

STATE OF MICHIGAN
 DEPARTMENT OF TECHNOLOGY, MANAGEMENT & BUDGET
 PROCUREMENT

525 W. ALLEGAN STREET
 LANSING, MI 48933

P.O. BOX 30026
 LANSING, MI 48909

CHANGE NOTICE NO. 3
 to
 CONTRACT NO. 071B2200257
 between
 THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF CONTRACTOR	PRIMARY CONTACT	EMAIL
Unisys Corporation 578 Shelbourne Drive Rochester Hills MI, 48309	Meredith Hughes	meredith.hughes@unisys.com
	PHONE	CONTRACTOR'S TAX ID NO. (LAST FOUR DIGITS ONLY)
	(248) 805-5014	*****7840

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
PROGRAM MANAGER / CCI	DTMB	Richard Novello	517-241-4449	NovelloD@michigan.gov
CONTRACT ADMINISTRATOR	DTMB	James Topping	517-284-7032	toppingj@michigan.gov

CONTRACT SUMMARY			
DESCRIPTION: Unisys & Mainframe Environment Support			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
August 1, 2012	July 31, 2015	2 - 1 Year	July 31, 2016
PAYMENT TERMS		DELIVERY TIMEFRAME	
N/A		N/A	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS			
N/A			

DESCRIPTION OF CHANGE NOTICE				
EXERCISE OPTION?	LENGTH OF OPTION	EXERCISE EXTENSION?	LENGTH OF EXTENSION	REVISED EXP. DATE
<input checked="" type="checkbox"/>	One Year	<input type="checkbox"/>		July 31, 2017
CURRENT VALUE		VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE	
align="center">\$23,009,884.41		\$ 0.00	align="center">\$23,009,884.41	
DESCRIPTION: Effective date February 19, 2016 the second option year available on this contact is hereby exercised. The revised contract expiration date is July 31, 2017. Program Manager updated to Richard Novello.				
All other terms, conditions, specifications and pricing remain the same. Per contractor and agency agreement, and DTMB Procurement approval.				

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

CHANGE NOTICE NO. 2
 to
CONTRACT NO. 071B2200257
 between
THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF CONTRACTOR	PRIMARY CONTACT	EMAIL
Unisys Corporation 578 Shelbourne Drive Rochester Hills, MI 48309	Meredith Hughes	Meredith.hughes@unisys.com
	PHONE	VENDOR TAX ID # (LAST FOUR DIGITS ONLY)
	(248) 805-5014	7840

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
PROGRAM MANAGER	DTMB	David Bengel	517-241-2921	bengeld@michigan.gov
CONTRACT ADMINISTRATOR	DTMB	Jarrod Barron	517-284-7045	Barronj1@michigan.gov

CONTRACT SUMMARY				
DESCRIPTION: Unisys & Mainframe Environment Support				
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW	
August 1, 2012	July 31, 2015	2, one year	July 31, 2015	
PAYMENT TERMS	F.O.B.	SHIPPED TO		
N/A	N/A	N/A		
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING	
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input checked="" type="checkbox"/> Yes <input 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 EXTENSION/OPTION	EXPIRATION DATE AFTER CHANGE
<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/>	<input type="checkbox"/>	One year	July 31, 2016
CURRENT VALUE		VALUE/COST OF CHANGE NOTICE	ESTIMATED REVISED AGGREGATE CONTRACT VALUE	
\$23,009,884.41		\$0.00	\$23,009,884.41	

DESCRIPTION:

Effective date April 1, 2015 the first option year available on this contract is hereby exercised. The revised contract expiration date is July 31, 2016.

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

CHANGE NOTICE NO.1
 to
CONTRACT NO. 071B2200257
 between
THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Unisys Corporation 578 Shelbourne Drive Rochester Hills, MI 48309	Meredith Hughes	Meredith.hughes@unisys.com
	TELEPHONE	CONTRACTOR #, MAIL CODE
	(248) 805-5014	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR	DTMB	David Bengel	517-241-2921	bengeld@michigan.gov
BUYER	DTMB	Reid Sisson	517-241-1638	sissonr@michigan.gov

CONTRACT SUMMARY:			
DESCRIPTION: Unisys & Mainframe Environment Support			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
August 1, 2012	July 31, 2015	2, one year	July 31, 2015
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
N/A	N/A	N/A	N/A
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MiDEAL PARTICIPANTS
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input checked="" type="checkbox"/> Yes <input 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 checked="" type="checkbox"/> No <input type="checkbox"/> Yes	<input type="checkbox"/>	<input type="checkbox"/>		July 31, 2015
VALUE/COST OF CHANGE NOTICE:			ESTIMATED REVISED AGGREGATE CONTRACT VALUE:	
\$0.00			\$23,009,884.41	

Effective March 6, 2013, the following language is added to this contract:

“The Administrative Fee referenced in Section 2.281-MiDEAL of the contract shall only be applicable to MiDEAL purchases and not to state purchases.”

All other terms, conditions, pricing and specifications remain the same. Per 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 48913

**NOTICE
 OF
 CONTRACT NO. 071B2200257
 Between
 THE STATE OF MICHIGAN
 And**

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Unisys Corporation 578 Shelbourne Drive Rochester Hills, MI 48309	Meredith Hughes	meredith.hughes@unisys.com
	TELEPHONE	CONTRACTOR #, MAIL CODE
	(248) 805-5014	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR:	DTMB	David Bengel	(517) 241-2921	bengeld@michigan.gov
BUYER:	DTMB	Reid Sisson	(517) 241-1638	sissonr@michigan.gov

CONTRACT SUMMARY:			
DESCRIPTION: Unisys & Mainframe Environment Support			
INITIAL TERM	EFFECTIVE DATE	INITIAL EXPIRATION DATE	AVAILABLE OPTIONS
3 Yrs.	August 1, 2012	July 31, 2015	2, 1 Yr. Options
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
N/A	N/A	N/A	N/A
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MiDEAL PARTICIPANTS
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
MINIMUM DELIVERY REQUIREMENTS:			
N/A			
MISCELLANEOUS INFORMATION:			
The terms and conditions of this Contract are those of RFP-RS-084R2200077, including Article 1 of the RFP, as revised and attached to this Contract, and Contractor's Response to the RFP dated May 17, 2012, are made a part hereof. In the event of a conflict, the terms in the body of the attached Article 2 of this Contract shall control.			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION:			\$23,009,884.41

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 DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET
 PROCUREMENT
 P.O. BOX 30026, LANSING, MI 48909
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THE STATE OF MICHIGAN
 And

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Unisys Corporation 578 Shelbourne Drive Rochester Hills, MI 48309	Meredith Hughes	meredith.hughes@unisys.com
	TELEPHONE	CONTRACTOR #, MAIL CODE
	(248) 805-5014	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR:	DTMB	David Bengel	(517) 241-2921	bengeld@michigan.gov
BUYER:	DTMB	Reid Sisson	(517) 241-1638	sissonr@michigan.gov

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DESCRIPTION: Unisys & Mainframe Environment Support			
INITIAL TERM	EFFECTIVE DATE	INITIAL EXPIRATION DATE	AVAILABLE OPTIONS
3 Yrs.	August 1, 2012	July 31, 2015	2, 1 Yr. Options
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
N/A	N/A	N/A	N/A
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MiDEAL PARTICIPANTS
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
MINIMUM DELIVERY REQUIREMENTS:			
N/A			
MISCELLANEOUS INFORMATION:			
The terms and conditions of this Contract are those of RFP-RS-084R2200077, including Article 1 of the RFP, as revised and attached to this Contract, and Contractor's Response to the RFP dated May 17, 2012, are made a part hereof. In the event of a conflict, the terms in the body of the attached Article 2 of this Contract shall control.			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION:			\$23,009,884.41

THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the RFP-RS-084R2200077. Orders for delivery will be issued directly by the Department of Technology, Management & Budget through the issuance of a Purchase Order Form.

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

FOR THE CONTRACTOR:

Firm Name
Unisys Corporation

Authorized Agent Signature

Authorized Agent (Print or Type)

Date

FOR THE STATE:

Signature

Jeff Brownlee, Chief Procurement Officer

Name/Title
DTMB Procurement

Division

Date

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Article 1 – Statement of Work (SOW)

1.000 Project Identification

1.001 PROJECT REQUEST

The purpose of this Contract is to support the State's current Unisys Mainframe Computing System and Unisys Legacy Environments, including procurement and support of hardware, associated software and licenses, maintenance and support and operations.

1.002 BACKGROUND

The DTMB's Data Center Operations provides centralized hosting services for all State of Michigan Agencies. The cornerstone to this operation for many critical applications is the Unisys mainframe computing system. DTMB's client state agencies have projected a need for these devices and services for the next three years and beyond. This RFP seeks to establish a vehicle for ongoing maintenance and support for the systems now in place, and also to anticipate future need. The goal of this RFP is to maintain a robust computing environment for our partner agencies by assuring continuity of current services as well as a pathway for enhancing and upgrading those services to increase efficiency, performance and opportunities for fiscal savings.

