the plant and all records and books of account will be allowed by the contractor at any time upon demand of authorized representatives of the State.



At all times the contractor will supervise closely the production of these stamps. Security measures will be employed to assure that all finished goods and production materials are properly accounted for. Every precaution will be taken to make certain that these stamps are not counterfeited or produced anywhere for any other purpose than the use of the State.

- a. The base paper must contain identifiable protective features that will at once permit analysis to establish its authenticity.

Contractor Response to this Task:

We understand and agree to this specification. All paper is printed with a special safety tint approved by the Contract Compliance Inspector or designee. The safety tint lettering appears on the face of the stamp as well as the base paper around the stamp. The safety tint transfers with the stamps, the lettering extends beyond the edges of the stamp when transferred with the stamp. The safety tint will fluoresce under a UV light. The printing of the safety tint on the base paper allows the Contract Compliance Inspector to establish authenticity.

- b. The base paper must contain fibers that under ordinary daylight are not distinguishable from the remainder of the fibers in the base paper but shall become brightly fluorescent when exposed to rays of ultra-violet light. This fluorescence must be a permanent effect whenever tests are made and must not be fugitive. If Contractor offers any other than this type of paper, Contract Compliance Inspector or designee reserves the right to decide whether or not such paper will meet its requirements.

Contractor Response to this Task:

We understand and agree to this specification. All paper is printed with a special safety tint approved by the Contract Compliance Inspector or designee. The safety tint will fluoresce under a UV light. By printing the safety tint on the base paper, Meyercord maintains control of the security of the tax stamp in case the base paper should fall into the wrong hands.

- c. All paper must be processed with a special safety tint reading with copy to be specified by Contract Compliance Inspector or designee and must be arranged and printed so it cannot be photographed on a color copier or scanned on a computer scanner. The safety tint lettering must be printed to appear on the face of the stamp and also appear on the paper between the stamps. The safety tint must transfer with the stamps, and the lettering extending beyond the edges of the stamp must also transfer with the stamp.

Contractor Response to this Task:

We understand and agree to this specification. The safety tint lettering cannot be photographed on a color copier or scanned on a computer scanner. The safety tint lettering will appear on the face of the stamp as well as on the paper between the stamps. The safety tint transfers with the stamps, and the lettering extends beyond the edges of the stamp when transferred with the stamp.

- d. All paper and stamps spoiled in the production process must be accounted for, kept under lock and key at the Contractor's facility and destroyed only at the direction of and in the presence of a State representative as authorized by Contract Compliance Inspector or designee. The Contractor must provide an affidavit to that effect after



destruction is complete. Treasury may waive its right to witness destruction. The accounting records must be furnished to the State upon request.



Contractor Response to this Task:

We understand and agree to this specification. Meyercord maintains detailed accounting information for all materials used in the production of tax stamps.

A full and accurate account will be made for all spoiled raw materials, stamps, and other materials. Upon completion or upon termination of this contract—or at any time the State desires—all designs, cylinders and associated materials will be destroyed and disposed of as directed by the State.

Complete and accurate accounting of each and every stamp and all paper or other materials used in the production of these stamps will be given to authorized representatives of the State upon request. Inspection of the plant and all records and books of account will be provided by Meyercord at any time upon request by authorized representatives of the State.

At all times, we will closely supervise the production of tax stamps. Security measures will be employed to ensure that all finished goods and production materials are properly accounted for. Every precaution will be taken to make certain that the stamps are not counterfeited or produced anywhere for any purpose other than use by the State.

Meyercord stores spoiled materials within a secure area. All spoilage generated during the production process is recorded and stored by number. Spoilage is held in a designated location until State Compliance Inspectors are available for reconciliation and to witness or authorize its destruction. Once destroyed, the accumulation of spoilage data will be forwarded to the Customer Service Coordinators for preparation of an affidavit. When stamps are destroyed, a Meyercord employee will be present. Stamps designated for destruction will never be left unattended.

Meyercord maintains records for all stamps produced, including stamps that will require destruction. Paper records are kept in the production accounting office, which is locked during non-working hours. Electronic records are maintained in Meyercord’s production accounting system. All records are available for inspection by the State.

4. Layout and Packaging

- a. **Heat Applied Serial Numbered “20” Cigarette Tax Stamps** (15 per row) must be furnished in rolls with a standard number of stamps per row and a standard number of total stamps per roll. Currently, 30,000 stamps are included on each roll. The stamp rolls must have ascending and descending numbers printed on the base paper at a standard interval to provide an exact count of stamps remaining and stamps used on the roll.

Each roll must to be packed in a custom fit serially numbered cardboard box, securely sealed. The box must be labeled with the denomination, quantity and roll number. For example:

PURCHASE ORDER # \_\_\_\_\_  
 “20” Tax-Paid Cigarette Stamps (15 per row)  
 30,000 stamps  
 Roll 00001 – XXXXX

Individual boxes of rolls shall be packed twenty-five (25) boxes per carton. Cartons must be sturdy enough to withstand normal shipping and handling and closed securely so cartons will not open accidentally. ALL cartons must be labeled with the denomination, Treasury Purchase Order number, quantity, and the beginning and ending roll numbers it contains.



Contractor Response to this Task:

We understand and agree to this specification

- b. **Heat Applied Serial Numbered “20” Cigarette Tax Stamps** (15 per row) must be furnished in sheets with a standard number of stamps per row and a standard number of stamps per sheet. Currently, 150 stamps are included on each sheet. Each sheet must be consecutively numbered. Sheets shall be stapled together in-groups of ten (10) consecutively numbered sheets.

One hundred (100) sheets shall be packed in a custom fit serially numbered cardboard box, securely sealed. The box must be labeled with the denomination, Treasury Purchase Order number, quantity and serial numbers of the sheets contained therein. For example:

PURCHASE ORDER # \_\_\_\_\_  
 “20” Tax-Paid Cigarette Stamps (15 per row)  
 150 stamps  
 Sheets 00001 - XXXXX

Boxes must be sturdy enough to withstand normal shipping and handling and closed securely so boxes will not open accidentally. ALL cartons must be labeled with the denomination, Treasury Purchase Order number, quantity, and the beginning and ending sheet numbers it contains.

Contractor Response to this Task:

We understand and agree to this specification

- c. **Heat Applied Serial Numbered “25” Cigarette Tax Stamps** shall be furnished in sheets of 150 (15 stamps per row).

Stamps must be spaced for application to packages of “25” cigarettes by hand iron. Each sheet must be consecutively numbered. Ten (10) sheets shall be stapled together.

One hundred (100) sheets shall be packed in a custom fit serially numbered cardboard box, securely sealed. The box must be labeled with the denomination, quantity and serial numbers of the sheets contained therein. For example:

PURCHASE ORDER # \_\_\_\_\_  
 “25” Tax-Paid Cigarette Stamps (15 stamps per row)  
 150 stamps  
 Sheets 00001 – XXXXX

Individual boxes of sheets shall be packed twenty-five (25) boxes per carton. Cartons must be sturdy enough to withstand normal shipping and handling and closed securely so cartons will not open accidentally. ALL cartons must be labeled with the denomination, Treasury Purchase Order number, quantity, and the beginning and ending sheet numbers it contains.

Contractor Response to this Task:

We understand and agree with this specification

- d. **Heat Applied Serial Numbered “1” Cigarette Tax Stamps** shall be furnished in sheets of 150 (15 stamps per row).



Each sheet must be consecutively numbered. Ten (10) sheets shall be stapled together.

One hundred (100) sheets shall be packed in a custom fit serially numbered cardboard box, securely sealed. The box must be labeled with the denomination, quantity and serial numbers of the sheets contained therein. For example:

PURCHASE ORDER # \_\_\_\_\_  
 "1" Tax-Paid Cigarette Stamps (15 stamps per row)  
 150 stamps  
 Sheets 00001 - XXXXX

Individual boxes of sheets shall be packed twenty-five (25) boxes per carton. Cartons must be sturdy enough to withstand normal shipping and handling and closed securely so cartons will not open accidentally. ALL cartons must be labeled with the denomination, Treasury Purchase Order number, quantity, and the beginning and ending sheet numbers it contains.

Contractor Response to this Task:

We understand and agree with this specification

- e. **TRIBAL Heat Applied Serial Numbered "20" Cigarette Tax Stamps** (15 per row) shall be furnished in rolls of 30,000 stamps with ascending and descending numbers at 300 stamp intervals to provide an exact count of stamps remaining and stamps used on the roll.

Each roll must be packed in a custom fit serially numbered cardboard box, securely sealed. The box must be labeled with the denomination, quantity and roll number. For example:

PURCHASE ORDER # \_\_\_\_\_  
 "20" Tax-Paid Tribal Cigarette Stamps (15 per row)  
 30,000 stamps  
 Roll 00001 - XXXXX

Individual boxes of rolls shall be packed twenty-five (25) boxes per carton. Cartons must be sturdy enough to withstand normal shipping and handling and closed securely so cartons will not open accidentally. ALL cartons must be labeled with the denomination, Treasury Purchase Order number, quantity, and the beginning and ending roll numbers it contains.

Contractor Response to this Task:

We understand and agree with this specification

- f. **TRIBAL Heat Applied Serial Numbered "20" Cigarette Tax Stamps** (15 per row) shall be furnished in sheets of 150 stamps. Each sheet must be consecutively numbered. Sheets shall be stapled together in-groups of ten (10) consecutively numbered sheets.

One hundred (100) sheets shall be packed in a custom fit serially numbered cardboard box, securely sealed. The box must be labeled with the denomination, Treasury Purchase Order number, and quantity and serial numbers of the sheets contained therein. For example:

PURCHASE ORDER # \_\_\_\_\_  
 "20" Tax-Paid Tribal Cigarette Stamps (15 per row)



150 stamps  
 Sheets 00001 – XXXXX

Boxes must be sturdy enough to withstand normal shipping and handling and closed securely so boxes will not open accidentally. ALL cartons must be labeled with the denomination, Treasury Purchase Order number, quantity, and the beginning and ending sheet numbers it contains.

Contractor Response to this Task:

We understand and agree with this specification

- g. **TRIBAL Heat Applied Serial Numbered “25” Cigarette Tax Stamps** (15 per row) shall be furnished in sheets of 150 stamps. Each sheet must be consecutively numbered. Sheets shall be stapled together in-groups of ten (10) consecutively numbered sheets.

One hundred (100) sheets shall be packed in a custom fit serially numbered cardboard box, securely sealed. The box must be labeled with the denomination, Treasury Purchase Order number, quantity and serial numbers of the sheets contained therein. For example:

PURCHASE ORDER # \_\_\_\_\_  
 “25” Tax-Paid Tribal Cigarette Stamps (15 per row)  
 150 stamps  
 Sheets 00001 - XXXXX

Boxes must be sturdy enough to withstand normal shipping and handling and closed securely so boxes will not open accidentally. ALL cartons must be labeled with the denomination, Treasury Purchase Order number, quantity, and the beginning and ending sheet numbers it contains.

Contractor Response to this Task:

We understand and agree with this specification

5. Inks and Printing

All inks necessary for printing the stamps must be supplied by the Contractor or designated subcontractor approved by Treasury. The inks shall be highly resistant to fading in sunlight and shall not bleed in water, except as an anti-counterfeiting technique. The specifications for the ink may be reviewed by an authorized representative of the State.

Contractor Response to this Task:

We understand and agree with this specification.

6. Colors and Design

- a. All colors and designs of all Michigan tobacco stamps shall be prescribed by the State and no changes may be made without prior written authorization from Contract Compliance Inspector or designee.

Contractor Response to this Task:

We understand and agree with this specification

- b. Stamp Size: 7/16” x 7/16” irregular shape and outline.



Contractor Response to this Task:

We understand and agree with this specification.

- c. Composition: Contractor must design composition. Contract Compliance Inspector must approve design, and no changes may be made without prior written authorization from Contract Compliance Inspector or designee.

Contractor Response to this Task:

We understand and agree with this specification

- d. Change in Stamp Design: The Contractor will be required, within two (2) calendar weeks notice or sooner if possible, to make changes in the stamp design as required by Treasury at any time during the Contract. The Contractor must be able to make changes in colors, printing, chemicals, papers, and other elements of the stamps quickly and with ease. Costs associated with the change in stamp design must be included in the unit price.

Contractor Response to this Task:

We understand and agree with this specification

- e. Color: Stamps will contain colors to be specified by Contract Compliance Inspector or designee. Half tones, Ben-Day effects, shades, tints or tones are not acceptable as separate and distinctive colors.

Contractor Response to this Task:

We understand and agree with this specification

- f. Proofs: Proofs must be delivered to Contract Compliance Inspector or designee within three (3) business days of receiving copy.

Contractor Response to this Task:

We understand and agree with this specification

7. Delivery

- a. Stamps (six [6] month-supply) in such quantities as specified by Treasury must be made within 30 calendar days\* from Contractor's receipt of Purchase Order.

\* Calendar days include Saturdays and Sundays, but does not include the following holidays: New Year's Eve third shift, New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Eve third shift and Christmas Day. Third shift is any shift beginning after 6 p.m. If any of these holidays falls on a weekend, one extra day will be granted.

- b. All shipments of stamps must be made by bonded/insured carrier, prepaid, at the risk and expense of the Contractor. In the event a bonded/insured carrier is not available, other methods of transportation may be used only with prior written approval from Contract Compliance Inspector or designee. For any shipment in transit overnight when not traveling, the trailer must be stored in a locked building.