The current Unisys Libra mainframe computer is an essential element of the State's data center; interacting with hundreds of servers and applications in order to deliver services to the citizens of the State of Michigan. The current number of software applications running in the mainframe environment is estimated at over 5,000, comprising an estimated 3.5 million lines of source code.

1.100 Scope of Work and Deliverables

1.101 IN SCOPE

- Mainframe Hardware
- Software
- Support and Maintenance
 - Hardware Maintenance
 - Software Support
 - SAM for LIBRA
- Operations Services
 - Data Center Project Management
 - Disaster Recovery Project Management
 - Disaster Recovery Architecture
 - ITAM Software Specialist
 - LIBRA Engineer
 - DMS-II Database Administration
- Support Services
 - Installation
 - Integration
 - Configuration
 - Implementation

A more detailed description of the services (work) and deliverables sought for this project is provided in **Section 1.104, Work and Deliverables**. The State reserves the right (depending on mutual agreement with the Contractor) to add spending authority to this Contract to purchase products and services.

1.102 OUT OF SCOPE

All hardware, software products and support services required to maintain this system are within scope. Everything else is out of scope.

1.103 ENVIRONMENT

The links below provide information on the State's Enterprise information technology (IT) policies, standards and procedures which includes security policy and procedures, IT strategic plan, eMichigan web development and the State Unified Information Technology Environment (SUITE).

Contractors are advised that the State has methods, policies, standards and procedures that have been developed over the years. Contractors are expected to provide proposals that conform to State IT policies and standards. All services and products provided as a result of this RFP must comply with all applicable State IT policies and standards. Contractor is required to review all applicable links provided below and state compliance in their response.

Enterprise IT Policies, Standards and Procedures:

<http://www.michigan.gov/dmb/0,1607,7-150-56355-107739--,00.html>

All software and hardware items provided by the Contractor must run on and be compatible with the MDTMB Standard Information Technology Environment. Additionally, the State must be able to maintain software and other items produced as the result of the Contract. Therefore, non-standard development tools may not be used unless approved by MDTMB. The Contractor must request, in writing, approval to use non-standard software development tools, providing justification for the requested change and all costs associated with any change. The MDTMB Project Manager must approve any tools, in writing, before use on any information technology project.

It is recognized that technology changes rapidly. The Contractor may request, in writing, a change in the standard environment, providing justification for the requested change and all costs associated with any change. The State's Project Manager must approve any changes, in writing, and MDTMB, before work may proceed based on the changed environment.

Enterprise IT Security Policy and Procedures:

http://www.michigan.gov/documents/dmb/1310_183772_7.pdf

http://www.michigan.gov/documents/dmb/1310.02_183775_7.pdf

http://www.michigan.gov/documents/dmb/1325_193160_7.pdf

http://www.michigan.gov/documents/dmb/1335_193161_7.pdf

http://www.michigan.gov/documents/dmb/1340_193162_7.pdf

http://www.michigan.gov/documents/dmb/1350.10_184594_7.pdf

The State's security environment includes:

- MDTMB Single Login.
- MDTMB provided SQL security database.
- Secured Socket Layers.
- SecureID (State Security Standard for external network access and high risk Web systems)

IT Strategic Plan:

<http://www.michigan.gov/itstrategicplan>

IT eMichigan Web Development Standard Tools:

http://www.michigan.gov/documents/som/Look_and_Feel_Standards_302051_7.pdf

The State Unified Information Technology Environment (SUITE):

Includes standards for project management, systems engineering, and associated forms and templates – must be followed: <http://www.michigan.gov/suite>

Agency Specific Technical Environment

The following items are included in the Unisys portfolio and are a part of this request:

- A. UNISYS Production Libra 690 and Virtual Tape Library
- B. UNISYS Development Libra 690 and UNISYS DR Libra 680
- C. MDOS Remittance Processors
- D. DLARA Remittance Processors
- E. MAIN COLD System

Details for these systems are included in Attachment A.

F. UNISYS Agile Business Suite – support for MSP installation

Contract Number	Ordered Style	Service Plan	Agency
45023	ABD 321-VSN	Bus Critical 24x7 2hr response	MSP
45023	ABD 321-VSN	Bus Critical 24x7 2hr response	MSP
45023	ABR 40-JEE	Bus Critical 24x7 2hr response	MSP

1.104 Work And Deliverable

I. Services and Deliverables To Be Provided -

For the purpose of preparing proposals, Vendors should contemplate that current systems’ support, operations, and availability of new products and services for purchase systems will be transferred to this Contract by the Contract start date.

The State reserves the right, at its sole determination, to procure goods and services from any other contract, based on best value.

A. Hardware

Contractor will provide Unisys mainframe computers, parts, and associated peripheral equipment for the purposes of replacing existing hardware, upgrading hardware, or purchase of new systems. In addition, Contractor may provide third-party mainframe hardware that is supported directly by Unisys. Hardware shall include all applicable software operating systems and firmware needed for successful operation, including software upgrades for replacement systems. Hardware shall include two printed copies of all applicable user and technical manuals.

Equipment that has not yet entered the production phase of the manufacturer may not be sold under this Contract.

Contractor may only provide hardware that includes a warranty, or for which maintenance can be purchased.

Contractor will furnish the State, at its request, hardware leasing options.

B. Software

Software includes software license, software media, and software technical and user manuals, to which Contractor will provide any combination at the State’s request. Contractor will provide:

- Unisys software relating the operation, administration, and interface of Unisys mainframe hardware
- Unisys software relating to the operation, administration, and monitoring of software applications running on the State’s mainframe environment.
- Unisys Remittance Processor Software used in existing State systems.
- Unisys ABSuite Software used in existing State systems.
- Unisys Enterprise Output Manager Software used in existing State systems.

Software that the publisher has not made available as Generally Available (beta- or earlier releases) may not be sold under this Contract.

Contractor must provide a detailed description of the infrastructure requirements for the software proposed. For example, the database, operating systems (including versions), and hardware required for maximum effectiveness of

the software. At the State's request, Contract will recommend and describe proposed architecture, technology standards, and programming environment.

Contractor shall provide prior to purchase a copy of any software's applicable License Agreement. License Agreements shall not conflict with the Article 2 Terms and Conditions of this Contract; in the event that such a conflict exists, the terms of the Contract shall supersede and take precedence. License Agreements shall not require the State to indemnify Licensor or any third parties.

Contractor shall not provide unlicensed software to the State. Contractor shall only provide installable copies of software for which the State has obtained license. For software installations where separately licensed functions or features are bundled in the same executable file, Contractor shall be responsible to provide control of access to the separately licensed features, through issue of a license authorization key or equivalent method.

License verification, compliance, & audit terms, if they exist as part of an applicable contract or software license agreement, must be identified as part of any audit. As part of an audit, DTMB will only provide information relevant to determine license-compliance. DTMB reserves the right to request explanation of the relevance of any information the software vendor requests and is the sole authority for determining the information's relevance to license compliance. DTMB will not install software measurement or compliance tools on State computing systems as part of an audit. DTMB may at its discretion agree to use software tools it has pre-tested or made standard for such purposes. If it becomes necessary to provide State sensitive data to a vendor as part of an audit, the Contractor shall comply with all State laws, policies, & procedures, for protection of sensitive data. Contractor shall accept full responsibility and liability for risk of compromise of sensitive data.

C. Support and Maintenance

General (hardware and software):

Contractor will provide support and maintenance on all of the State's existing mainframe hardware and associated software, and for all existing Remittance Processor software, ABSuite software, and Enterprise Output Manager Software. In addition, Contractor will provide support and maintenance for all new hardware and software procured under this Contract.

Contractor shall offer support and maintenance at the following service levels:

- Standard 9x5 4hr response: Contractor is available to provide service Monday through Friday, 8:00AM to 5:00PM eastern time. Contractor must respond to service requests within four business-hours of receiving the initial contact.
- 9x5 Next Bus Day response: Contractor is available to provide service Monday through Friday, 8:00AM to 5:00PM eastern time. Contractor must respond to service requests by the next business day of receiving the initial contact.
- Bus Critical 24x7 2hr response: Contractor is available 24 hours a day, Sunday through Saturday, to provide service. Contractor must respond to service requests within two chronic hours (not business-hours) of receiving the initial contact.
- Bus Critical 24x7 4hr response: Contractor is available 24 hours a day, Sunday through Saturday, to provide service. Contractor must respond to service requests within four chronic hours (not business-hours) of receiving the initial contact.

A detail of the State's current existing inventory of items requirement maintenance is included in Attachment A. In addition, Attachment A specifies the required Service Level Agreement response times for each of the components.

Contractor shall provide access to maintenance 24 x 7 x 365 through a designated field engineer, who may be available on site or on call, with escalation as necessary to senior technical/engineering staff, and then to higher management and/or senior management. Contractor shall comply with State DCO standard operating procedures for failure of critical State IT systems.

Hardware Maintenance:

Contractor will provide hardware maintenance that will be performed by qualified personnel familiar with the hardware.