Contractor Response to this Task:

We understand and agree with this specification. Stamps will be available for shipment in quantities designated by the Treasury within 30 days of receipt of order and artwork approval. All stamps will be shipped by bonded/insured carriers prepaid. For security



reasons stamps are delivered the same day. At no time is a truck allowed to stop overnight during a shipment.

- c. Two days prior to the shipment, the Contractor must advise Contract Compliance Inspector or designee of the delivery date.

Contractor Response to this Task:

We understand and agree to this specification.

- d. Tobacco stamp shipments must be delivered F.O.B. Destination to a single Treasury storage facility in Michigan between 8:00 a.m. and 11:00 a.m. on the delivery date. Treasury reserves the right to refuse to receive shipments arriving later than 11:00 a.m. Cartons shall be placed on the delivery truck so the pallet containing the highest numbered carton is in position to be unloaded first, and those following in sequence until the pallet containing the lowest numbered carton is in position to be unloaded last. Treasury reserves the right to refuse shipments loaded in any other configuration.

Contractor Response to this Task:

We understand and agree to this specification.

- e. Palletizing: Shipments must be palletized on Treasury provided pallets and must conform to the following (see diagram, Exhibit D):
  1. Manufacturer’s standard 4-way shipping pallets are acceptable.
  2. Pallet Dimensions: 48” x 42”
  3. Maximum height: Stack four (4) cartons high. Cartons must be stacked so the cartons containing the lowest numbered stamps are on top and the highest numbered stamps are on the bottom.
  4. Maximum weight: 3,500 pounds; including pallet.

Contractor Response to this Task:

We understand and agree to this specification. We currently ship on pallets provided by the treasury.

- f. The Contractor must bear the costs of carrier for storage and second delivery of shipments when the original shipment is refused by Treasury because delivery did not comply with requirements in section 1.104.A.7.

Contractor Response to this Task:

We understand and agree to this specification

- g. Treasury may require the Contractor to store newly-manufactured tobacco stamps in the Contractor’s facility. Storage may involve an entire printing order or a portion of an order and may be as little as two weeks or as much as 180 days. The alternate storage facility must have security appropriate for the storage of negotiable instruments. The State reserves the right to enter the storage facility at any time Michigan tobacco stamps are being stored there to inspect for appropriate security measures. The facility must be located so a request by Treasury can prompt guaranteed delivery within three (3) calendar days. Please exclude any costs of this item from the total unit cost and separately state the cost associated with storage. If Treasury opts to invoke this requirement, Treasury shall separately pay this cost.



## Contractor Response to this Task:

We understand and agree to this specification. All stamps will be stored at Meyercord's secure facility. An alternate storage facility will not be necessary.

- h. All prices include the costs associated with palletizing the stamps using Treasury provided pallets. Pallets remain the property of Treasury and must be returned to Treasury upon request.

## Contractor Response to this Task:

We understand and agree to this specification.

## 8. Security Features

- a. All stamps and paper must contain proven security features to guard against illegal reproduction including hidden indicia, hidden background with agreed upon wording, and other hidden security features. This includes security features that permit laboratory identification of inks and hidden indicia by the Contractor. Describe security features of stamps.

## Contractor Response to this Task:

We understand and agree to this specification  
Each **FUSON®** heat applied stamp contains multiple layers of overt and covert security features to safeguard the interests of the Treasury and to prevent unlawful reproduction. These protective features permit quick and easy field inspection to test the authenticity of the stamps:

*1 through 4 below are standard security features for all current Michigan stamps.*

1. Fuson stamps are printed on paper processed by Meyercord with a special **Safety Tint** lettering which will transfer with the stamp during application and become a part of the stamp. When exposed to ultraviolet long wave light, the safety tint will fluoresce pink or gray. (Overt)
2. Fuson stamps will contain sensitive materials that will react to a **chemical reagent**. A drop of this reagent will cause the stamp to change to a predetermined color within seconds. (Covert)
3. Stamp contains a visual **Variable Image** that will appear and disappear when viewed from different angles. This inspection can be performed at the retail outlet under varying light conditions. The variable image will appear as the states initials in the middle of the stamp. When exposed to ultraviolet short-wave light, the **Variable Image** will fluoresce green (Overt)
4. Stamps containing **Taggant**, an in-organic element, can be authenticated by pointing the **Taggant Pen** at the stamp. If the stamp is authentic it will emit a green luminescence. This test can be performed instantaneously under almost any light conditions. (Covert)

The following optional security features available for an additional charge:

5. Stamps printed with the **Microprint** security feature are printed in a character font that cannot be read with the naked eye. Microprint can be read by using a magnifying lens. The State will specify what the microprint should read. Enforcement agents can determine authenticity by using a magnifying lens to read the microprint. This security feature cannot be photocopied. (Semi- Overt)



- 6. Stamps containing **Taggant Plus** can be authenticated by pointing the **Taggant Tester** within one inch of the stamp. If the stamp is authentic, you will hear an audible beep as well as a visible purple light on the tester. This test can be performed instantaneously under almost any light conditions. (Covert)
- 7. Stamps containing Meyercord's **Forensic Marker** contain a unique in-organic element known only to Meyercord. Stamps containing Meyercord's **Forensic Marker** can be submitted to Meyercord's forensic laboratory to authenticate the stamp. This forensic marker can be verified using specialized equipment.

- b. Reader Pens: Contractor must provide up to twenty (20) reader pens per year at no additional cost to the State in order to verify hidden security features in stamps. Quantities above twenty (20) must be available for purchase by Treasury. Describe any options outside of read pens available to verify hidden security features.

Contractor Response to this Task:

We understand and agree to this specification. We will provide up to twenty taggant pens at no additional cost. **Taggant Testers** are also available. The taggant tester can be used to authenticate the taggant or taggant plus security feature or both depending on the configuration. The taggant tester is a battery operated device the size of a typical key fob. Stamps containing taggant can be authenticated by pointing the **Taggant Tester** within one inch of the stamp. If the stamp is authentic, you will hear an audible beep as well as a visible green light on the tester.

- c. **TREASURY OPTION:** Contractor shall advise Treasury if new technology becomes available to test for hidden security features.

Contractor Response to this Task:

We understand and agree to this specification. The **Taggant Tester** was developed using a different technology than the taggant pen for authenticating Meyercord's Taggant security feature. The taggant tester is a battery operated device the size of a typical key fob. Stamps containing taggant can be authenticated by pointing the **Taggant Tester** within one inch of the stamp. If the stamp is authentic, you will hear an audible beep as well as a visible green light on the tester. The **Taggant Tester Plus** includes an ultraviolet light to detect the presence of Meyercord's **Safety Tint** Security Feature as well as the **Taggant** Security Feature with one simple hand held authentication device. Stamps containing taggant and the safety tint can be authenticated by pointing the **Taggant Tester Plus** within one inch of the stamp. If the stamp is authentic, you will hear an audible beep as well as a visible green light on the tester and the safety tint will fluoresce pink.

9. Roll or Sheet Size

The Contractor must produce and package the stamps in quantities and denominations specified by Contract Compliance Inspector or designee. There will be no change in the roll size, roll numbering, use of roll cores, or use of roll containers without prior written approval from Contract Compliance Inspector or designee.

Contractor Response to this Task:

We understand and agree to this specification.



## 10. Storage

Finished stamps must be kept in secured storage at the plant of the Contractor until directions have been received from the Contract Compliance Inspector or designee for delivery of manufactured stamps.

The Contractor's storage area must be protected against damage or loss and meet the approval of Contract Compliance Inspector or designee. Treasury shall have access to the storage area for purposes of inspection and examination without advance notice to the Contractor.

### Contractor Response to this Task:

We understand and agree to this specification.

All finished stamps will be stored in a secure storage area protected by Meyercord's State of the Art security system. (See our response to Manufacturing Security in Section 11b. of our bid response) This secure area of the facility is restricted to employees involved with the production of cigarette tax stamps. Further, there are only two access points (which are protected by the biometric access control system) and no windows on the perimeter of the secure area.

Biometric devices control entry to the building and access to the secure stamp production, finishing and storage areas. The Access Control System is programmed to only allow employees into the facility and production areas during their regular working hours. In addition, only employees involved in the production of tax stamps are allowed access into the secure stamp production area. This assures the States that their products are being protected, as there is limited access to the production and inventory storage areas.

## 11. Manufacturing Security

- a. Outside perimeter of manufacturing and/or storage facility must contain, but not be limited to, the following:
  1. Fire exit doors with break alarm bell for local alert in the event of an exit.
  2. Locks on all outside doors.
  3. Intrusion alarm system.
  4. A log for all visitors entering office, storage and manufacturing areas.
  5. Limited access to all production and storage areas by the Contractor's employees or agents, and visitors.
  6. Security cameras.



### Contractor Response to this Task:

Meyercord has taken extraordinary measures to protect the State's revenue stream including all of the six required items above and additional measures.

We are keenly aware of and sensitive to potential threats that could potentially compromise the security of the tax stamp. Our full effort is designed to ensure against potential counterfeiting of the stamps or fraud. Our thrust on this program is to protect the interests of the State and, to do that, we draw upon our successes providing stamps to other states and local governments.

All of these efforts are designed to ensure complete accountability of the products we will provide to the Treasury.

The following precautions will be observed to protect the Treasury against theft and unlawful production of Fuson stamps.

Meyercord Revenue Inc. uses recognized and specialized security precautions and protocols to protect against alteration of, and unlawful and/or unauthorized access to, the production, storage and distribution of tax stamps and the critical components in their production. This Security Plan is a high level description of the elements in use for this program that include:

- The production facilities and people who use or visit those facilities,
- Accountability for raw materials used in the manufacturing process
- The production of the stamps,
- The shipping of the stamps to the Licensed Cigarette Distributors
- The security of and access to the computers that provide the tools to assist in production, production controls, records and audit trail.
- The uncompromised accountability for the security of the program

### Physical and Technical Controls

#### Facility

Our manufacturing facility is a modern, two story, fireproof building, fully equipped with Underwriters' approved sprinkler system. Additionally, the facility is one of a few air-conditioned and humidity controlled plants in the heat transfer/decal industry.

The entire manufacturing process including stamp design, cylinder etching, coating of the base paper stock, printing, numbering, finishing, packing and shipping of your stamps will be performed in our plant located in, Carol Stream, Illinois.

All departments of our plant involved with the manufacture of tax stamps will be open to any accredited officials of the State.

The following precautions will be observed to protect the Treasury against theft and unlawful production of cigarette tax stamps.

#### Exterior Lighting

The entire exterior perimeter of the building, including the parking lot, is fully illuminated.

#### Locked Facility

The entire exterior of the facility is locked at all times. Employees must enter through the employee entrance, using the biometric access control system. Visitors must be "granted



access” by the receptionist in order to gain entry into the facility.

#### Fire Door Alarms

The two exterior fire doors in the secure stamp production area are equipped with door alarms. If either of these doors is opened at any time, or for any reason, the security alarm will be activated.

#### Fire Door Hardware

The two exterior fire doors in the stamp production area contain no exterior hardware. Thus, there are no locks that can be compromised, significantly reducing the possibility of exterior access.

#### Closed Circuit Television (CCTV)

The entire facility is equipped with over 22 video cameras. There are two PTZ cameras located on opposite corners of the building's exterior. The two cameras run a programmed tour of the building's exterior and are enclosed in a dome so that their current position cannot be detected.

#### Access Control & Audit Logs

Biometric devices control entry to the building and access to the secure stamp production and finishing areas. The biometric system provides a nontransferable means of identifying people not just cards or badges. The HandKey System uses the uniqueness of three dimensional hand geometry to control access to Meyercord's building entrance and stamp production areas to assure no unauthorized personnel are admitted... The Access Control System is programmed to only allow employees into the facility and production areas during their regular working hours. In addition, only employees involved in the production of tax stamps are allowed access into the secure stamp production area.

The readers can also be programmed by the system administrator to allow only authorized employees access to certain areas of the facility. This assures the States that their products are being protected, as there is limited access to the production and inventory storage areas. The HandKey System records employee movement throughout the plant when an employee enters key areas of the plant he must register his hand. The system then records the employee number, date, time and whether or not access was granted.

The HandKey Reader can also act as a complete door management system. Meyercord can monitor when a door is left open too long, when a door is forced open or any unusual duress.

#### Intrusion Detection

Every exterior door and window is equipped with intrusion detectors connected to the alarm system. Once the facility is armed, the alarm will be activated whenever an exterior door is opened or an exterior window broken.

#### Windows

There are no windows in the production, finishing or inventory areas, which prevents physical or visual intrusion. All exterior windows are armed with V-Plex addressable glass break detectors. Any window that is tampered with and broken will automatically



set off the alarm system.

#### Alarm System

A central alarm station for 24-hour system supervision monitors all three elements of the alarm system, motion detection, glass breaks and door contacts. If any of these devices reports an intrusion, the system contacts the alarm company with information about what device caused the alarm. The alarm company, in turn, notifies the police department and key company contacts.

#### Visitor Log Book

A visitor logbook is maintained at the front entrance. Whenever someone visits the facility, they are required to sign the visitor logbook.

#### Visitor Confidentiality Notice

Every visitor must sign a visitor's card and a non-disclosure confidentiality agreement

#### Access Logs

The biometric access control system records every access attempt. It records the date and time, the location, the person attempting access and whether or not access was granted.