Software Support

Software Support includes all future software updates and system enhancements applicable to system modules licensed without further charge to all licenses maintaining a software support contract. For all software licensed by the State, Contractor will provide information on software problems encountered at other locations, along with the solution to those problems, when such information is relevant to State software. Contractor will provide timely notification of software roadmaps and end-of-life dates for hardware and software. For all supported versions of software, Contractor will provide the following support services:

- Error Correction. Upon notice by State of a problem with the Software (which problem can be verified), reasonable efforts to correct or provide a working solution for the problem.
- Material Defects. The State will be notified of any material errors or defects in the deliverables known, or made known to Contractor from any source during the Contract term that could cause the production of inaccurate, or otherwise materially incorrect, results and shall initiate actions as may be commercially necessary or proper to effect corrections of any such errors or defects.
- Updates. All new releases and bug fixes (collectively referred to as "Changes") for any software deliverable developed or published by Contractor and made generally available to its other customers at no additional charge will be provided to the State at no additional charge.

Unisys Support Account Manager (SAM)

Contractor shall provide a dedicated SAM to the State to perform the following Support and Maintenance functions:

1. Quarterly Reviews of Software Incidents. Discussion topics include software support calls and status, open issues, and progress of the resolution of software support service requests and problems reported via UCFs.
2. Quarterly System Healthcheck Reports, intended to proactively highlight potential problem areas warranting further evaluation and to provide remotely collected data on system load, memory, processor, network, and disk usage.
3. Monthly Support Status Review Call. This establishes monthly communication between Unisys and the State, provides the opportunity to review and discuss open activities or actions, upcoming planned events, plans for new software upgrades and migration (including a review of any known problems), and any additional topics.
4. Escalation Management. As the State of Michigan's personal liaison into the Unisys support center, the SAM will manage all service related issues that are critical to the performance of the State of Michigan's Unisys systems.

5. Support Consulting. The consulting hours (up to 20 hours per year) included as part of your SAM engagement provide the State of Michigan with consulting services that can be used to obtain assistance from Unisys for technical issues related to product usage and administrative/operational tasks. An example of one such service is Software Update Management for mission-critical client environments or enterprise-wide server environments. This service evaluates the client's current software levels and makes recommendations for updates relative to the client's system software levels configuration. The main focus is to identify updates or patches that are critical to improve performance and security.

D. Operations Services

Contractor will provide the following Operations Services for support of State's mainframe environment, [at the State's request](#):

1. Data Center Project Manager

The Data Center Hosting project is a slate of operations initiatives, all designed to enhance current hosting center capabilities in the mode of IT industry best practices. Project Management is needed to assist with moving this slate of facilities, operations and process improvement initiatives forward. The scope of this service is to provide consulting and project management for the DTMB, Data Center Operations Hosting projects, including the following:

- a. Provide consulting and project management leadership for a slate of small- and medium-sized Information Technology projects, including but not limited to Data Center Hosting Center Electrical Enhancement project for 2011/2012.
- b. Provide project management, coordination and oversight for project implementation, which includes planning, organizing, consulting and serving as liaison with management and internal/external customers.
- c. Interface with multiple teams for the duration of projects and serve as a liaison to DTMB Staff and vendors.
- d. Oversee project implementation ensuring adherence to SOM Project Management methodology and standards.
- e. Maintain the portfolio of Data Center Hosting project initiatives, their statuses, outstanding issues, timeframes and milestones.
- f. Provide project management in the development and delivery of technology projects. Specifically:
 - Manage and oversee IT projects for the Data Center with a wide number of variables, including planning, organizing, estimating and consulting with both management and customers to achieve goals and objectives.
 - Develop work plans and resource requirements; identify tasks and budget necessary to complete the project.
 - Organize project plan for implementation to best meet the requirements, time and budget.
 - Ensure that management, and client affected State agencies and contractors agree to project commitments.
 - Assign project tasks to project team and monitor progress.
 - Apply quality assurance methods to ensure requirements and project implementation specifications are consistent with project goals, budgets and standards.
 - Obtain customer and management approval for completed projects.
- g. Provide specialist consulting regarding power solutions, architectural considerations, air conditioning options to insure the hosting centers are moving toward UpTime Institute Tier III level, including but not limited to:
 - Provide environmental solution recommendations for replacement of the Lake Superior Hosting Center's ten Computer Room Air Conditioners (CRAC) units (eight of them purchased in 1994). The Lake Superior Hosting Center has 320 tons of cooling capacity.
 - Research and present options for the next generation of cooling options compatible with DTMB Energy Plant directions.
 - Monitor and review power usage trends at all hosting centers and recommend action.
- h. Serve as the primary liaison to client and team members on project activity. Specifically:

- Serve as liaison between the division and clients regarding project schedules, status, issues and requirements.
 - Facilitate project planning and requirements with clients to define business needs, project objectives, and project scope.
 - Develop project tracking reports for management review of project progress.
 - Keep project team members and management informed on all project action and task status.
 - Coordinate implementation of initiatives of initiatives with client to minimize impact on customer normal operating procedures.
- i. Support overall goals and objectives of the project and facilitate communication. Specifically:
- Maintain needed communication with DTMB Management.
 - Maintain the slate of Data Center Project initiatives, their status, outstanding issues, timeframes and milestones.
 - Participate in bi-weekly project managers meetings, and staff meetings as required.
 - Participate in discussions on improving methods of communication and project delivery.
 - Participate in planning future directions and provide recommendations for improvement.

2. Disaster Recovery Project Manager

The Disaster Recovery (DR) project is a portfolio of operational initiatives, all designed to enhance current hosting center offerings in the mode of IT industry best practices. A Project Manager is needed to move forward the State's Disaster Recovery Project initiatives. The scope of this service includes the following:

- a. Serve as Project Manager in the development and delivery of the Disaster Recovery technology project. Specifically:
- Manage and oversee IT DR projects for the Data Center with a wide number of variables, including planning, organizing, estimating and consulting with both management and customers to achieve goals and objectives.
 - Develop work plans and resource requirements; identify tasks and budget necessary to complete the project.
 - Organize project plan for implementation to best meet the requirements, time and budget.
 - Ensure that management, and client affected State agencies and contractors agree to project commitments.
 - Assign project tasks to project team and monitor progress.
 - Apply quality assurance methods to ensure requirements and project implementation specifications are consistent with project goals, budgets and standards.
 - Obtain customer and management approval for completed projects.
- b. Serve as the primary liaison to the customer and team members on DR project activity. Specifically:
- Serve as liaison between the division and clients regarding project schedules, status, issues and requirements.
 - Facilitate project planning and requirements with clients to define business needs, project objectives, and project scope.
 - Develop project tracking reports for management review of project progress.
 - Keep project team members and management informed on all project action and task status.
 - Coordinate implementation of initiatives of initiatives with client to minimize impact on customer normal operating procedures.

3. Disaster Recovery Systems Architect

The Disaster Recovery (DR) project is a portfolio of operational initiatives, all designed to enhance current hosting center offerings in the mode of IT industry best practices. A Systems Design Architect is needed to move forward the State's Disaster Recovery Program and will serve as its lead technician. The scope of this service includes the following:

- a. Work with the Project Manager to provide technology leadership for all Information Technology projects that fall under the purview of the Disaster Recovery Team.
- b. Provide expert-level design and guidance along with implementation of the SunGard software:
 - Living Disaster Recovery Planning System (LDRPS),
 - Business Impact Analysis (BIA)
 - Risk Assessment (RA)
- c. When called upon, supervise and lead the project teams, as well as serving as a liaison to Agency Staff, Department Staff and vendors. Specifically:
 - Facilitate planning for deliberation on a specific aspect or component of the application to meet requirements and budget factors within the project scope.
 - Assist with the statuses, outstanding issues, timeframes and milestones for the overall group.
 - Ensure through the latest technology and fault-tolerant techniques that the disaster planning application is available at the highest level and/or has previously produced recovery/resumption plans that are accessible at the time of an "event".
 - Coordinate activities with Server Teams, the Database Group and senior DR staff to install new companion products, upgrade and maintain the latest versions of the vendor software.
 - Utilize the internal tools of the DR Content Management System (CMS) application to modify the entry screens, the database repository and Report Writer output sub-system for enhanced effectiveness by the SOM.
 - Create multiple custom application navigation flows based upon Plan type for optimized data capture tuned to the SOM-defined Table of Contents for the expected plan output results.
 - Work with senior DR staff to complete and maintain custom security roles that reflect the access necessary for different Agency and DTMB Staff, including identification of different requirements among multiple security roles.

4. Onsite LIBRA Support Specialist

The State's current Unisys Libra XXX computing environment requires an onsite LIBRA Support Specialist. The scope of this service includes the following:

- a. Standard hardware maintenance activities: remedial maintenance, parts replacement, mandatory Field Change Notice installations, preventive maintenance
- b. Perform locally the following tasks on an as-needed basis:
 - Equipment installations, moves, adds, changes, disposals (IMACDs)
 - Install firmware upgrades
 - Monitor and analyze storage arrays
 - Threshold management and monitoring
 - Test and certify servers
 - Analyze configurations and databases
 - Check system log reports
 - Train your operations staff in the proper handling of system console messages
 - Coordinate activities with support personnel

5. Onsite LIBRA Operating Systems Support Specialist

The State's current Unisys Libra XXX computing environment requires a LIBRA Operating Systems Support Specialist. The scope of this service includes the following:

- a. Support, update, patch and/or repair the MCP instance.
- b. Support, update, patch and/or repair the COMS instance.
- c. Support, update, patch and/or repair the TCPIP/BNA communications instance.
- d. Support, manage, update, patch and/or repair the Disaster Recovery system.
- e. Support over 5200 station mappings.
- f. Support, update, patch and/or repair the CANDE environment.
- g. Support, update, patch and/or repair the over 80 ALGOL utilities.
- h. Administer connected databases.

6. DMS-II Database Administrator

The State's current Unisys Libra computing environment uses a Unisys DMS-II Database, which requires a dedicated Database Administrator. The scope of this service includes the following:

- a. Provide Unisys Libra Mainframe application development support.
- b. Monitor performance of all Mainframe production databases.
- c. Redesign or reorganize databases to optimize performance, when necessary.
- d. Educate application programmers on Unisys Libra Mainframe DMS-II programming language constructs.
- e. Monitor the development of new application programs to ensure that efficient coding practices are employed, and that database integrity is maintained.
- f. Perform database extracts to support other State of Michigan initiatives.
- g. Manage developers in selection and use of other file management options and access tools.
- h. Perform troubleshooting procedures, such as reviewing database access and usage for performance issues.
- i. Oversee mainframe database design and maintenance.
- j. Mentor other database administrators.
- k. Act as a database architect for all new database creation and for changes made to existing databases to accommodate new application initiatives.
- l. Develop and maintain procedures for backing up and recovering all databases.
- m. Serve as technical consultant to State agencies with regard to data structures and efficient applications processes.
- n. Design data and process flows.
- o. Make recommendations on applications and processes.

7. IT Asset Management (ITAM) Software Specialist

The ITAM Software Specialist shall provide the following services:

- a. Technical support and development services for the state's Information Technology Asset Management (ITAM) system
- b. Technical architecture and integration of the user interface with ITAM.
- c. Integration of the Automated Asset Receiving and Tracking (AART) into ITAM.
- d. Integration of the Automated Asset Recovery Program (AARP) into ITAM and Microsoft's System Center Configuration Manager (SCCM).
- e. Technical architecture and integration of the Automated Asset Trucking and Shipping (AATS) into ITAM.
- f. Technical architecture and integration of the Automated Billing from ITAM.
- g. Technical architecture and integration of the Exemption Program with ITAM.
- h. Technical architecture and integration of the software definition program with ITAM.
- i. Technical architecture and integration of the Research Analysis Deployment and Reporting (RADAR) with ITAM.
- j. Integration of Radio-frequency identification (RFID) data points at the Depot into ITAM
- k. Technical support with integration points between the iTRAC (the web based tool used for initiating and tracking State of Michigan Purchases) and the Remedy Change management system.
- l. Technical architecture and integration services for the State's enterprise wide Michigan/1 ADOPT desktop standardization and desktop management project.
- m. Technical architecture and integration services of the Challenge Response System.

E. Hardware and Software Support Services

At the State's option and request, Contractor will provide limited support services for hardware and software purchased or maintained under this Contract. Services purchased from this Contract must be related to the installation, integration, configuration or implementation of products purchased or maintained through this Contract and of a temporary nature of six (6) months or less. The expectation is that service costs will be 50% or less of the total project/product cost. Services for data migration and customization are not available under this Contract.

II. Requirements

A. Minimum Mandatory Requirements:

1. Contractor shall be an authorized distributor of Unisys hardware and software for sale to the State.
2. Contractor shall be an authorized provider of Unisys maintenance and support services for hardware and software, including all components of the State's current Unisys Libra computing environment.

B. Other Requirements

1. Service Level Agreements (SLA):

Contractor shall meet the following SLA's in providing services:

- a. Provide quote for Hardware: ten (10) business days
- b. Provide quote for Software: four (4) business days
- c. Provide proposal for Support Services per SOW: ten (10) business days
- d. Provide Maintenance per SLA's defined in warranties and service plans. For hardware and software in the State's existing systems, the current services plans are identified in Attachment A, under the column header: Service Plan Description. For new products purchased, the service plan will be defined at the time of purchase. Please see definitions provided in 1.104 Section A, I, C-Maintenance.

The State reserves the right to assess liquidated damages for failure by the Contractor to meet an SLA.

1.200 Roles and Responsibilities

1.201 CONTRACTOR STAFF, ROLES, AND RESPONSIBILITIES

A. Contractor Staff

The Contractor will provide resumes in Attachment D – Contractor Personnel and Organization for staff, including subcontractors, who will be assigned to the Contract, indicating the duties/responsibilities and qualifications of such personnel, and stating the amount of time each will be assigned to the project. The competence of the personnel the Contractor proposes for this project will be measured by the candidate's education and experience with particular reference to experience on similar projects as described in this Statement of Work. The Contractor will commit that staff identified in its proposal will actually perform the assigned work.

Contractor must provide a list of all subcontractors, including firm name, address, contact person, and a complete description of the work to be contracted. Include descriptive information concerning subcontractor's organization and abilities.

The Contractor will identify a Single Point of Contact (SPOC). The duties of the SPOC shall include, but not be limited to:

- supporting the management of the Contract,
- facilitating dispute resolution, and
- advising the State of performance under the terms and conditions of the Contract.

The State reserves the right to require a change in the current SPOC if the assigned SPOC is not, in the opinion of the State, adequately serving the needs of the State.

The State reserves the right to designate Key Personnel as part of an individual Statement of Work. The contractor must submit a letter of commitment for Key Personnel, signed by the identified resource, stating their commitment to work for the contractor/subcontractor on this project contingent on award of the bid. If the identified personnel are currently assigned to a State project the contractor must provide a letter signed by the State Project Manager releasing the individual from the project upon execution of the contract. All Key Personnel may be subject to the State's interview and approval process. Any key staff substitution must have the prior approval of the State.

The Contractor will provide, and update when changed, an organizational chart indicating lines of authority for personnel involved in performance of this Contract and relationships of this staff to other programs or functions of the firm. This chart must also show lines of authority to the next senior level of management and indicate who within the firm will have prime responsibility and final authority for the work.

The Contractor will provide sufficient qualified staffing to satisfy the deliverables of this Statement of Work.

B. On Site Work Requirements

1. Location of Work

The work is to be performed, completed, and managed at the Westshire Building; 515 Westshire Drive, Lansing, MI 48917, with occasional visits to other State Office Buildings within the greater Lansing area.

2. Hours of Operation:

- a. Normal State working hours are 8:00 a.m. to 5:00 p.m. EST, Monday through Friday, with work performed as necessary after those hours to meet project deadlines. No overtime will be authorized or paid.
- b. Select Contractor staff will be available on call, 7 x 24 x 365 as a shared responsibility.
- c. The State is not obligated to provide State management of assigned work outside of normal State working hours. The State reserves the right to modify the work hours in the best interest of the project.
- d. Contractor shall observe the same standard holidays as State employees. The State does not compensate for holiday pay.

3. Travel:

- a. No travel or expenses will be reimbursed. This includes travel costs related to training provided to the State by Contractor.
- b. Travel time will not be reimbursed.

4. Additional Security and Background Check Requirements:

Contractor must present certifications evidencing satisfactory Michigan State Police Background checks ICHAT and drug tests for all staff identified for assignment to this project.

In addition, proposed Contractor personnel will be required to complete and submit an RI-8 Fingerprint Card for the National Crime Information Center (NCIC) Finger Prints, if required by project.

Contractor will pay for all costs associated with ensuring their staff meets all requirements.

Contractor's Personnel and Organization are detailed in Attachment D.

1.202 STATE STAFF, ROLES, AND RESPONSIBILITIES

Agency should specify State personnel dedicated to project, and identify their associated roles and responsibilities.

The State will provide the following resources for the Contractor's use on this project:

- Work space
- Minimal clerical support
- Desk
- Telephone
- PC workstation
- Printer
- Access to copiers and fax machine
- VPN access as appropriate
- Pager or cell phone as appropriate

The State project team will consist of Executive Subject Matter Experts (SME's), project support, and a MDTMB and Agency project manager:

State Program Manager-

MDTMB will provide a Project Manager who will be responsible for the State's infrastructure and coordinate with the Contractor in determining the system configuration.

The State's Project Manager will provide the following services:

- Provide State facilities, as needed
- Coordinate the State resources necessary for the project
- Facilitate coordination between various external contractors
- Facilitate communication between different State departments/divisions
- Provide acceptance and sign-off of deliverable/milestone
- Review and sign-off of timesheets and invoices
- Resolve project issues
- Escalate outstanding/high priority issues
- Utilize change control procedures

- Conduct regular and ongoing review of the project to confirm that it meets original objectives and requirements
- Document and archive all important project decisions
- Arrange, schedule and facilitate State staff attendance at all project meetings.