#### Access to Storage Area

Biometric devices control entry to the building and access to the secure stamp production, finishing and storage areas. The Access Control System is programmed to only allow employees into the facility and production areas during their regular working hours. In addition, only employees involved in the production of tax stamps are allowed access into the secure stamp production area. This assures the States that their products are being protected, as there is limited access to the production and inventory storage areas.

- b. Inside manufacturing or storage facility must contain, but not be limited to, the following:
1. Spoilage and overruns must be destroyed by a method acceptable to the State of Michigan (see section 1.104.A.3.d).
  2. Printing plates, printing cylinders and any other unique items developed for this Contract must be produced only and stored under maximum security conditions.
  3. Shipping manifest made up and cartons pulled in sequential order and carried on pallets directly to the trucks.
  4. Security cameras.

#### Contractor Response to this Task:

We understand and agree to this specification.

Meyercord has taken extraordinary measures to protect the State's revenue stream including all four of the required items above and additional measures.

Our manufacturing facility is a modern, two story, fireproof building, fully equipped with Underwriters' approved sprinkler system. Additionally, the facility is one of a few air-conditioned and humidity controlled plants in the heat transfer/decal industry.

The entire manufacturing process including stamp design, cylinder



etching, coating of the base paper stock, printing, numbering, finishing, packing and shipping of your stamps will be performed in our plant located in, Carol Stream, Illinois.

All departments of our plant involved with the manufacture of tax stamps will be open to any accredited officials of the State.

The following precautions will be observed to protect the State against theft and unlawful production of cigarette tax stamps.

#### Interior Night Lighting

All areas of the facility have interior night lighting.

#### Secure Stamp Production Area

All printing, finishing, numbering, stamp inventories, audit records, artwork and cylinders are in a separate area of the facility that is restricted to employees involved with production of cigarette tax stamps. Further, there are only two access points (which are protected by the biometric access control system) and no windows on the perimeter of the secure area.

#### Interior Locks

Within the secured stamp production area, the laboratory and the production accounting office are locked during non-working hours. The computer room is locked at all times. Every private office in the facility is equipped with a lock.

#### Closed Circuit Television (CCTV)

The entire facility is equipped with over 22 video cameras. There are two PTZ cameras located on opposite corners of the building's exterior. The two cameras run a programmed tour of the building's exterior and are enclosed in a dome so that their current position cannot be detected.

The remaining 20 video cameras are placed strategically throughout the facility. The entire video monitoring scheme is controlled by an Integral Technology digital recording system. The digital function allows Meyercord much more flexibility in the areas of playback, retrieval, archiving and real-time viewing in order to ensure the security of our customers products. The cameras are all motion activated and take three frames per second when live. All of the cameras are connected to a digital video recorder, which records at a rate of three frames per second. This digital video recorder is capable of holding 25 days of video and also has the ability to write to CDs or DVDs if a longer period of time is required. Since the recorder uses digital image technology, recording does not stop when previously recorded video is being viewed.

With the Integral Technology CCTV monitoring system, Meyercord's customers can rest assured that their products are protected by one of the highest quality surveillance systems on the market today.

#### Access Control & Audit Logs

Biometric devices control entry to the building and access to the secure stamp production and finishing areas. The biometric system provides a nontransferable means of identifying people not just cards or badges. The HandKey System uses the uniqueness of three dimensional hand geometry to control access to Meyercord's building entrance and stamp production areas to assure no unauthorized personnel are admitted... The Access Control System is programmed to only allow employees into the



facility and production areas during their regular working hours. In addition, only employees involved in the production of tax stamps are allowed access into the secure stamp production area.

The readers can also be programmed by the system administrator to allow only authorized employees access to certain areas of the facility. This assures the States that their products are being protected, as there is limited access to the production and inventory storage areas. The HandKey System records employee movement throughout the plant when an employee enters key areas of the plant he must register his hand. The system then records the employee number, date, time and whether or not access was granted.

The HandKey Reader can also act as a complete door management system. Meyercord can monitor when a door is left open too long, when a door is forced open or any unusual duress.

#### Motion Detection

The alarm system protecting Meyercord's facility during off hours weekends and holidays includes a number of addressable motion detectors located strategically throughout the stamp production areas. Once the facility is armed, the alarm will be activated whenever one of the motion sensors is tripped. The Ademco motion detectors sense alarms up to eight times faster than conventional multiplex systems. The addressability allows the central station to identify the exact location of the intrusion

#### Interior Loading Dock

All shipments are made from an interior loading dock. No one from outside the facility can be near the truck while it is being loaded with stamps. Our unloading and stamp loading procedures are shown below.

##### Unloading:

- 1) All delivery vehicles must be logged in when entering the dock area with the date, items being delivered/shipped, time of arrival, and time of departure.
- 2) Whoever is responding to the dock bell must log in the driver, determine the purpose of the delivery and contact the responsible department. The driver is never left alone.
- 3) If a driver needs to leave the dock area (e.g., to visit the restroom or make a telephone call) the Meyercord employee must escort the driver to the area and wait to escort them back to the dock. At no time is the driver allowed to leave the dock area without being accompanied by a Meyercord employee.

##### Stamp Loading:

- 1) All tax stamp orders are assembled for shipment in a secure area within the Tax Stamp Department inventory holding location. Stamps do not move from this secure area until arrival of the delivery truck.
- 2) Upon arrival of the truck, the Tax Stamp Department is notified. Stamps are delivered to the dock area. At no time should the stamp order be left unattended after leaving the secure area.
- 3) Once the truck is loaded and the driver signed out, the truck is released.

#### Secured Dumpster:



The dumpster is located within the interior loading dock and is not accessible to the public. Details of our waste destruction process are:

- 1) All scrap generated in production will be recorded. All generated scrap is maintained by master roll number in separate cases. Storage of the scrap will be in a designated location within the secured Finished Goods area prior to shredding.
- 2) Scrap will remain in the designated location until the State auditors are available for reconciliation and witness to, or authorize, its destruction. Once destroyed, the accumulation of scrap data will be forwarded to the Customer Service Coordinator for the preparation of the affidavit.
- 3) When stamps are being destroyed, a Meyercord employee will be present at all times. Stamps designated for destruction will never be left unattended in the dock area. If the responsible person destroying the stamps has to leave the dock area during destruction, they must get another Meyercord employee to stay with the stamps until their return or the stamps would be brought back to a secured location.

#### Cigarette Stamp Accountability

All raw materials used in the manufacturing process will be strictly accounted for. Meyercord maintains records for all stamps produced, including stamps that will require destruction. These records are maintained in Meyercord's production accounting system, and are available for inspection by the State.

#### Retention of Spoiled Stamps

Meyercord will retain all damaged or invalidated stamps within its secured stamp production area until the state requests, or is present to witness, the destruction of the stamps.

#### Records Security

Cigarette stamp records are kept in the production accounting office, which is locked during non-working hours. Electronic information is stored on the central computer system, which is located in a locked room.

#### Meyercord – Employees Background Checks

A search is done on every new employee for Federal and County felonies and Mis-demeanors following the preliminary job offer but prior to employment.

#### Drug Screening Test

As with background checks, every candidate must pass a drug-screening test prior to employment.

#### Separation Procedure

Upon separation of an employee from the company, the Human Resources department notifies Security and Information Technology personnel, and others, of the separation, so that appropriate actions can be taken to remove the employee's access privileges and identification badge.



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- c. The original drawings, master dyes, engravings, cylinders, negatives and any other unique items developed for this Contract will become the property of Treasury and must be kept and protected or destroyed as required by Treasury. Such items will be used solely for orders from this Contract.

Contractor Response to this Task:

We understand and agree to this specification.

- d. Contractor and Contractor's current and former employees, agents and representatives must keep confidential all information including, but not limited to, the printing processes, features and design of the stamps printed or unprinted under this Contract, related security features including, but not limited to, inks and any other information relating to this Contract during and after the life of this Contract.

Contractor Response to this Task:

We understand and agree to this specification. Meyercord has a strict "Need to Know" information policy. The purpose of this policy is to establish a strict "Need to Know test to be performed whenever information that is judged to be of strategic value is disclosed to anyone. All information regarding this contract, printing processes and security features will be kept confidential and will be limited to those employees on a need to know basis.

- e. At the termination of this Contract, or anytime that Treasury may require, all such cylinders, design, films, etc., will be destroyed and disposed of as directed by the Treasury. Or, at their option, Treasury may elect to receive in good order all photos, etchings, cylinders, films, etc. used for the manufacture of the tobacco stamps.

Contractor Response to this Task:

We understand and agree to this specification.

- f. The State reserves the right to enter the Contractor's premises at any time during the production of the stamps to inspect methods of production and assure full compliance with all provisions of the instruction and Contract.

Contractor Response to this Task:

We understand and agree to this specification. The Meyercord facility will be open at all times to accredited officials of the State.

12. Field and Laboratory Tests

- a. The product proposed must lend itself to quick, reliable field tests that will determine its authenticity. The field tests must be designed so that they may be performed under normal business lighting conditions by Treasury representatives using the related test equipment.

If field tests identify a potential counterfeit, additional laboratory tests may become necessary by Contractor.

Contractor Response to this Task:

We understand and agree with this specification. The following field tests can be conducted under normal business lighting conditions to determine stamp authenticity.

Overt Security Feature



Variable Image – Treasury staff can verify the presence of the variable image by looking at the stamp from different angles to verify the presence of the State Initials MI

Covert Security Features -

Taggant - Treasury staff can verify the presence of the taggant by pointing a taggant pen at the stamp. The stamp will fluoresce green verifying the presence of the authentic taggant security feature.

Chemical Reagent – Treasury staff can verify the presence of the chemical reagent by placing a drop of the chemical reagent on the stamp. The stamp will turn pink verifying the presence of the authentic chemical reagent security feature.

- b. Contractor must provide laboratory tests at no cost to State for authenticating stamps submitted by the State. Describe type of laboratory testing and turn-around time.

Contractor Response to this Task:

Meyercord maintains a Forensic Laboratory, which is available to perform authenticity testing of stamps submitted. A lab report will be issued within 48 hours from the receipt of samples.

The following lab tests will be conducted ;

1. Visual comparison
2. Numbering font comparison
3. Gravure print verification
4. Verification of the following security features
  - a. Variable Image
  - b. Watermark
  - c. Chemical Indicator
  - d. Taggant

- c. Contractor must provide a representative for court proceedings to serve as an expert witness upon request by the Contract Compliance Inspector. Costs for this service (inclusive of travel expenses) must be included in Pricing (Article 1, Attachment A). Normally, testimony is only needed two (2) to three (3) times per year.

Contractor Response to this Task:

We understand and agree to this specification. Meyercord would be willing to appear and testify in court as to the genuineness of our stamps. Meyercord provides forensic testing of stamps submitted to all of our State customers as well as Federal Enforcement Agencies. Our 50 years of experience, technical database and professional expertise would provide valuable tools in the event of litigation.

Per Clarification Dated February 7, 2008:

Section 1.104.A.12.c, Page 37: Regarding Expert Witness, we understand that you are willing to act as an expert witness if need be. Would you be interested in providing training to Michigan State Police personnel on how to become an expert witness in this field? If so, what would the training involve? Could training be provided as needed at no additional cost?



*Meyercord would be willing to train personnel to be expert witnesses in this field at no additional cost.*

13. Provide samples for each stamp denomination and layout type per sections 1.104.A.2.e, 1.104.A.4 and 4.046. A quantity of ten (10) stamps must be provided for each denomination/layout type.

Contractor Response to this Task:

We understand and agree to this specification. Samples of each denomination are provided.

**B. Stamping Machines**

1. Contractor must warrant that during the Contract period, stamping machines will be made available only to Treasury-approved Distributors or Treasury-approved stamping agents of authorized Distributors.

See Exhibit E for approximate machine inventory and locations for State of Michigan Distributors.

Contractor Response to Task:

We understand and agree to this specification, with the stipulation the distributor account remains in good standing with our company

Per Clarification Dated February 7, 2008:

In various areas within your proposal you respond to certain activities by stating “**As long as Distributor remains in good standing**” (e.g. sections 1.104.B.1 and 5). Please describe to us what constitutes a Distributor remaining in good standing.

*Good standing means the distributor is current with their payments.*

2. Contractor agrees not to sell or lease a stamp-applying machine to a person who is not currently a licensed Distributor. Describe process to ensure a Distributor is licensed and that Treasury receives notice prior to sale or lease of any machine.

Contractor Response to Task:

We understand and agree with this specification. We require that the customer provide a copy of their license to us prior to accepting a purchase order for equipment. A copy is kept as backup in every customer file. In turn, we will notify Treasury by letter of any new machine order we receive prior to the shipment of any sold or leased equipment.

3. Machines and related equipment must meet the approval of Contract Compliance Inspector or designee, be acceptable to the tobacco Distributors and operate satisfactorily at a high rate of speed comparable to other means of mechanical stamping.

Contractor Response to Task:

We understand and agree with this specification.

- a. Identify all machine options and accessories (i.e. models, specifications, etc.). Lease, purchase and maintenance costs must be included in Article 1, Attachment A (Pricing) for all models and accessories.

Contractor Response to Task:



There are several machine models and options available at varying levels of complexity and price points. These models include the SSM and VL10 Stamp Machines. Complimentary equipment options available to the distributors include the Universal Case Packer and CC612 Case Cutter. Article 1, Attachment A includes pricing for the various models, options and lease/purchase costs.