Name	Agency/Division	Title
David Bengel	MDTMB DCO	Program Manager
Ronnie Albert	MDTMB DCO	Enterprise Platform Services Manager
Judith Odett	MDTMB Office Automation Services	Director
Matt Caterino	DTMB DCO	Disaster Recovery Manager
Dan Klodt	DTMB Agency Services	IT Application Manager
Bob Weldon	DTMB DCO	Hosting Center Manager

MDTMB shall provide a Contract Administrator whose duties shall include, but not be limited to, supporting the management of the Contract.

1.203 RESERVED

1.300 Project Plan

1.301 OPERATIONS AND PROJECT PLAN MANAGEMENT

Orientation Meeting

Upon ten (10) calendar days from execution of the Contract, the Contractor will be required to attend an orientation meeting to discuss the content and procedures of the Contract. The meeting will be held in Lansing, Michigan, at a date and time mutually acceptable to the State and the Contractor. The State shall bear no cost for the time and travel of the Contractor for attendance at the meeting.

Performance Review Meetings

The State will require the Contractor to attend bi-weekly meetings, at a minimum, to review the Contractor's performance under the Contract. The meetings will be held in Lansing, Michigan, or by teleconference, as mutually agreed by the State and the Contractor. The State shall bear no cost for the time and travel of the Contractor for attendance at the meeting.

Operations and Project Control

1. The Contractor will carry out this operations and projects under the direction and control of MDTMB, Data Center Operations.
2. The Contractor will manage projects in accordance with the State Unified Information Technology Environment (SUITE) methodology, which includes standards for project management, systems engineering, and associated forms and templates which is available at <http://www.michigan.gov/suite>
 - a. Contractor will use an automated tool for planning, monitoring, and tracking the Contract's progress and the level of effort of any Contractor personnel spent performing Services under the Contract. The tool shall have the capability to produce:
 - Staffing tables with names of personnel assigned to Contract tasks.
 - 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 120 days, updated semi-monthly).
 - Updates must include actual time spent on each task and a revised estimate to complete.
 - Graphs showing critical events, dependencies and decision points during the course of the Contract.
 - b. 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 standards.

1.302 REPORTS

Reporting formats must be submitted to the State's Project Manager for approval within twenty (20) business days after the execution of the contract resulting from this RFP. Once both parties have agreed to the format of the report, it shall become the standard to follow for the duration of the contract.

- Quarterly System Health Check detailing:
 - Potential problem areas
 - system load, network, memory, processor, and disk usage
- Quarterly software incidents report, including
 - Software incidents
 - Progress of User Communication Form (UCF) service requests

1.400 Project Management

1.401 ISSUE MANAGEMENT

An issue is an identified event that if not addressed may affect schedule, scope, quality, or budget.

The Contractor shall maintain an issue log for issues relating to the provision of services under this Contract. The issue management log must be communicated to the State's Project Manager on an agreed upon schedule, with email notifications and updates. The issue log must be updated and must contain the following minimum elements:

- Description of issue
- Issue identification date
- Responsibility for resolving issue.
- Priority for issue resolution (to be mutually agreed upon by the State and the Contractor)
- Resources assigned responsibility for resolution
- Resolution date
- Resolution description

Issues shall be escalated for resolution from level 1 through level 3, as defined below:

- Level 1 – Business leads
- Level 2 – Project Managers
- Level 3 – Executive Subject Matter Experts (SME's)

1.402 RISK MANAGEMENT

A risk is an unknown circumstance or event that, if it occurs, may have a positive or negative impact on the project.

The Contractor is responsible for establishing a risk management plan and process, including the identification and recording of risk items, prioritization of risks, definition of mitigation strategies, monitoring of risk items, and periodic risk assessment reviews with the State.

A risk management plan format shall be submitted to the State for approval within twenty (20) business days after the effective date of the contract resulting from the upcoming RFP. The risk management plan will be developed during the initial planning phase of the project, and be in accordance with the State's PMM methodology. Once both parties have agreed to the format of the plan, it shall become the standard to follow for the duration of the contract. The plan must be updated bi-weekly, or as agreed upon.

The Contractor shall provide the tool to track risks. The Contractor will work with the State and allow input into the prioritization of risks.

The Contractor is responsible for identification of risks for each phase of the project. Mitigating and/or eliminating assigned risks will be the responsibility of the Contractor. The State will assume the same responsibility for risks assigned to them.

1.403 CHANGE MANAGEMENT

Change management is defined as the process to communicate, assess, monitor, and control all changes to system resources and processes. The State also employs change management in its administration of the Contract.

If a proposed contract change is approved by the Agency, the Contract Administrator will submit a request for change to the Department of Technology, 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 MDTMB 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. **Contractors who provide products or services prior to the issuance of a Contract Change Notice by the MDTMB Purchasing Operations, risk non-payment for the out-of-scope/pricing products and/or services.**

The Contractor must employ change management procedures to handle such things as "out-of-scope" requests or changing business needs of the State while the migration is underway.

The Contractor will employ the change control methodologies to justify changes in the processing environment, and to ensure those changes will not adversely affect performance or availability.

1.500 Acceptance

1.501 CRITERIA

Acceptance criteria will be defined as needed, for specific purchases and individual Statements of Work.

1.502 FINAL ACCEPTANCE

Based on criteria and requirements defined in individual Statements of Work, the State will approve a project for final acceptance and will authorize to make final payments, including any holdback amounts from previous deliverables.

1.600 Compensation and Payment

1.601 COMPENSATION AND PAYMENT

Method of Payment

The Cost and Discount Tables included in Attachment A, B, and C must be used as the format for submitting pricing information.

1. The State will pay for hardware and software purchased based on a minimum, not-to-exceed discount. In addition, Contractor is encouraged to offer additional discounts to hardware and software purchases.
2. In addition to products not specified in Attachment A – Essential Components and Replacement Costs, the State reserves the right to purchase in-scope products not specified in Attachment A.
3. The State will pay for computing systems' Million Instructions Per Second (MIPS) on an annual basis. Each system's number of MIPS will be defined in advance of the support and maintenance period. If the State's MIPS usage exceeds the purchased number of MIPS for the period, the State will purchase a true-up of MIPS. In this case, the MIPS true-up unit cost shall not exceed the in-advance MIPS unit cost.
4. The State will pay for support and maintenance on an annual, renewable basis.
5. The State will pay for Operations Services monthly, based on the number of hours each personnel works within the billing period.
6. The State will pay for Software Support Services, on a fixed-price, deliverable basis, as defined in the approved Statement of Work.

Bidders must complete the following attachments:

1. Attachment A – Essential Components and Replacement Costs
2. Attachment B – Essential Components Recurrent Costs
3. Attachment C – Other Costs and Cost Summary

Travel

The State will not pay for any travel expenses, including hotel, mileage, meals, parking, etc. Travel time will not be reimbursed.

If Contractor reduces its prices for any of the software or services during the term of this Contract, the State shall have the immediate benefit of such lower prices for new purchases. Contractor shall send notice to the State's MDTMB Contract Administrator with the reduced prices within fifteen (15) Business Days [or other appropriate time period] of the reduction taking effect.

Statements of Work and Issuance of Purchase Orders

- Unless otherwise agreed by the parties, each Statement of Work will include:
 1. Background
 2. Project Objective
 3. Scope of Work
 4. Deliverables
 5. Acceptance Criteria
 6. Project Control and Reports
 7. Specific Department Standards
 8. Payment Schedule
 9. Travel and Expenses
 10. Project Contacts
 11. Agency Responsibilities and Assumptions
 12. Location of Where the Work is to be performed
 13. Expected Contractor Work Hours and Conditions

- 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. Contractor shall perform in accordance with this Contract, including the Statements of Work/Purchase Orders executed under it.

Invoicing

Contractor will submit properly itemized invoices to

DTMB – Financial Services
Accounts Payable
P.O. Box 30026
Lansing, MI 48909
or
DTMB-Accounts-Payable@michigan.gov

. Invoices must provide and itemize, as applicable:

- Contract number;
- Purchase Order number
- Contractor name, address, phone number, and Federal Tax Identification Number;
- Description of any commodities/hardware, including quantity ordered;
- Date(s) of delivery and/or date(s) of installation and set up;
- Price for each item, or Contractor's list price for each item and applicable discounts;
- Maintenance charges;
- Net invoice price for each item;
- Shipping costs;
- Other applicable charges;
- Total invoice price; and
- Payment terms, including any available prompt payment discount.

The State may pay maintenance and support charges on a monthly basis, in arrears. Payment of maintenance service/support of less than one (1) month's duration shall be prorated at 1/30th of the basic monthly maintenance charges for each calendar day.

Incorrect or incomplete invoices will be returned to Contractor for correction and reissue.

1.602 HOLDBACK

For any Statement of Work where Contractor will provide a deliverable, the State shall have the right to hold back an amount equal to ten percent (10 %) of all amounts invoiced by Contractor for Deliverables. The amounts held back shall be released to Contractor after the State has granted Final Acceptance.

Article 2, Terms and Conditions

2.000 Contract Structure and Term

2.001 CONTRACT TERM

This Contract is for a period of three (3) years beginning August 1, 2012 through July 31, 2015. All outstanding Purchase Orders must also expire upon the termination for any of the reasons listed in **Section 2.150** of the Contract, unless otherwise extended under the Contract. Absent an early termination for any reason, Purchase Orders issued but not expired, by the end of the Contract's stated term, shall remain in effect for the balance of the fiscal year for which they were issued.

2.002 OPTIONS TO RENEW

This Contract may be renewed in writing by mutual agreement of the parties not less than 30 days before its expiration. The Contract may be renewed for up to two (2) additional one-year periods.

2.003 LEGAL EFFECT

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

Except as otherwise agreed in writing by the parties, the State shall not be liable 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), signed by all the parties and a Purchase Order against the Contract has been issued.

2.004 ATTACHMENTS & EXHIBITS

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

- Exhibit 1 Glossary
- Exhibit 2 Contractor Supplemental Contract Terms;
- Exhibit 3 Contractor's support Services website terms of use
- Exhibit 4: **TERMS FROM EXHIBIT 7 SAFEGUARDING CONTRACT LANGUAGE TO IRS PUBLICATION 1075**

2.005 ORDERING

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

2.006 ORDER OF PRECEDENCE

The Contract, including any Statements of Work and Exhibits, to the extent not contrary to the Contract, each of which is incorporated for all purposes, constitutes the entire agreement between the parties with respect to the subject matter and supersedes all prior agreements, whether written or oral, with respect to the subject matter and as additional terms and conditions on the purchase order must apply as limited by **Section 2.005**.

In the event of any inconsistency between the terms of the Contract and a Statement of Work, the terms of the Statement of Work shall take precedence (as to that Statement of Work only); provided, however, that a Statement of Work may not

modify or amend the terms of the Contract. The Contract may be modified or amended only by a formal Contract amendment.

2.007 HEADINGS

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

2.008 FORM, FUNCTION & UTILITY

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

2.009 REFORMATION AND SEVERABILITY

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

2.010 Consents and Approvals

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

2.011 NO WAIVER OF DEFAULT

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

2.012 SURVIVAL

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

2.020 Contract Administration

2.021 ISSUING OFFICE

This Contract is issued by the Department of Technology, Management and Budget, Purchasing Operations (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. The Purchasing Operations Contract Administrator for this Contract is:

[Reid Sisson](#)
Buyer
Purchasing Operations
Department of Technology, Management and Budget
Mason Bldg, 2nd Floor
PO Box 30026
Lansing, MI 48909
SissonR@michigan.gov
517-241-1638

2.022 CONTRACT COMPLIANCE INSPECTOR - RESERVED

2.023 PROGRAM MANAGER - RESERVED

2.024 CHANGE REQUESTS

The State reserves the right to request from time to time any changes to the requirements and specifications of the Contract and the work to be performed by the Contractor under the Contract. During the course of ordinary business, it may become necessary for the State to discontinue certain business practices or create Additional Services/Deliverables. At a minimum, to the extent applicable, Contractor shall provide a detailed outline of all work to be done, including tasks necessary to accomplish the Additional 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 before commencing performance of the requested activities it believes are New Work. If the Contractor fails to notify the State before commencing performance of the requested activities, any such activities performed before the Contractor gives notice shall be conclusively considered to be in-scope Services/Deliverables and 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.

(1) Change Request at State Request

If the State requires 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").

(2) Contractor Recommendation for Change Requests:

Contractor shall be entitled to propose a Change to the State, on its own initiative, should Contractor believe the proposed Change would benefit the Contract.

(3) 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 shall 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 applicable 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.

(4) 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 must be prepared and issued under this Contract, describing the Change and its effects on the Services and any affected components of this Contract (a "Contract Change Notice").

(5) 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 Technology, Management and Budget, Purchasing Operations.

(6) If the State requests or directs the Contractor to perform any activities that Contractor believes constitute a Change, the Contractor must notify the State that it believes the requested activities are a Change before beginning to work on the requested activities. If the Contractor fails to notify the State before beginning to work on the requested activities, then the Contractor waives any right to assert any claim for additional compensation or time for performing the requested activities. If the Contractor commences performing work outside the scope of this Contract and then ceases performing that work, the Contractor must, at the request of the State, retract any out-of-scope work that would adversely affect the Contract.

2.025 NOTICES

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

State:

State of Michigan

Purchasing Operations

Attention:

PO Box 30026

530 West Allegan

Lansing, Michigan 48909

Contractor: Unisys Corporation

Name: Unisys OGC - Customer Contracts

Address: Unisys Corporation, 801 Lakeview Drive, Suite 100, Blue Bell, PA 19422

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

2.026 BINDING COMMITMENTS

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

2.027 RELATIONSHIP OF THE PARTIES

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

2.028 COVENANT OF GOOD FAITH

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

2.029 ASSIGNMENTS

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

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

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

2.030 General Provisions

2.031 MEDIA RELEASES

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

2.032 CONTRACT DISTRIBUTION

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

2.033 PERMITS

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

2.034 WEBSITE INCORPORATION

The State is not bound by any content on the Contractor's website, even if the Contractor's documentation specifically referenced that content and attempts to incorporate it into any other communication, unless the State has actual knowledge of the content and has expressly agreed to be bound by it in a writing that has been manually signed by an authorized representative of the State. As a condition to using Contractor's support services website, the State acknowledges and agrees that its use of the site will be subject to the Terms of Use found in Exhibit 3..

2.035 FUTURE BIDDING PRECLUSION

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

2.036 FREEDOM OF INFORMATION

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

2.037 DISASTER RECOVERY

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

2.040 Financial Provisions

2.041 FIXED PRICES FOR SERVICES/DELIVERABLES

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

2.042 ADJUSTMENTS FOR REDUCTIONS IN SCOPE OF SERVICES/DELIVERABLES

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

2.043 SERVICES/DELIVERABLES/PRODUCTS COVERED

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

2.044 INVOICING AND PAYMENT – IN GENERAL

- (a) Each Statement of Work issued under this Contract shall list (or indicate by reference to the appropriate Contract Exhibit) the prices for all Services/Deliverables, equipment, Software licenses and commodities to be provided, and the associated payment milestones and payment amounts.
- (b) Each Contractor invoice shall show details as to charges by Service/Deliverable/Product component and location at a level of detail reasonably necessary to satisfy the State's accounting and charge-back requirements. Invoices for Services performed on a time and materials basis shall show, for each individual, the number of hours of Services performed during the billing period, the billable skill/labor category for such person and the applicable hourly billing rate. Prompt payment by the State is contingent on the Contractor's invoices showing the amount owed by the State minus any holdback amount to be retained by the State in accordance with **Section 1.600**.
- (c) Correct invoices shall be due and payable by the State, in accordance with the State's standard payment procedure as specified in 1984 Public Act No. 279, MCL 17.51 et seq., within 45 days after receipt, provided the State determines that the invoice was properly rendered.
- (d) All invoices for Services/ deliverables should reflect actual work done. Specific details of invoices and payments shall be agreed upon between the Contract Administrator and the Contractor after the proposed Contract Agreement has been signed and accepted by both the Contractor and the Director of Purchasing Operations, Department of Management & Budget. This activity shall occur only upon the specific written direction from Purchasing Operations.

The specific payment schedule for any Statement(s) of Work entered into, as the State and the Contractor(s) shall mutually agree upon. The schedule should show payment amount and should reflect actual work done by the payment dates, less any penalty cost charges accrued by those dates. As a general policy statements shall be forwarded to the designated representative by the 15th day of the following month.

The Government may make progress payments to the Contractor for Services/Deliverables when requested as work progresses, but not more frequently than monthly, in amounts approved by the Contract Administrator, after negotiation. Contractor must show verification of measurable progress at the time of requesting progress payments.

2.045 PRO-RATION

To the extent there are Services that are to be paid for on a monthly basis, the cost of such Services shall be pro-rated for any partial month.

2.046 ANTITRUST ASSIGNMENT

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

2.047 FINAL PAYMENT

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

2.048 ELECTRONIC PAYMENT REQUIREMENT

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

2.050 Taxes

2.051 EMPLOYMENT TAXES

Contractor shall collect and pay all applicable federal, state, and local employment taxes, including the taxes for those individuals on Contractor's payroll.

2.052 SALES AND USE TAXES

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

2.060 Contract Management

2.061 CONTRACTOR PERSONNEL QUALIFICATIONS

All persons assigned by Contractor to the performance of Services under this Contract must be employees of Contractor or its majority-owned (directly or indirectly, at any tier) subsidiaries (or a State-approved Subcontractor) and must be fully qualified to perform the work assigned to them. Contractor must include a similar provision in any subcontract entered into with a Subcontractor. For the purposes of this Contract, independent contractors engaged by Contractor solely in a staff augmentation role must be treated by the State as if they were employees of Contractor for this Contract only; however, the State understands that the relationship between Contractor and Subcontractor is an independent contractor relationship. Further, the State understands that Contractor may engage third party suppliers to support Contractor's maintenance and warranty support obligations for all of its customers, that such suppliers are not engaged specifically to provide Services to the State and are not "Subcontractors". Notwithstanding the above, all personnel assigned by Contractor to deliver the Services who are given direct access to the State's systems and facilities must comply with section 2.091.