Per Clarification Dated February 7, 2008:

Section 1.104.B.3a, Page 38: We ask you to identify all machine options and accessories. Your response only refers to SSM and VL10 Stamp Machines. Are the M100 and M120 machines still available? If so, what is the cost for these machines?

*Although it is not clearly indicated in the bid response, United Silicone will provide free installation for all VL10 & SSM machines that replace the existing M100 & M120 machines. We will also assist our customers to the best of our ability to identify other customers nationally that have a need for used equipment. The M100 and M120 machines have older technology and are no longer commercially available. The VL10 and SSM are much more technologically advanced in order to provide the stamp quality the State of Michigan is seeking.*

- b. Identify all requirements to implement machines (i.e. electrical requirements, data lines, air compressor, etc.)

Contractor Response to Task:

Machine Description	Electrical Service Requirement	Electric Connection on Meyercord Machine	Compressed Air Requirement	Installation Notes
SSMB	220 VAC 30 A, Single Phase	PLUG, NEMA L6-30P	7.5 SCFM @ 90 psig	
VL-10	220 VAC 30 A, Single Phase	PLUG, NEMA L6-30P	4.0 SCFM @ 90 psig	Carton Load Height: 34-39 inches
Universal Packer APMB	120 VAC / 15 A, Single Phase	PLUG, 3- Straight Blade (NEMA 5-15)	8.0 SCFM @ 90 psig	Carton Load Height: 33-38 inches Case Discharge Height: 40-45 inches
CC-612 CASE CUTTER	220 VAC 30 A, Single Phase	PLUG, NEMA L6-30P	12 SCFM @ 90 psig	Case In-feed & Discharge Case Height: 24-29 inches

- c. Identify the useful life of machines (e.g. five [5] years).

Contractor Response to Task:

Useful life is difficult to quantify because of varying conditions, owner care, volume of usage and other conditions beyond our control. Given the range of operating conditions encountered, our equipment is expected to have a useful life of between five and ten years.



- d. Identify the error rate of the machines (i.e. number of packs processed that are not stamped).

Contractor Response to Task:

The SSM type equipment has diagnostic capability and provides error messaging when machine sequencing is not complete. Compared to the M100 line, the common reasons for the potential of missed stamps are now eliminated. The VL10 does not have automated diagnostic capability at present. Verification of stamp application remains with the operator.

- e. Identify if technology is available to assure that all packs are stamped, and whether it is standard or optional on the machines.



Contractor Response to Task:

It is technologically feasible to design and build systems to assure all packs are stamped. It is not currently an option on our equipment. We would be willing to work with any stamping agent that desires this feature to develop a system for this requirement.

4. Contractor must furnish and install a sufficient number of stamp applying machines, including related equipment such as power carton openers, carton closures and gluers, throughout the United States for Distributors serving Michigan customers, when and where needed as determined by Contract Compliance Inspector or designee. In the event that the Contractor is unable to supply the quantity of stamp applying machines required, Treasury reserves the right to seek an additional or alternate source or sources of stamps and stamp applying machines.

Contractor Response to Task:

We understand and agree with this specification.

- a. If such a situation would occur, the Contractor must agree to reimburse the State of Michigan and all affected Distributors for the difference in cost between its stamps and/or equipment and those of an alternate supplier. Further, if Distributors have placed an order for equipment with the Contractor, the Distributor does not receive the equipment and the Contractor has not installed the machine within 75 days of Contractor's receipt of Purchase Order for the manufacturing of the stamps, and as a result is forced to hand stamp product that is normally stamped by machine (Distributor shall provide documentation to support their claim), the Contractor must provide direct and immediate reimbursement to the Distributor for all temporary help and overtime costs associated with hand stamping this product. The Distributor's order for equipment must be submitted within 45 days of Contractor's receipt of Purchase Order for manufacturing of stamps.

Contractor Response to Task:

We understand and agree to this specification. Although we can readily supply application machines to Distributors within the specified 75 day timeframe, there may be occasions when distributors have not prepared for the machine accommodations as specified for the machine installation. Distributors are notified in advance of any installation requirements. We have no control over whether the Distributor has the facilities and services requirements already in place or will have them in place in a timely manner for the installation to be completed within the specified 75 day time. In the event that such requirements are not in place, we have no control over when the machine installation can be completed and as such have no responsibility to recompense the Distributor or the State for any alternative work plans that have to be implemented. We will install equipment based on mutually agreed upon terms between the Distributor and Treasury.

5. Machines must be provided (rental or purchase) in sufficient numbers to satisfy the request of cigarette Distributors. During the period that the State purchases tax stamps from the Contractor, the Contractor is required to supply tax-stamping machines under lease or purchase to Distributors for use by approved stamping agents or Treasury-approved authorized Distributors.

Contractor Response to Task:

We understand and agree to this specification, provided that the cigarette distributors remain in good standing with our company.

Per Clarification Dated February 7, 2008:



In various areas within your proposal you respond to certain activities by stating “**As long as Distributor remains in good standing**” (e.g. sections 1.104.B.1 and 5). Please describe to us what constitutes a Distributor remaining in good standing.

*Good standing means the distributor is current with their payments.*

- a. If Heat Applied Stamps are proposed by Contractor, a plan to upgrade all M-100 machines must be provided. The plan must include a price proposal that minimizes the impact of higher costs on Distributors.

**Contractor Response to Task:**

We understand and agree to this specification. The process for converting machinery will be a controlled, phased approach. The equipment will be systematically rolled out across Michigan with approval of the treasury and in cooperation with Distributors. At each installation, the existing equipment will be moved offline while the new machine is installed. The old line will remain on-site until the new unit is fully operational and the operators have demonstrated their ability to operate the equipment without issue.

This approach will ensure that, in the unlikely event of a catastrophic failure, the old machine can be moved immediately back in line while the new equipment fault is diagnosed and the machine repaired or replaced. This will help avoid any significant disruption to the Distributors operations.

Our records indicate there are 24 M100’s and M120’s. We will replace these machines over a period of time that is mutually agreeable between the distributors and Treasury. Please refer to our proposed project schedule, Article 1 Attachment C With respect to cost minimization for the distributors, we offer two different models of stamp machines at varying price points and levels of complexity.

Article 1, Attachment A includes pricing for the various models, options and lease/purchase costs. We recommend that distributors that have M100’s and M120’s upgrade to the VL10 to minimize the impact on the distributor.

Per Clarification Dated February 7, 2008:

Section 1.104.B.5.a. Page 40: Are there any type of incentives or rebates available to current customers using an old M100 or M120 machine if they upgrade to a new machine? If so, what are they? Is the cost higher for the SSM and VL10 verse the M100 and M120?

*United Silicone will provide free installation for all VL10 & SSM machines that replace the existing M100 & M120 machines. The VL10 is within a comparable price range of the M-120, while the SSM is higher due to the technology incorporated into its design*

- 6. Contractor must immediately inform Contract Compliance Inspector or designee of the sale or lease of any machine and the name and address of the purchaser. A quarterly report will also be required per section 1.302.1.

**Contractor Response to Task:**

We understand and agree to this specification

- a. If a Distributor purchases a machine, the Contractor must include terms in the purchase agreement that the Distributor/customer must notify the Contract Compliance Inspector and Contractor of the following:
  - 1) If the business is discontinued



- 2) Intended use of machine, transfer of ownership or disposal of the machine after discontinuing business.

Contractor Response to Task:

We understand and agree to this specification

7. Machines must be designed and manufactured to assure proper adhesion and high-speed application of stamps to all sized cigarette packs per the Contract.

Contractor Response to Task:

We understand and agree to this specification. Both the SSM and VL10 will be better able to apply stamps at specified rates and adhesion characteristics per the contract and to more carton configurations than the current M100's.. The machines will be capable of applying stamps to the great majority of cigarettes that are packaged in a 2 x 5 carton configuration. Other carton configurations or products produced or marketed in a manner inconsistent with industry standards may not be capable of being processed on new equipment; this is consistent with current equipment stamping capabilities.

Per Clarification Dated February 7, 2008:

Section 1.104.B.7, Page 41: Please describe how non-standard carton configuration would be stamped. If there is a cost associated with hand stamp machines (e.g. irons), identify those costs.

*Non-standard carton configurations would be hand stamped. Historically, hand irons have been provided to wholesalers free of charge by Phillip Morris or Reynolds.*

*Hand irons for non-standard configurations can be obtained through United Silicone Customer Service at (716)681-8222, extension 188. The standard unit with stand and 2X5 stamp head configuration sells for \$465. The same unit and stand with an optional straight bar configuration sells for \$445. Both configurations with interchangeable heads sell for \$520.*

- a. Describe number of stamps that can be applied by each model of machine per minute.



Contractor Response to Task:

Current distributors are stamping at rates up to 120 cartons (1200 stamps) cartons per minute on the SSM. The VL10 is capable of stamping at 70 cartons (700 stamps) per minute. The overall rate is impacted on conditions other than those controlled by the machines. These include carton configuration, quality of the packaging, consistent presence of product, etc.

- b. Machines must affix the stamps in a manner that does not disturb or destroy the stamp, any hidden indicia, hidden security features, stamp serial number or the clear background with Treasury approved hidden wording or design.

Contractor Response to Task:

We understand and agree to this specification. The SSM and VL10 will have overall improved transfer when compared to existing machines, in that the stamps are applied to the center area of the packs in most cases.

Per Clarification Dated February 7, 2008:

Section 1.104.B.7.b, Page 41: The SSM and VL10 machines provide better stamp transfer and center stamping in most cases. In what cases does center stamping not occur on these machines?

*The SSM and VL10 are designed to accommodate the vast majority of carton configurations the major cigarette manufacturers produce. Certain off brand or promotional carton configurations may process through the equipment but, because of their non-standard sizes, the stamp may not be applied in the center of the pack.*

- 8. The Contractor's lease for stamp applying machines and any related equipment shall be for a minimum of one year unless the lease is a temporary extension or other terms are mutually agreed to by the Contractor and the Contract Compliance Inspector or designee. If the Contractor elects not to renew a lease, they must provide written notice via certified mail at least ninety (90) days prior to the lease expiration date to both the lessee and the State. If after receiving a non-renewal notice a Distributor has made a good faith effort to obtain alternate stamping equipment but does not have the same in their possession and in working order at the lease expiration date, the Contractor will provide the Distributor with a 120-day lease extension at the identical cost as contained in the original lease.

Contractor Response to Task:

We understand and agree to the one-year minimum lease term. If we do not renew the lease, we will provide the 120-day extension at the prevailing market rate, provided that the distributor is conducting its business with us in a commercially reasonable manner and is in good standing. We will agree to consult with the Contract Compliance Officer in an effort to resolve any situations in which we would not want to extend the 120 terms due to distributors operating in a commercially unreasonable manner with respect to our employees, equipment, or contract terms.

Per Clarification Dated February 7, 2008:

Sections 1.104.B.8 and C.1, Page 44: Regarding machine leases and maintenance, you state that "We understand and agree to this specification, provided that service requirements are the result of normal machine operation, and **the distributor continues to operate in a commercially responsible manner.....** What is meant by commercially responsible?"



*The following are excerpts from our standard lease agreement requiring that the “lessee” (distributor) operate the machinery in a commercially responsible manner.*

- *The machine should be used in accordance with all applicable laws, ordinances, rules and regulations issued by the taxing governments or other governmental bodies.*
- *The machine should be used in accordance with operating and/or maintenance manuals and written or oral instructions provided by Lessor.*
- *Lessee shall at all times keep the machine at the place of business referred to in the lease or at such other location as is approved in writing by Lessor before the machine is relocated.*
- *Lessee shall permit the Machine to be used only by its employees and shall protect the Machine from damage arising from improper or careless use.*
- *Lessee shall not attach any devices to the Machine, alter the Machine in any way, or incorporate the Machine as an adjunct to or a part of any other machine, process or system.*

*In addition, the distributor should be current on all lease payments*

9. Contractor must guarantee that the tax stamps and stamp applying machines, including related equipment, that the Contractor proposes to furnish and their sale and use will not infringe any United States patent. Contractor must guarantee to defend, protect and hold harmless the State and all persons, firms or concerns using or applying the tax stamps and using the stamp applying machines on its behalf, against all legal actions and from all damages, claims, demands, expenses and attorney’s fees, for actual or alleged infringement of any United States patent by reason of the purchase and use of the tax stamps and use of the stamp applying machine.

**Contractor Response to Task:**

We understand and agree to this specification. Our stamp applying machines and related equipment do not infringe on any United States patent. 1) We agree to indemnify the State of Michigan for sums the State of Michigan becomes legally obligated to pay as damages for bodily injury or property damage caused by our fault. Our companies fault is defined as: (i) a manufacturing defect, design defect (if designed by us, or negligent failure to warn with respect to products designed by us and supplied to the State of Michigan by us; or (ii) the negligence of our employees or agents in connection with the installation of our products or equipment. We further agree to indemnify the State of Michigan for legal expenses it incurs defending itself against any suits seeking such damages.

10. If the Contractor is unsuccessful in subsequent bids for this product, the stamping machines must continue to be made available to licensed cigarette Distributors approved by Treasury for a period of not less than 180 days after the end of the Contract. If the new successful Contractor replaces the stamp machines prior to the end of the 180 days, the cigarette Distributors must be given credit on any leasing or service agreements for the period remaining after the equipment is replaced.

**Contractor Response to Task:**

We understand and agree with this specification.

11. Provide copies of any lease, purchase and/or maintenance agreements Contractor is proposing for Distributors under this contract for each machine model (if applicable).