2.062 CONTRACTOR KEY PERSONNEL

- (a) The Contractor must provide the Contract Compliance Inspector with the names of the Key Personnel.
- (b) Key Personnel must be dedicated as defined in the Statement of Work to the Project for its duration in the applicable Statement of Work with respect to other individuals designated as Key Personnel for that Statement of Work.
- (c) The State shall 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 shall notify the State of the proposed assignment, shall introduce the individual to the appropriate State representatives, and shall 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 shall provide a written explanation including reasonable detail outlining the reasons for the rejection.
- (d) Contractor must not remove any Key Personnel from their assigned roles on the Contract without the prior written consent of the State. The Contractor's removal of Key Personnel without the prior written consent of the State is an unauthorized removal ("Unauthorized Removal"). Unauthorized Removals does not include replacing Key Personnel for reasons beyond the reasonable control of Contractor, including illness, disability, leave of absence, personal emergency circumstances, resignation or for cause termination of the Key Personnel's employment. Unauthorized Removals does not include replacing Key Personnel because of promotions or other job movements allowed by Contractor personnel policies or Collective Bargaining Agreement(s) as long as the State receives prior written notice before shadowing occurs and Contractor provides 30 days of shadowing unless parties agree to a different time period. The Contractor with the State must review any Key Personnel replacements, and appropriate transition planning will be established. Any Unauthorized Removal may be considered by the State to be a material breach of the Contract, in respect of which the State may elect to exercise its termination and cancellation rights.
- (e) The Contractor must notify the Contract Compliance Inspector and the Contract Administrator at least 10 business days before redeploying non-Key Personnel, who are dedicated to primarily to the Project, to other projects. If the

State does not object to the redeployment by its scheduled date, the Contractor may then redeploy the non-Key Personnel.

2.063 RE-ASSIGNMENT OF PERSONNEL AT THE STATE'S REQUEST

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

2.064 CONTRACTOR PERSONNEL LOCATION

All staff assigned by Contractor to work on the Contract shall perform their duties either primarily at Contractor's offices and facilities or at State facilities. Without limiting the generality of the foregoing, Key Personnel shall, at a minimum, spend at least the amount of time on-site at State facilities as indicated in the applicable Statement of Work. Subject to availability, selected Contractor personnel may be assigned office space to be shared with State personnel.

2.065 CONTRACTOR IDENTIFICATION

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

2.066 COOPERATION WITH THIRD PARTIES

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

2.067 CONTRACT MANAGEMENT RESPONSIBILITIES

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 during and within the scope of the Services. 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 shall 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 the Project Plan is likely to delay the timely achievement of any Contract tasks.

The Contractor shall provide the Services/Deliverables directly or through its affiliates, subsidiaries, subcontractors or resellers. Regardless of the entity providing the Service/Deliverable, the Contractor shall 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.

2.068 CONTRACTOR RETURN OF STATE EQUIPMENT/RESOURCES

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

2.070 Subcontracting by Contractor

2.071 CONTRACTOR FULL RESPONSIBILITY

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

2.072 STATE CONSENT TO DELEGATION

Contractor shall not delegate any duties under this Contract to a Subcontractor unless the Department of Technology, Management and Budget, Purchasing Operations has given written consent to such delegation. Such consent is given with respect to any Subcontractors identified in Contractor's proposal(s) or Statement(s) of Work accepted by the State under this Contract. 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 shall agree to an equitable adjustment in schedule or other terms that may be affected by the State's required removal. If any such incident with a removed Subcontractor results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLA for the affected Work shall not be counted for a time agreed upon by the parties.

2.073 SUBCONTRACTOR BOUND TO CONTRACT

In any subcontracts entered into by Contractor for the performance of the Services, Contractor shall require the Subcontractor, to the extent of the Services to be performed by the Subcontractor for the State, 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 shall 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 shall 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. A list of the Subcontractors, if any, approved by the State as of the execution of this Contract, together with a copy of the applicable subcontract is attached.

2.074 FLOW DOWN

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

2.075 COMPETITIVE SELECTION

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

2.080 State Responsibilities

2.081 EQUIPMENT

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

2.082 FACILITIES

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

2.090 Security

2.091 BACKGROUND CHECKS

On a case-by-case basis, the State may, on notice to Contractor, investigate the Contractor's personnel before they may have direct access to State facilities and systems. The scope of the background check is at the discretion of the State and the results shall be used to determine Contractor personnel eligibility for working within State facilities and systems. The investigations shall 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 shall be initiated by the State and shall be reasonably related to the type of work requested.

All Contractor personnel shall 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/dtmb>. Furthermore, Contractor personnel shall be expected to agree to the State's security and acceptable use policies before the Contractor personnel shall be accepted as a resource to perform work for the State. It is expected the Contractor shall present these documents to the prospective employee before the Contractor presents the individual to the State as a proposed resource. Contractor staff shall be expected to comply with all Physical Security procedures in place within the facilities where they are working.

2.092 FEDERAL TAX RETURN INFORMATION AND SECURITY BREACH NOTIFICATION

Neither the Contractor nor the State anticipate that Contractor will be performing Services that require Contractor to access, use, store, transmit or process federal tax return information (FTI), and the State will only provide Contractor such FTI if the parties agree such FTI is necessary for Contractor's performance of the Services. To the extent that the terms are applicable to scope of services provided under the Contract based on the requirements of Internal Revenue Code (IRC) Section 6103(n), Contractor shall comply with requirements detailed in Exhibit 3 (which address requirements from Exhibit 7 of IRS Publication 1075).

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

2.093 PCI DATA SECURITY REQUIREMENTS – DELETED/NA

2.100 Confidentiality

2.101 CONFIDENTIALITY

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

2.102 PROTECTION AND DESTRUCTION OF CONFIDENTIAL INFORMATION

The State and Contractor shall 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 shall (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 shall limit disclosure of the other party's Confidential Information to employees and Subcontractors who must have access to fulfill the purposes of this Contract. Disclosure to, and use by, a Subcontractor is permissible where (A) use of a Subcontractor is authorized under this Contract, (B) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the Subcontractor's scope of responsibility, and (C) Contractor obligates the Subcontractor in a written Contract to maintain the State's Confidential Information in confidence. At the State's request, any employee of Contractor and of any Subcontractor having access or continued access to the State's Confidential Information may be required to execute an acknowledgment that the employee has been advised of Contractor's and the Subcontractor's obligations under this Section and of the employee's obligation to Contractor or Subcontractor, as the case may be, to protect the Confidential Information from unauthorized use or disclosure.

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

2.103 EXCLUSIONS

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

2.104 NO IMPLIED RIGHTS

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

2.105 RESPECTIVE OBLIGATIONS

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

2.110 Records and Inspections

2.111 INSPECTION OF WORK PERFORMED

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

2.112 EXAMINATION OF RECORDS

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

2.113 RETENTION OF RECORDS

Contractor shall maintain at least until the end of the Audit Period all pertinent financial and accounting records (including time sheets and payroll records, and information pertaining to the Contract and to the Services, equipment, and commodities provided under the Contract) pertaining to the Contract according to generally accepted accounting principles and other procedures specified in this Section. Financial and accounting records shall be made available, upon request, to the State at any time during the Audit Period. If an audit, litigation, or other action involving Contractor's records is initiated before the end of the Audit Period, the records shall be retained until all issues arising out of the audit, litigation, or other action are resolved or until the end of the Audit Period, whichever is later.

2.114 AUDIT RESOLUTION

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

2.115 ERRORS

If the audit demonstrates any errors in the documents 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 invoices. If a balance remains after four invoices, then the remaining amount shall be due as a payment or refund within 45 days of the last quarterly invoice that the balance appeared on or termination of the contract, whichever is earlier.

In addition to other available remedies, if the difference between the payment received and the correct payment amount is an overcharge greater than 10%, then the Contractor shall pay all of the reasonable costs of the audit.