Contractor Response to Task:

We understand and agree to this specification. We will provide copies of any lease, purchase and/or maintenance agreements upon request by the contract compliance officer.

12. Contractor must comply with Safeguard Requirements of Confidential Data (Exhibit C).

Contractor Response to Task:

We understand and agree with this specification.

13. At the end of this contract, the Contractor must provide the disposition/inventory of all machines to the Contract Compliance Inspector.

Contractor Response to Task:

We understand and agree to this specification

**C. Machine Maintenance**

1. During the period that Treasury uses the Contractor’s stamps for machine application, service and maintenance of machines must be provided to the Distributors. SERVICE FOR MECHANICAL FAILURES THAT OCCUR DURING NORMAL USE will not substantially disrupt stamping by any Distributor, deliveries to retailers or receipt of revenue by the State. Machine maintenance price and any additional costs for service to Distributors that do not have a maintenance agreement (e.g. hourly rates, parts, etc.) must be provided for each model of machine in Article 1, Attachment A (Pricing).

Contractor Response to Task:

We understand and agree to this specification, provided that service requirements are the result of normal machine operation, and the distributor continues to operate in a commercially responsible manner with regards to our personnel and equipment.

2. Contractor must have a sufficient number of trained personnel, repair parts and supplies located in the State to properly maintain, service and repair stamp applying machines so mechanical failure will not substantially disrupt stamping by the tobacco Distributors, deliveries to retailers or receipt of revenue by the State. Identify the number of maintenance personnel proposed.

Contractor Response to Task:

We understand and agree to this specification. We currently have a service force of over 30 technicians available to maintain, service and repair stamp machines on a nationwide basis. When the contract is in place, there will be no fewer than 9 trained technicians and engineers located in Michigan or the surrounding states. In addition, we employ a central dispatch system located in Carol Stream, IL. A 24 hour, 7 day per week toll free telephone number is provided to all distributors. This line is manned by fully trained technicians that are capable of diagnosing and troubleshooting problems remotely.

Per Clarification Dated February 7, 2008:

Section 1.104.C.2, Page 44: You state that you employ a central dispatch system located in Carol Stream, IL. Do you have any Technicians located in Michigan? If so, how many and where are they located?

*Meyercord will employ a minimum of one technician to be located in Michigan. We currently have a service force of over 30 technicians available to maintain, service and repair stamp machines on a nationwide basis. There will be no fewer than 9 trained*



*technicians and engineers located in Michigan or the surrounding states. All technicians supporting Michigan will be directed by our Central Dispatch System to ensure a timely and efficient response to any service calls.*

3. CONTRACTOR MUST PROVIDE THE Contract Compliance Inspector or designee, AND ALL LICENSED DISTRIBUTORS WHO PERFORM STAMPING FUNCTIONS WITH A LIST OF SERVICE LOCATIONS WITH THE NAME AND PHONE NUMBER OF THE SERVICE TECHNICIAN AT EACH LOCATION. CONTRACTOR MUST ALSO INCLUDE THE NAME AND PHONE NUMBER FOR AN EMERGENCY SERVICE TECHNICIAN IN THE EVENT THEIR NORMAL SERVICE TECHNICIAN CANNOT BE REACHED. Contractor must provide Contract Compliance or designee with the emergency service phone number.

Contractor Response to Task:

We understand and agree to this specification. We employ a central dispatch system located in Carol Stream, IL., thus eliminating the need for distributors to make multiple calls to local technicians. A 24 hour, 7 day per week toll free telephone number (800-639-3799) is provided to all distributors. This line is manned by fully trained technicians that are capable of diagnosing and troubleshooting problems. If the problem cannot be resolved remotely, a technician will be dispatched to the distributor's location.

4. Contractor must establish and follow a preventive maintenance program that includes, but not limited to, the following:
  - a. Describe the Contractor's proposed preventative maintenance program for each model of machine.

Contractor Response to Task:

We understand and agree to this specification. We agree to furnish a preventative maintenance schedule to the Contract Compliance Officer, specific to any new equipment resulting from this contract, prior to implementation of the contract. The distributor can provide their own maintenance personnel to do the work or contract with us.

The key to Meyercord's service program is scheduled preventive maintenance to minimize machine downtime. Depending on the volume of cigarettes stamped, our service department can arrange pre-determined appointments with a customer to perform preventive maintenance. Preventive maintenance procedures may require a few hours per stamping line. If the preventative maintenance requirements conflict with the customer's production requirements, another appointment may be made at a more convenient time, or a minimally disruptive procedure may be performed while the machine is operating. Preventive maintenance schedules are revised from time to time and as customer's cigarette volume or equipment change.

Calls for emergency service may take precedence over preventive maintenance schedules. Response time to service calls depends in part on the travel distance and the time of day the call is received.

After scheduled preventive maintenance and service calls, some maintenance information is compiled detailing the work performed. A service history for Meyercord equipment may be entered into our database for future reference and/or statistical analysis purposes. Depending on the age of the machine, volume of cigarettes stamped, the amount and frequency of service calls, a leased machine may be periodically exchanged for a new or rebuilt stamping line incorporating the latest revisions



Per Clarification Dated February 7, 2008:

Section 1.104.C.4.a, Page 45: You have the statement in your response **“A service history for Meyercord equipment MAY be entered into our database for future reference and/or statistical analysis purpose.”** What is meant by the word “may”? What service history wouldn’t be entered into this system?

*All service history is currently entered into our system (database) – this would continue under a new contract. The word “may” refers to potential uses of the information. We “may” use the information for future reference and/or statistical analysis. The use of this information may arise from internal studies or may be directed by the State.*

- b. Instructions for licensees to maintain machines and what to look for must be provided (i.e. frequent troubleshooting steps) for each machine.

Contractor Response to Task:

We understand and agree with this specification. Detailed operation manuals, preventive maintenance and troubleshooting guides will be available for each piece of equipment we provide to the distributors.

- c. Technicians must provide a quality assurance check by applying a production run of stamps after performing maintenance to ensure proper stamp application. Describe recommended solution for quality assurance check.

Contractor Response to Task:

We understand and agree with this specification. After performing a maintenance procedure, the technician stamps approximately 30 cases of product to assure the problem has been fixed. The technician then generates a service report which is signed by distributor representatives to validate that the repair has been made and the equipment is operating to expectations.

- d. Train licensees’ staffs on proper operation of the machine, related equipment and any proposed computer software and hardware (if applicable) when initially implementing machine, performing preventative maintenance and upon request by State or Distributor.

Contractor Response to Task:

We understand and agree to this specification.

- e. If paper is misaligned on machine, then technician must notify the Distributor’s owner.

Contractor Response to Task:

We understand and agree to this specification.

- f. Technician must review the licensees' damaged product area for potential stamp application problems.

Contractor Response to Task:

We understand and agree with this specification provided the technician is allowed access to the distributors damaged product area.

- 5. Contractor shall acknowledge requests for service BY PHONE within two (2) hours. Contractor shall make every effort to respond to service request the day they are made, and if that is not possible, the service call shall be made as soon as possible the following business day.



Contractor Response to Task:

We understand and agree to this specification. We will make our best commercial efforts to fulfill this specification. We employ a central dispatch system located in Carol Stream, IL. A 24 hour, 7 day per week toll free telephone number is provided to all distributors. This line is manned by fully trained technicians that are capable of diagnosing and troubleshooting problems. If the problem cannot be resolved remotely, a technician will be dispatched to the distributor's location.

*1.2 Roles and Responsibilities*

**1.201 CONTRACTOR STAFF, ROLES, AND RESPONSIBILITIES**

Contractor must provide information on the following staff:

1. Relationship Manager: Acts as a central point of contact for all contractual activities
2. Service Technicians: Provides machine service and maintenance
3. Reserved
4. Identify any other Contractor staff who will be involved, identify by name the individuals, and describe in detail their roles and responsibilities. Descriptions of roles should be functional and not just by title. Include an organization chart in Article 1, Attachment B.

Contractor Response to Task:

Relationship Manager – John Sprawka at 630-682-6239 or [jsprawka@meyercord.com](mailto:jsprawka@meyercord.com) will be the principal point of contact and will have overall responsibility for contract fulfillment.  
Service Technicians. Tom Letizia, at 630-682-6291 or [tletizia@unitedsilicone.com](mailto:tletizia@unitedsilicone.com) will serve as the point of contact with regard to application equipment installations at the distributors as well as service. A 24/7 call service 1-800-639-3799 is provided for all service calls pertaining to machine service issues  
Customer Service Coordinator – Linda Eberhardt at 630-682-6171 or [leberhardt@meyercord.com](mailto:leberhardt@meyercord.com) will coordinate all day-to-day customer service functions including shipments.

**1.202 STATE STAFF, ROLES, AND RESPONSIBILITIES**

1. Contract Compliance Inspector per section 2.015.
2. Department of Treasury, Customer Contact Division, Special Taxes Section, Tobacco Unit: Provide administration of the Tobacco Products Tax Act
3. Discovery and Tax Enforcement: Provide enforcement activities
4. Michigan State Police: Provide enforcement activities
5. Department of Treasury, Office of Security: Ensures security of Treasury data
6. Department of Information Technology: Provides information technology assistance to State users.

**1.203 OTHER ROLES AND RESPONSIBILITIES**

1. Distributors/Wholesalers: External customers to order and stamp tobacco products
2. ACS State & Local Solutions (ACS): Contractor provides ASP services for tobacco tax stamp electronic filing/ordering system.



1.3 *Project Plan*

**1.301 PROJECT PLAN MANAGEMENT**

1. The Contractor will carry out this project under the direction and control of the Contract Compliance Inspector (see section 2.015).

Contractor Response to Task:

We understand and agree to this specification

2. Provide a project plan with proposal in Article 1, Attachment C. The plan must include the details noted in section 1.301.3.

Contractor Response to Task:

We understand and agree to this specification. Please refer to Article 1 Attachment C for our proposed project plan. To ensure a smooth implementation of the project the following reviews will be conducted:

Initial Review - Provides an initial assessment of the status of the project, issues and risks to verify that the contract gets off to a sound start by:

Confirming proper communication, organization planning, tracking, change control, quality management and reporting plans are established and establishing performance baselines.

Interim Project Management Review - Provides an objective assessment of the status of the project, issues and risks to verify that the project is:

Being managed in accordance with the contractual commitment.

Meeting planned business considerations and

Satisfying the Treasury requirements.

Deliverable Readiness Review - Provides an objective assessment of the solution and major milestone deliverables in order to verify that the solution satisfies Treasury requirements as defined by the contract.

3. Within five (5) working days of the award of the Contract, the Contractor will submit to the Contract Compliance Inspector for final approval a work plan. This final implementation plan must be in agreement with Article 1, Attachment C as proposed by the Contractor and accepted by the State for Contract, and must include the following:
  - a. The Contractor's project organizational structure.
  - b. The Contractor's staffing table with names and title of personnel assigned to the project. This must be in agreement with staffing of accepted proposal. Necessary substitutions due to change of employment status and other unforeseen circumstances may only be made with prior approval of the State.
  - c. The project breakdown showing sub-projects, activities and tasks, and resources required and allocated to each.

Contractor Response to Task:

We understand and agree with this specification.



**1.302 REPORTS**

1. Provide a quarterly inventory report of all machines (purchased and leased) that includes the following (section 1.104.B or E, Stamping Machines):
  - a. Company name
  - b. Address (physical location of equipment)
  - c. Machine model number
  - d. Machine serial number
  - e. Starting purchase/lease date
  - f. Lease end date (if applicable).

Contractor Response to Task:

We understand and agree with this specification.

2. Provide a monthly report for all machines leased/purchased during the preceding month that includes the information requested in section 1.302.1. The report must include information on whether the new machine replaced another machine (include serial numbers of old and new machine) or is an additional machine for Distributor.

Contractor Response to Task:

We understand and agree to this specification

3. Provide a monthly field/service report to Contract Compliance Inspector or designee for all machines serving Michigan (section 1.104.C or F, Machine Maintenance).

Contractor Response to Task:

We understand and agree to this specification.

**1.4 Project Management**

**1.401 ISSUE MANAGEMENT**

Describe how issues will be addressed when they arise and how appropriate parties will be apprised of progress.

Contractor Response to Task:

All issues will be addressed promptly using the following quality assurance process;

- Gather all facts, observations and opinions regarding the issue.
- Identify the root cause of the issue.
- Explore options for resolving the issue
- Implement optimum solution in a timely and effective manner.

The Treasury will be kept informed during all phases of the quality assurance process.

The following are Meyercord's responses to specific issues.

Late delivery due to carrier – In the event that a delivery is delayed during shipment, the carrier will immediately notify Meyercord. Meyercord will, in turn, notify the treasury of the delay and a new



delivery date and time will be provided. All tax stamp carriers are rated on a continual basis. Carriers with sub-standard performance will be put on notice and given 30 days to correct the deficiency and improve performance.

Stamps damaged in shipment – Treasury will be instructed not to accept any damaged stamps. The carrier is responsible for returning the damaged stamps to Meyercord at the carrier’s expense. All damaged stamps will be replaced as soon as possible at no expense to the distributor. The Treasury will be notified of the expedited delivery date of the replacement shipment.

Stamp application problems - Distributors will be instructed to call their Meyercord Service Technician (MST) if they experience any problems with stamp application. The MST will identify the root cause of the problem in his service report. Any machine related problems will be addresses during the service call. Stamp related problems will be identified in the service report and a sample of the paper (with stamps removed) along with the roll #will be sent to Meyercord for analysis. The paper will be tested at Meyercord’s laboratory. If the sample is determined to be defective, the Treasury will immediately be credited for the roll(s) in question.

**1.402 RISK MANAGEMENT**

1. Risk management generally involves (1) identification of the risk, (2) assigning a level of priority based on the probability of occurrence and impact to the project, (3) definition of mitigation strategies, and (4) monitoring of risk and mitigation strategy. Risk assessment review should be conducted on a regular basis. Please describe Contractor’s risk management process.

Contractor Response to Task:

**Supply Chain Risk**

Meyercord recognizes the significant impact a disruption of its supply chain would have on its business, including Meyercord’s ability to meet its contractual commitments to its State and Municipal Customers. Meyercord has developed a proactive policy to minimize any such disruptions and their effects on its supply chain.

This policy consists of four steps:

**Create Awareness**

Internally – Awareness is developed within the management team so that resources can be allocated and appropriate processes can be developed to manage the risk.

Raw materials used in manufacturing process

Paper

Wax

Ink

Taggant (Security ingredient)

Risk of disruption of supply

Wax – medium

Taggant – medium

Paper – low

Ink – Low

Externally – Work with vendors and customers in an effort to manage the risk.

Frequency of deliveries

Safety Stocks

Expedited shipments



**Prevention – Reduce the impact or likelihood of supply chain disruptions**

Identify Risk – Evaluate the potential causes of supply chain disruptions

- Change in specifications
- Vendor raw material availability
- Vendor goes out of business
- Strike
- Natural Disaster

Risk Assessment – Evaluate the probability and impact of each cause of supply chain disruption.

- Change in specifications – Low
- Vendor raw material availability – Low
- Vendor goes out of business – Low
- Strike – Low
- Natural Disaster – Low

Risk Treatment – Prioritize the various causes of disruption and develop strategies for reducing the probability and mitigate their impact.

- Change in specifications
  - Develop Specifications for each raw material
  - Certificates of compliance with each delivery
  - Qualified secondary sources
  - Safety Stock at Vendors
  - Safety Stock at Meyercord
  - Safety Stock at Customers
- Vendor raw material availability
  - Qualified secondary sources
  - Safety Stock at Vendors
  - Safety Stock at Meyercord
  - Safety Stock at Customers
- Vendor goes out of business
  - Qualified secondary sources
  - Safety Stock at Meyercord
  - Safety Stock at Customers
- Strike
  - Qualified secondary sources
  - Safety Stock at Meyercord
  - Safety Stock at Customers
- Natural Disaster
  - Qualified secondary sources
  - Safety Stock at Meyercord
  - Safety Stock at Customers

**Risk Monitoring – Monitor on an on-going basis, developments in the supply chain that may have an effect on the supply chain.**

- All major vendors are reviewed on an annual basis.
- The General Manager is involved in the negotiation of all contracts with major vendors.

**Resolution – Develop plans to recover from a disruption in the supply chain. Factors to consider are;**

- How to shorten the duration of the disruption.
- Minimize its impact on the business.
- Identify the resources necessary to carry out the plan.

**Experience - It is important that Meyercord learns from disruptions to the supply chain when they occur.**

- A post-audit should be conducted to identify the lessons learned.
- he supply chain policy should be revised accordingly.





### **Business Continuity and Disaster Recovery Plans:**

Meyercord has developed a Business Continuity and Disaster Recovery Plan that ensures that service to its customers is not disrupted if a disaster occurs at its plant. The Plan covers natural disasters, disruption in supply, and labor disruptions. The contingencies envisioned will be accommodated as shown below.

**Fire Prevention:** The Meyercord printing press is protected by a fire suppression system. In case of fire, the fire suppression system will engulf the press with carbon dioxide, suffocating the fire. Since carbon dioxide is a gas, it will not damage the press when it is discharged.

In addition to the fire suppression system on the press, the entire facility is protected by an automatic sprinkler system. This system is designed to localize the fire and prevent the spread to other areas of the building. In addition, the sprinkler alarm is tied into the central alarm system that notifies the local fire department whenever the system is activated.

**Carrier:** A strike by Meyercord employees or a transportation company: Meyercord Revenue employees are not covered by a collective bargaining agreement. Meyercord uses multiple freight carriers and shipping modes to ship tax stamps. To the best of our knowledge, none of these companies are unionized. In the event that one of our carriers went on strike, we would use one of our other carriers.

**Disruption in printing supplies:** Meyercord has pre-qualified back-up or secondary sources of supply for each raw material to ensure an adequate supply of materials at all times.

**Protection of Artwork:** Electronic copies of all artwork files are kept in a fireproof safe.

**Protection of Computer Files:** Electronic copies of all computer files are kept in a fireproof safe.

**Office/Telecommunications:** In the unfortunate circumstance of an unplanned disaster, Meyercord has arrangements with a local ITW facility to operate a skeleton administrative staff with computers and phones.

**Press equipment failure:** The printing press designated to print the tax stamp has many redundant features. A failure in one section of the press will not prevent the balance of the press from operating. A spare parts inventory is maintained on-site for the maintenance staff to make any necessary repairs or to have emergency service contact with the press manufacturer.

**Press equipment destroyed:** In the event the entire press is destroyed, tax stamps would either be printed at an out-of-state ITW facility or at a local, non-ITW facility.

**Numbering equipment failure:** A spare parts inventory is maintained on-site for the maintenance staff to make any necessary repairs or to have emergency service contacts with the equipment manufacturers.

**Numbering equipment destroyed:** In the event that the numbering machine is destroyed, tax stamps would either be shipped without numbers or with the same number printed on every stamp, until a new numbering machine can be built and installed.

**Rewinder equipment failure:** We operate and maintain multiple rewinders so that production can be switched over to another rewriter if an equipment failure occurs. As with the press, we maintain a spare parts inventory, have an on-site maintenance staff to make any necessary repairs and have emergency service contacts with the rewriter manufacturer.

**Rewinder equipment destroyed:** In the event that both rewinders are destroyed, tax stamps would either be rewound at an out-of-state ITW facility or at a local non-ITW facility.

**Complete destruction of plant or finished goods inventory:** Meyercord is willing to print and store an emergency supply of stamps at a secure offsite facility for an additional charge.



### 1.403 CHANGE MANAGEMENT

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

## 1.5 Acceptance

### 1.501 CRITERIA

The following criteria will be used by the State to determine Acceptance of the Services and/or Deliverables provided under this SOW:

#### A. Performance and Reliability Evaluation (PARE)

The Performance and Reliability Evaluation will consist of three phases.

##### 1. PHASE 1 – Specifications Compliance Review

- a. The first phase shall be comprised of a compliance review of the specifications for the system listed in the Contract. This review will ensure all items are in compliance with the required specifications for the Contract. In the event Treasury determines that any component or feature of the system does not comply with the mandatory specifications of the Contract, Treasury reserves the right to cancel the contract.

##### 2. PHASE 2 – Acceptance Test

- a. The Contract Compliance Inspector will evaluate the system's performance based on the specifications provided in the Contract. The Contract Compliance Inspector will determine that the system is fully operational when all of the requirements listed in the Contract are met. It will be the Contract Compliance Inspector's responsibility to determine that the system is fully operational.

##### 3. PHASE 3 – Post Implementation

- a. The performance period for Phase 3 is a period of forty-five (45) consecutive calendar days. The performance period shall commence when the system is fully operational.

During the performance period for Phase 3 there shall be no more than three (3) interruptions. During the performance period for Phase 3 there shall be no individual interruption that lasts longer than four (4) hours.

An interruption is defined as failure in the Contractor-supplied system or database, which results in work stoppage (including failure to process stamp orders and delivery of stamps).



Work stoppages resulting from network downtime, Treasury-supplied equipment failure or Treasury-supplied software malfunctions shall not be included in the performance period.

### **1.502 FINAL ACCEPTANCE**

Final Acceptance will be completed forty-five (45) days after Phase 3 of the PARE in section 1.501. During Final Acceptance, there shall be no more than three (3) interruptions. During Final Acceptance there shall be no individual interruption that lasts longer than four (4) hours (see 1.501 for definition of interruption). Upon completion of Final Acceptance, the Contract Compliance Inspector will provide written acceptance of the system.

## *1.6 Compensation and Payment*

### **1.601 COMPENSATION AND PAYMENT**

This Contract is a firm, fixed price Contract. See Article 1, Attachment A for Pricing.

#### A. Heat-Applied Stamps/Machines Proposals

1. Stamps: Invoicing/payment will occur as needed when stamps are ordered and delivered on a monthly basis
2. Read Pens (or Equivalent): Invoicing/payment will occur as needed when reader pens or equivalent are ordered and delivered
3. Storage (Optional): Invoicing/payment will occur monthly
4. Stamping Machinery and Maintenance/Service: Invoicing/payment will occur directly with the Distributors

## *1.7 Additional Terms and Conditions Specific to this SOW- Reserved*



**Article 1, Attachment A**  
Pricing

Products and Services Provided Directly to State:Item	Unit	Description	Annual Quantity *	Annual Quantity (Rolls or Pads)	Unit Price **	Three (3)-Year Total Price
1-A	TH	Heat Applied Serial Numbered "20" Cigarette Tax Stamps	585,000,000	19,500 rolls	\$0.78	\$1,368,900.00
1-B	TH	Heat Applied Serial Numbered "20" Cigarette Tax Stamps	10,800,000	7,200 pads	\$3.50	\$113,400.00
1-C	TH	Heat Applied Serial Numbered "25" Cigarette Tax Stamps	2,160,000	1,440 pads	\$3.50	\$22,680.00
1-D	TH	Heat Applied Serial Numbered Single Stick Cigarette Tax Stamps	126,000	84 pads	\$4.50	\$1,701.00
1-E	TH	Tribal Heat Applied Serial Numbered "20" Cigarette Tax Stamps	7,200,000	240 Rolls	\$0.78	\$16,848.00
1-F	TH	Tribal Heat Applied Serial Numbered "20" Cigarette Tax Stamps	54,000	36 Pads	\$4.50	\$729.00
1-G	TH	Tribal Heat Applied Serial Numbered "25" Cigarette Tax Stamps	54,000	36 Pads	\$4.50	\$729.00
1-H	EA	Reader Pens (Price above 20 per Year)	15		\$150.00	\$2,250.00

**Optional Resources and Costs**

1-I	YR	Stamp Storage by Contractor (Optional)	1		\$2,500.00	\$7,500.00
1-J	YR	Stamp Delivery Directly to Distributors	605,394,000		\$108,970.92	\$326,912.76
1-K	TH	Microprint	605,394,000		\$24,215.76	\$72,647.28

**Grand Total** \$1,934,297.04

\* The State reserves the right to CHANGE the quantities estimated above.

\*\* Pricing must be inclusive of all costs.

**Products and Services Provided Directly to Distributors**

1-J	EA	Stamping Machinery (List All Models/Accessories for Purchase and Lease) <i>VL10</i>	1	\$49,422 (a)	\$49,442
1-K	EA	Stamping Machinery Maintenance Agreements and Service Calls (List All Models/Accessories) <i>Per hour</i>	1	\$98.00 (b)	\$98

**Grand Total** \$1,582,177

\* The State reserves the right to CHANGE the quantities estimated above.

\*\* Pricing must be inclusive of all costs.



**EQUIPMENT PRICING – STATE OF MICHIGAN**

1. HEAT APPLIED STAMPS/MACHINE PROPOSALS

<b>1-J STAMPING MACHINERY</b>	UNIT PRICE	THREE (3) YEAR LEASE RATE
* VL10 (includes auto sizing)	\$49,442 (a)	\$1,258 per month
* SSMB (includes auto sizing)	\$73,090	\$1,859 per month
* Universal Case Packer	\$32,642	\$830 per month
* CC612 Case Cutter	\$73,639	\$1,873 per month

Notes: All machinery comes with a 1 year warranty on parts and labor (wear parts are not included).  
 All machinery is FOB, Lancaster, New York.  
 Additional leasing options are available

**1-K STAMPING MACHINERY MAINTENANCE AGREEMENTS AND SERVICE CALLS**

EQUIPMENT INSTALLATION CHARGE

* VL10 (includes auto sizing)	\$1,200
* SSMB (includes auto sizing)	\$2,400
* Universal Case Packer	\$ 800
* CC612 Case Cutter	\$2,400

SERVICE RATES \$98 per hour (b)

Notes: 1. Discounted service packages are available.  
 2. Maximum increase annually (duration of contract) will be 5%.

Pricing: Heat Applied Stamps/Machines Proposals Continued

Item	Unit	Description	Annual Quantity	Annual Quantity (Rolls or Pads)	Unit Price	Three (3)-Year Total Price
1-L	EA	Out-of-Scope: Other Tobacco Product (OTP) Stamping	1	TBD	\$_____	\$_____
<b>Additional Resources and Costs Available from Contractor (e.g. hourly rates for system modifications)</b>						
1.	<b>Microprint Security Feature (Semi-Covert Security Feature) Additional \$.04 /M Stamps</b>					
2.	<b>Taggant Plus Security Feature (Covert Security Feature) Additional \$.03 /M Stamps</b>					
3.	<b>Forensic Marker (Covert Forensic Security Feature) Additional \$.03 /M Stamps</b>					
4.	<b>Taggant Tester – (Covert Authentication Device) \$150 Each (First 20 per year free)</b>					
5.	<b>Taggant Tester Plus – (Semi-Covert Authentication Device) \$200 Each</b>					



**1-L OUT OF SCOPE: Other Tobacco Products (OTP)**

We have developed several concepts for stamping OTP products, particularly chewing tobacco. We have not yet developed working models or firm pricing. Our company has full engineering, design and manufacturing capabilities. We would have a great deal of interest in working with the State and various distributors to define market needs and develop cost effective solutions to meet those needs.

Per Clarifications Dated February 7, 2008:

1. Article 1, Attachment A, Pages 63 and 64: Under Item 1-K of your pricing, you show a unit price of \$98.00/hour. What’s the dollar amount of the annual maintenance agreement for each machine?

*The annual maintenance agreements are attached. Pricing is zoned based on the distributor location in relation to the technician home base. If contract is won and we place a technician central to the majority of the distributors, approximately 80% would fall under the zone A pricing. All others with the exception of the Upper Peninsula would fall under zone B*

2. Article 1, Attachment A, Page 64: Does the 5% annual escalator apply to Service Rates (\$98/hour) only?

*The 5% annual cap applies to service rates, maintenance agreements and parts.*

3. Section 1.104.7 (Delivery), Page 22: Can Meyercord ship stamps directly to Distributors instead of deliveries being made to the State for subsequent shipment to Distributors? If yes, what costs would be incurred for this service, and what would the ordering process entail? *Yes, Meyercord can ship stamps directly to Distributors. The price for this service is as follows;*

*Option 1  
System Development – One-Time Cost - \$36,000*

*Price per thousand stamps shipped directly to Distributors \$.15 /M*

*Option 2  
Price per thousand stamps shipped directly to Distributors \$.18 /M*

*The following is a description of the ordering process;*

**Background**

To streamline communication of information, and eliminate data-synchronization errors, all data entry, inquiries and reports would be performed via Meyercord’s secure web-based Stamp Information System (SIS).

**Stamp Ordering**

The order process begins with the Distributor placing an order with the Treasury. Once all of Treasury’s requirements for the order have been met, any authorized Treasury employee logs in to the SIS, with their unique user ID and password, and enters the order.

**Order Confirmation**

Every time an order is submitted, the SIS will send an email to the individual that entered the order. (The email address is tied to the user ID that was used to enter the order. As such, if someone’s



user ID is compromised, they will be alerted to that fact when they receive the email for an order that they did not place.) The email will contain the details of the order. Upon receiving the email, the user must click on the embedded link. Doing so will serve as an acknowledgement to the SIS that the confirmation email was received, and that the order is to be shipped. An order will not ship until this confirmation process has been completed.

### **Stamp Shipping**

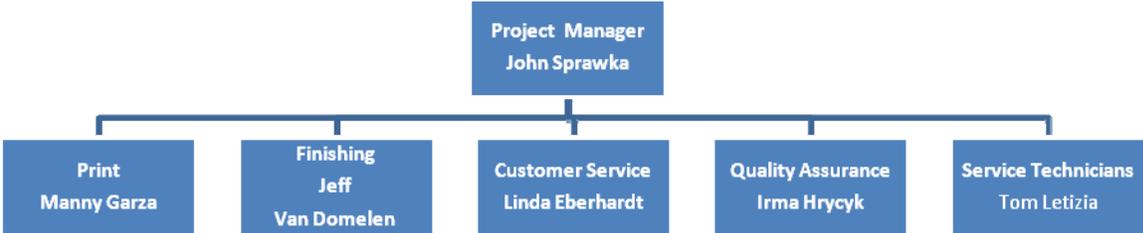
For each order, rolls to fulfill the order are picked, and each roll is scanned into the SIS. Doing so ensures that the correct type of roll is being shipped, and that the quantity of rolls shipped matches the quantity of rolls ordered. In addition, this is the step that assigns the Distributor to each roll number for this order.

Once an order is packed, each case for the order is individually weighed, assigned a tracking number, and affixed with a shipping label. The tracking numbers and weights are automatically recorded in SIS.



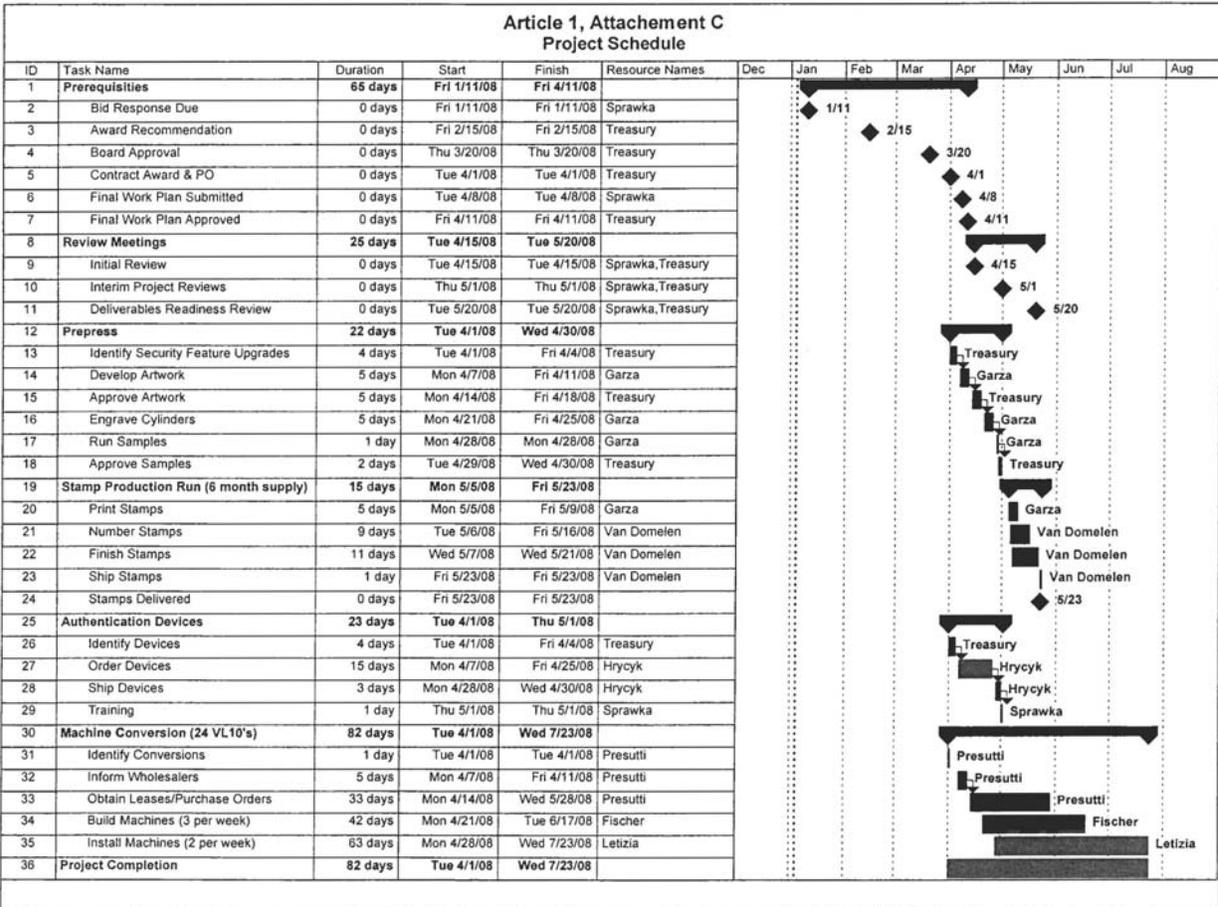
**Article 1, Attachment B**  
Organizational Chart, including Key Personnel

**Article 1, Attachment B Organizational Chart, Including Key Personnel**





**Article 1, Attachment C**  
Project Plan





## **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) Reserved
- (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.

#### **2.013 Statements 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 Purchasing Operations and Department of Treasury (collectively, including all other relevant State of Michigan departments and agencies, the "State"). Purchasing Operations is the sole point of contact in the State with regard to all procurement and contractual matters relating to the Contract. **Purchasing Operations is the only State office authorized to change, modify, amend, alter or clarify the prices, specifications, terms and conditions of this Contract.** The Contractor Administrator within the Office of Purchasing Operations for this Contract is:

Irene Pena, CPPB  
Buyer Specialist  
Office of Purchasing Operations  
Department of Management and Budget  
Mason Bldg, 2nd Floor  
PO Box 30026  
Lansing, MI 48909  
Penai1@michigan.gov  
(517) 241-1647

#### 2.015 Contract Compliance Inspector

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



Mary Ann Vicini  
Department of Treasury  
Customer Service Bureau  
Customer Contact Division  
Special Taxes Section

2.020 Contract Objectives/Scope/Background

**2.021 Background - Reserved**

**2.022 Purpose - Reserved**

**2.023 Objectives and Scope - Reserved**

**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 August 15, 2008 through August 14, 2011. 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 five (5) additional one (1) year periods. Successful completion of negotiations surrounding the terms of the extension, will be a pre-requisite for the exercise of any option year.

### 2.040 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. Article 1, Attachment B provides an organization chart showing the roles of certain Key Personnel, if any.

(ii) Key Personnel shall be dedicated as defined in Article 1, Attachment B 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) Reserved

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



(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**

The Contractor will adhere to all existing standards as described within the comprehensive listing of the State's existing technology standards at <http://michigan.gov/dit/0,1607,7-139-34305---,00.html>.

#### **2.052 PM Methodology Standards**

The State has adopted a standard documented Project Management Methodology (PMM) for use on all Information Technology (IT) based projects. See the State's PMM website at <http://www.michigan.gov/projectmanagement>.

The Contractor shall use the State's PPM to manage this Contract. If the Contractor requires training on the PMM, those costs shall be the responsibility of the Contractor, unless otherwise stated.

#### **2.053 Adherence to Portal Technology Tools**

The State has adopted the following tools for its Portal Technology development efforts:

- Vignette Content Management and personalization Tool
- Inktomi Search Engine
- E-Pay Payment Processing Module
- Websphere Commerce Suite for e-Store applications

Unless otherwise stated, Contractor must use the Portal Technology Tools to implement web content management and deployment efforts. Tools used for web-based application development must work in conjunction with Vignette and Inktomi. The interaction with Vignette and Inktomi must be coordinated with DIT, Enterprise Application Services Office, e-Michigan Web Development team.

Contractors that are compelled to use alternate tools must have received an exception from DIT, Enterprise Application Services Office, e-Michigan Web Development team, before this Contract is effective.

#### **2.054 Acceptable Use Policy**

To the extent that Contractor has access to the State computer system, Contractor must comply with the State's Acceptable Use Policy, see [http://michigan.gov/documents/1460\\_162823\\_7.00.doc](http://michigan.gov/documents/1460_162823_7.00.doc). All Contractor employees must be required, in writing, to agree to the State's Acceptable Use Policy before accessing the State system. The State reserves the right to terminate Contractor's access to the State system if a violation occurs.



## 2.060 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**

#### (a) Equipment to be New

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

#### (b) Prohibited Products

The State will not accept salvage, distressed, outdated or discontinued merchandise. Shipping of such merchandise to any State agency, as a result of an order placed against the Contract, shall be considered default by the Contractor of the terms and conditions of the Contract and may result in cancellation of the Contract by the State. The brand and product number offered for all items shall remain consistent for the term of the Contract, unless Purchasing Operations has approved a change order pursuant to **Section 2.106**.

## 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**

The parties acknowledge that Untimely Processing/Delivery of Stamps and System Down-Time 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 such delay. Therefore, Contractor and the State agree that in the case of any such Untimely Processing/Delivery of Stamps or System Down-Time in respect of which the State does not elect to exercise its rights under **Section 2.191**, the State may assess liquidated damages against Contractor as specified in this Section.

If Untimely Processing/Delivery of Stamps or System Down-Time occurs, then the State shall be entitled to collect liquidated damages as follow:

1. Untimely Processing and Delivery of Stamps: In the amount of \$10,000.00 and an additional \$10,000.00 per day for each day Contractor fails to timely process and deliver stamp orders per sections 1.104.A.7 or 1.104.D.7.
2. System Down-Time: In the amount of \$10,000.00 when the system is down four (4) hours or more on a single business day and an additional \$10,000.00 per day for each day Contractor fails to remedy system availability to at least 99% of each 24 hour period, per section 1.104.G.4.

### **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 Contractor agrees that time is of the essence in the performance of the Contractor's obligations under this Contract. [Only use if timing is crucial to a fundamental state program]



## 2.076 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

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

- (a) Shipment responsibilities - Services performed/Deliverables provided under this Contract shall be delivered “F.O.B. Destination, within Government Premises.” The Contractor shall have complete responsibility for providing all Services/Deliverables to all site(s) unless otherwise stated. Actual delivery dates will be specified on the individual purchase order.
- (b) Delivery locations - Services will be performed/Deliverables will be provided at every State of Michigan location within Michigan unless otherwise stated in the SOW. Specific locations will be provided by the State or upon issuance of individual purchase orders.
- (c) Damage Disputes - At the time of delivery to State Locations, the State shall examine all packages. The quantity of packages delivered shall be recorded and any obvious visible or suspected damage shall be noted at time of delivery using the shipper’s delivery document(s) and appropriate procedures to record such.



Where there is no obvious or suspected damage, all deliveries to a State Location must be opened by the State and the contents inspected for possible internal damage not visible externally within fourteen (14) days of receipt. Any damage must be reported to the Contractor within five (5) days of inspection. If this inspection does not occur and damages not reported within thirty (30) days of receipt, the cure for such damaged deliveries shall transfer to the delivery signing party.

## **2.082 Delivery of Deliverables**

(a) Where applicable, the Statements of Work/POs contain lists of the Deliverables to be prepared and delivered by 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 rates in Article 1, Attachment A. 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 A 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 A**.

## 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 A**. 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](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 - Reserved

### 2.095 Electronic Payment Availability

Electronic transfer of funds mandatory 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 C** (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 [Any Mandatory Reports or Meetings should be included in the Statement of Work]

### (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 Purchasing Operations.

(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** [Any Mandatory Tools should be listed in the Statement of Work]

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

### **2.111 Records and Inspections**

The Contractor agrees that the State may, upon 24-hour notice, perform an audit at Contractor's location(s) to determine if the Contractor is complying with the requirements of the Contract. The Contractor agrees to cooperate with the State during the audit and produce all records and documentation that verifies compliance with the Contract requirements.

### **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) 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 \(Also See Exhibit C, Safeguard Requirements of Confidential Data\)](#)

### **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"). Certain sections of proposals may be exempt per section 28(1)(f) of the Revenue Act (e.g. information obtained in the administration of a tax; or information or parameters that would enable a person to ascertain the audit selection or processing criteria of the department for a tax administered by the department).

### **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

Contractor and/or its personnel shall confirm such assignment by execution and delivery of the assignments, confirmations of assignment, or other written instruments as the State may request. The State shall have the right to obtain and hold in its own name all copyright, trademark, and patent registrations and other evidence of rights that may be available for Deliverables.

#### **2.161 License**

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

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

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

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

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

#### **2.162 Source Code Escrow - Reserved**

#### **2.163 Rights in Data**

(a) The State will be and remain the owner of all data made available by the State to 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**

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

#### **2.165 Standard Software - Reserved**

#### **2.166 Pre-existing Materials for Custom Software Deliverables**

Neither Contractor nor any of its Subcontractors shall incorporate any preexisting materials (including Standard Software) into Custom Software Deliverables or use any pre-existing materials to produce Custom Software Deliverables if such pre-existing materials will be needed by the State in order to use the Custom Software Deliverables unless (i) such pre-existing materials and their owners are identified to the State in writing and (ii) such pre-existing materials are either readily commercially available products for which Contractor or its Subcontractor, as the case may be, has obtained a license (in form and substance approved by the State) in the name of the State, or are materials that Contractor or its Subcontractor, as the case may be, has the right to license to the State and has licensed to the State on terms and conditions approved by the State prior to using such pre-existing materials to perform the Services.

#### **2.167 General Skills**

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

#### **2.170 Warranties and Representations**

#### **2.171 Warranties and Representations**

The 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 neither 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

### (a) Performance Warranty

The Contractor represents and warrants that Deliverables, after Final Acceptance, will perform and operate in compliance with the requirements and other standards of performance contained in this Contract (including all descriptions, specifications and drawings made a part of the Contract) for a period of ninety (90) days. In the event of a breach of this warranty, Contractor will promptly correct the affected Deliverable(s) at no charge to the State.

### (b) No Surreptitious Code Warranty

The Contractor represents and warrants that no copy of licensed Software provided to the State contains or will contain any Self-Help Code or any Unauthorized Code as defined below. This warranty is referred to in this Contract as the "No Surreptitious Code Warranty."

As used in this Contract, "Self-Help Code" means any back door, time bomb, drop dead device, or other software routine designed to disable a computer program automatically with the passage of time or under the positive control of a person other than the licensee of the software. Self-Help Code does not include Software routines in a computer program, if any, designed to permit an owner of the computer program (or other person acting by authority of the owner) to obtain access to a licensee's computer system(s) (e.g. remote access via modem) for purposes of maintenance or technical support.

As used in this Contract, "Unauthorized Code" means any virus, Trojan horse, spyware, worm or other Software routines or components designed to permit unauthorized access to disable, erase, or otherwise harm software, equipment, or data; or to perform any other such actions. The term Unauthorized Code does not include Self-Help Code. Unauthorized Code does not include Software routines in a computer program, if any, designed to permit an owner of the computer program (or other person acting by authority of the owner) to obtain access to a licensee's computer system(s) (e.g. remote access via modem) for purposes of maintenance or technical support.

In addition, Contractor will use up-to-date commercial virus detection software to detect and remove any viruses from any software prior to delivering it to the State.

### (c) Calendar Warranty

The Contractor represents and warrants that all software for which the Contractor either sells or licenses to the State of Michigan and used by the State prior to, during or after the calendar year 2000, includes or shall include, at no added cost to the State, design and performance so the State shall not experience software abnormality and/or the generation of incorrect results from the software, due to date oriented processing, in the operation of the business of the State of Michigan.

The software design, to insure calendar year rollover compatibility, shall include, but is not limited to: data structures (databases, data files, etc.) that provide 4-digit date century; stored data that contain date century recognition, including, but not limited to, data stored in databases and hardware device internal system dates; calculations and program logic (e.g., sort algorithms, calendar generation, event recognition, and all processing actions that use or produce date values) that accommodates same century and multi-century formulas and date values; interfaces that supply data to and receive data from other systems or organizations that prevent non-compliant dates and data from entering any State system; user interfaces (i.e., screens, reports, etc.) that accurately show 4 digit years; and assurance that the year 2000 shall be correctly treated as a leap year within all calculation and calendar logic.



(d) Third-party Software Warranty

The Contractor represents and warrants that it will disclose the use or incorporation of any third-party software into the Deliverables. At the time of Delivery, the Contractor shall provide in writing the name and use of any Third-party Software, including information regarding the Contractor's authorization to include and utilize such software. The notice shall include a copy of any ownership agreement or license that authorizes the Contractor to use the Third-party Software.

### **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 two (2) 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**

(a) Contractor represents and warrants that each licensed copy of the Software provided by the Contractor is free from physical defects in the media that tangibly embodies the copy. This warranty does not apply to defects discovered more than thirty (30) days after that date of Final Acceptance of the Software by the State. This warranty does not apply to defects arising from acts of Excusable Failure. If the Contractor breaches this warranty, then the State shall be entitled to replacement of the non-compliant copy by Contractor, at Contractor's expense (including shipping and handling).



## 2.175 DISCLAIMER

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

## 2.176 Consequences for Breach

In addition to any remedies available in law, if the 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](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 Purchasing Operations, certificate(s) of insurance verifying insurance coverage ("Certificates"). The Certificate must be on the standard "accord" form or equivalent. **THE CONTRACT OR PURCHASE ORDER NO. MUST BE SHOWN ON THE CERTIFICATE OF INSURANCE TO ASSURE CORRECT FILING.** All Certificate(s) are to be prepared and submitted by the Insurance Provider. All Certificate(s) shall contain a provision indicating that



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

The 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 INSURED 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 INSURED 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

5. Employee Fidelity, including Computer Crimes, insurance naming the State as a loss payee, providing coverage for direct loss to the State and any legal liability of the State arising out of or



related to fraudulent or dishonest acts committed by the employees of Contractor or its Subcontractors, acting alone or in collusion with others, in a minimum amount of one million dollars (\$1,000,000.00) with a maximum deductible of fifty thousand dollars (\$50,000.00).

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

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

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

(b) Subcontractors

Except where the State has approved in writing a 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 Purchasing Operations certificate(s) of insurance verifying insurance coverage or providing satisfactory evidence of self-insurance as required in this Section (the “Certificates”). Before the Contract is signed, and not less than 20 days before the insurance expiration date every year thereafter, the 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 \$2,000,000 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.

(d) 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.

(e) Payment - If the transition results from a termination for any reason, reimbursement shall be governed by the termination provisions of this Contract. If the transition results from expiration, the 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 Article 1, Attachment A. 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 Purchasing Operations, DMB, or designee, for the purpose of attempting to resolve such dispute without the need for formal legal proceedings, as follows:

(i) The representatives of 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 Purchasing Operations, DMB, or designee, shall issue a written opinion regarding the issue(s) in dispute within thirty (30) calendar days. The opinion regarding the dispute shall be considered the State's final action and the exhaustion of administrative remedies.

(b) This **Section 2.250** will not be construed to prevent either party from instituting, and a party is authorized to institute, formal proceedings earlier to avoid the expiration of any applicable limitations period, to preserve a superior position with respect to other creditors, or pursuant to **Section 2.253**.

(c) The State will not mediate disputes between the 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 Purchasing Operations.

(2) Contractor shall also notify the Office of Purchasing Operations within thirty (30) days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership or officers.

(3) Contractor shall also notify Purchasing Operations within thirty (30) days whenever changes to company affiliations occur.

### **2.272 Governing Law**

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

### **2.273 Compliance with Laws**

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 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:

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

Contractor(s): Meyercord Revenue Inc.  
Attn: John Sprawka  
475 Village Drive  
Carol Stream, IL 60188

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 Article 1, Attachment B 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**

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

## **2.298 Reformation and Severability**

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

## **2.299 Consents and Approvals**

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

## **2.300 No Waiver of Default**

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

## **2.301 Survival**

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

## **2.302 Covenant of Good Faith**

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

## **2.303 Permits**

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 - Reserved

1.330 Federal Grant Requirements – Reserved



**Exhibit A**  
Reserved



**Exhibit B**  
Reserved



**Exhibit C**  
Reserved



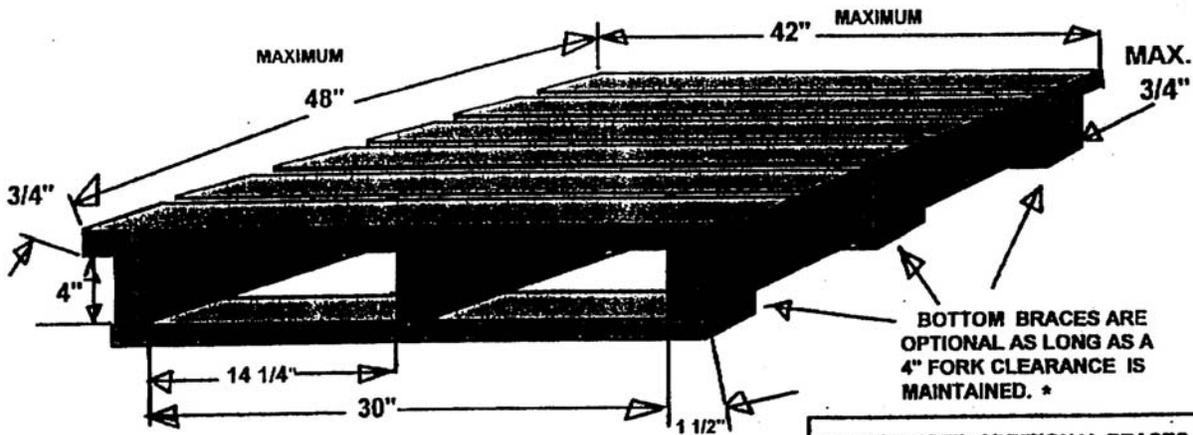
**Exhibit D**  
**PALLET SPECIFICATIONS**

ATTACHMENT A

*STACKED 4 BOXES HIGH*

**MICHIGAN LOTTERY PALLET SPECIFICATIONS** *-(USE FOR TOBACCO STAMPS)*

**USE ONLY TWO WAY PALLETS WITH ENTRANCE ON SHORT SIDE.**



NOTE: ALL DIMENSIONS ARE MINIMUM UNLESS OTHERWISE INDICATED.

PLEASE NOTE: ADDITIONAL BRACES WILL IMPAIR USE OF A HAND LIFT TRUCK, AND MUST NOT BE USED.

**\* PALLETS MUST BE STURDY ENOUGH TO SUPPORT THE LOAD.**

11/97



**Exhibit E**  
Distributor Locations

City	State
MOORPARK	CA
CARROLL	IA
MORRIS	IL
CHICAGO	IL
WOODSTOCK	IL
DANVILLE	IL
URBANA	IL
INDIANAPOLIS	IN
NEW HAVEN	IN
BLUFFTON	IN
SOUTH BEND	IN
WESTVILLE	IN
WESTVILLE	IN
FORT WAYNE	IN
NICHOLASVILLE	KY
LOWELL	MI
ALPENA	MI
CADILLAC	MI
IRON MOUNTAIN	MI
ESCANABA	MI
HAZEL PARK	MI
YPSILANTI	MI
LANSING	MI
HOUGHTON	MI
WYOMING	MI
IRONWOOD	MI
MOUNT PLEASANT	MI
KALAMAZOO	MI
DETROIT	MI
LANSING	MI
ST CLAIR SHORES	MI
WATERFORD	MI
MT PLEASANT	MI
GRAND RAPIDS	MI
SHELBY TWP	MI
BRIDGEPORT	MI
MANISTIQUE	MI
FERNDALE	MI
SOUTHFIELD	MI
MUSKEGON	MI
MI	MI
NORTHFIELD	MN
PLYMOUTH	MN
PLYMOUTH	MN
GREENSBORO	NC
WINSTON-SALEM	NC
OXFORD	NC
OMAHA	NE
TOLEDO	OH



City	State
BRYAN	OH
LIMA	OH
HANOVER TOWNSHIP	PA
WILKES-BARRE	PA
BLAINE	WA
JANESVILLE	WI
EAV CLAIRE	WI
WISCONSIN DELLS	WI
MERRILL	WI
MILWAUKEE	WI