2.120 Warranties

2.121 WARRANTIES AND REPRESENTATIONS

The Contractor represents and warrants:

- (a) It is capable in all respects of fulfilling and understands it must fulfill all of its obligations under this Contract. Contractor will assign resources to the performance of all of its obligations under this Contract in a timely, professional, and workman-like manner and in accordance with the performance and operational standards required under this Contract.
- (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 license to use, as applicable, of any and all Deliverables. None of the Deliverables provided by Contractor to the State under this Contract nor their use by the State shall infringe the patent, copyright, trade secret, or other proprietary rights of any third party.
- (d) If, under this Contract, Contractor procures any equipment, software licenses or Deliverable for the State (including equipment, software and Deliverables manufactured, re-marketed or otherwise sold or licensed by Contractor under Contractor's name), then in addition to Contractor's other responsibilities with respect to the items in this Contract, Contractor must assign or otherwise transfer or pass through to the State or its designees, or afford the State the benefits of, any available manufacturer's warranty for the equipment, software or Deliverable.
- (e) The contract signatory has the power and authority, including any necessary corporate authorizations, necessary to enter into this Contract, on behalf of Contractor.
- (f) It is qualified and registered to transact business in all locations where required.
- (g) Neither the Contractor nor any Affiliates, nor any employee of either, has, must have, or must acquire, any contractual, financial, business, or other interest, direct or indirect, that would conflict in any manner or degree with Contractor's performance of its duties and responsibilities to the State under this Contract or otherwise create an appearance of impropriety with respect to the award or performance of this Agreement. Contractor must notify the State about the nature of the conflict or appearance of impropriety within two days of learning about it.
- (h) Neither Contractor nor any Affiliates, nor any employee of either has accepted or must accept anything of value based on an understanding that the actions of the Contractor or Affiliates or employee on behalf of the State would be influenced. Contractor must not attempt to influence any State employee by the direct or indirect offer of anything of value.
- (i) Neither Contractor nor any Affiliates, nor any employee of either has paid or agreed to pay any person, other than bona fide employees and consultants working solely for Contractor or the Affiliate, any fee, commission, percentage,

brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract.

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

2.122 WARRANTY OF MERCHANTABILITY

Goods provided by Contractor under this agreement shall be merchantable. All goods provided under this Contract shall be of good quality within the description given by the State, shall be fit for their ordinary purpose, shall be adequately contained and packaged within the description given by the State, shall conform to the agreed upon specifications, and shall conform to the affirmations of fact made by the Contractor or on the container or label.

2.123 WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE

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

2.124 WARRANTY OF TITLE – REFER TO EXHIBIT 2

2.125 EQUIPMENT WARRANTY – REFER TO EXHIBIT 2

2.126 EQUIPMENT TO BE NEW

If applicable, all equipment provided under this Contract by Contractor shall be new or assembled from new or serviceable used parts that are like new in performance. Equipment that is assembled from new or serviceable used parts that are like new in performance is acceptable if provided under the same terms as if the Equipment were new.

2.127 PROHIBITED PRODUCTS

Except as otherwise specified in an Order, 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 and Contractor may substitute equivalent products. Contractor may add or delete items available for purchase on written notice to the State

2.128 CONSEQUENCES FOR BREACH

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

2.130 Insurance

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

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

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

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

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

See www.michigan.gov/dleg.

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

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

1. Commercial General Liability with the following minimum coverage:

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

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

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

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

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

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

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

- 4. Employers liability insurance with the following minimum limits:
 - \$100,000 each accident
 - \$100,000 each employee by disease
 - \$500,000 aggregate disease
- 5. Employee Fidelity, including Computer Crimes, insurance naming the State as a loss payee, providing coverage for direct loss to the State and any legal liability of the State arising out of or related to fraudulent or dishonest acts committed by the employees of Contractor or its Subcontractors, acting alone or in collusion with others, in a minimum amount of five million dollars (\$5,000,000.00) with a maximum deductible of one million dollars (\$1,000,000.00)
- 6. Umbrella or Excess Liability Insurance in a minimum amount of ten million dollars (\$10,000,000.00), which must apply, at a minimum, to the insurance required in Subsection 1 (Commercial General Liability) above.
- 7. Professional Liability (Errors and Omissions) Insurance with the following minimum coverage: three million dollars (\$3,000,000.00) each occurrence and three million dollars (\$3,000,000.00) annual aggregate.
- 8. Fire and Personal Property Insurance covering against any loss or damage to the office space used by Contractor for any reason under this Contract, and the equipment, software and other contents of the office space, including without limitation, those contents used by Contractor to provide the Services to the State, up to its replacement value, where the office space and its contents are under the care, custody and control of Contractor. The policy must cover all risks of direct physical loss or damage, including without limitation, flood and earthquake coverage and coverage for computer hardware and software. The State must be endorsed on the policy as a loss payee as its interests appear.

2.132 SUBCONTRACTOR INSURANCE COVERAGE

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

2.133 CERTIFICATES OF INSURANCE AND OTHER REQUIREMENTS

Contractor must furnish to MDTMB Purchasing Operations, certificate(s) of insurance verifying insurance coverage or providing satisfactory evidence of self-insurance as required in this Section (the "Certificates"). The Certificate must be on the standard "accord" form or equivalent. **The Contract Number or the Purchase Order Number must be shown on the Certificate Of Insurance To Assure Correct Filing.** All Certificate(s) are to be prepared and submitted by the Insurance Provider. All Certificate(s) must contain a provision indicating that coverage afforded under the policies SHALL NOT BE CANCELLED, MATERIALLY CHANGED, OR NOT RENEWED without 30 days prior written notice, except for 10 days for non-payment of premium, having been given to the Director of Purchasing Operations, Department of Technology, Management and Budget. The notice must include the Contract or Purchase Order number affected. Before the Contract is signed, and not less than 20 days before the insurance expiration date every year thereafter, the Contractor must provide evidence that the State and its agents, officers and employees are listed as additional insured under each commercial general liability and commercial automobile liability policy. In the event the State approves the representation of the State by the insurer's attorney, the attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.

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

2.140 Indemnification

2.141 GENERAL INDEMNIFICATION

To the extent permitted by law, the Contractor must indemnify, defend and hold harmless the State from liability, including all claims and losses, and all related costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest and penalties), accruing or resulting to any person, firm or corporation that may be injured or damaged by the Contractor in the performance of this Contract to the extent caused by 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.

Per State statute, the State cannot indemnify any other party.

2.142 CODE INDEMNIFICATION

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

2.143 EMPLOYEE INDEMNIFICATION

In any claims for which Contractor provides an indemnity under this Contract against the State of Michigan, its departments, divisions, agencies, sections, commissions, officers, employees and agents, by any employee of the Contractor or any of its subcontractors, the indemnification obligation under the Contract must not be limited in any way by the amount or type of damages, compensation or benefits payable by or for the Contractor or any of its subcontractors under worker's disability compensation acts, disability benefit acts or other employee benefit acts.

2.144 PATENT/COPYRIGHT INFRINGEMENT INDEMNIFICATION

To the extent permitted by law, the Contractor must indemnify, defend and hold harmless the State from and against all losses, liabilities, damages (including taxes), and all related costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest and penalties) incurred in connection with any action or proceeding threatened or brought against the State to the extent that the action or proceeding is based on a claim that any piece of Unisys Product or Service supplied by the Contractor or its subcontractors under this Contract, 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. The State will provide prompt written notice in the event of an actual or threatened claim of infringement.

In addition, should the Unisys Product, or Service, or its operation, become or in Contractor's opinion be likely to become the subject of a claim of infringement, the Contractor must at the Contractor's sole expense (i) procure for the State the right to continue using such equipment, software, commodity or service or, if the option is not reasonably available to the Contractor, (ii) replace or modify to the State's satisfaction the same with equipment, software, commodity or service of equivalent function and performance so that it becomes non-infringing, or, if the option is not reasonably available to Contractor, (iii) accept its return by the State with appropriate credits to the State against the Contractor's charges paid for the Product, offset for past use. If the Product is returned to Unisys under (iii), above, Contractor will additionally be responsible, subject to the limitation of liability provisions in Section 2.221, for reimbursing the State for any losses or costs incurred as a consequence of the State ceasing its use and returning it.

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

2.145 CONTINUATION OF INDEMNIFICATION OBLIGATIONS

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

2.146 INDEMNIFICATION PROCEDURES

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

- (a) After the State receives notice of the action or proceeding involving a claim for which it shall seek indemnification, the State must promptly notify Contractor of the claim in writing and take or assist Contractor in taking, as the case may be, any reasonable action to avoid the imposition of a default judgment against Contractor. No failure to notify the Contractor relieves the Contractor of its indemnification obligations except to the extent that the Contractor can prove damages or prejudice attributable to the failure. Within 21 days following receipt of written notice from the State relating to any claim, the Contractor must notify the State in writing whether Contractor agrees to assume control of the defense and settlement of that claim (a "Notice of Election"). After notifying Contractor of a claim and before the State receiving Contractor's Notice of Election, the State is entitled to defend against the claim, which shall be at the Contractor's expense if the claim is one subject to Contractor's indemnification obligations, and the Contractor will be responsible for any reasonable costs incurred by the State in defending against such claim during that period.
- (b) If Contractor delivers a Notice of Election relating to any claim: (i) the State is entitled to participate in the defense of the claim and to employ counsel at its own expense to assist in the handling of the claim and to monitor and advise the State about the status and progress of the defense; (ii) the Contractor must, at the request of the State, demonstrate to the reasonable satisfaction of the State, the Contractor's financial ability to carry out its defense and indemnity obligations under this Contract; (iii) the Contractor must periodically advise the State about the status and progress of the defense and must obtain the prior written approval of the State before entering into any settlement of the claim or ceasing to defend against the claim and (iv) to the extent that any principles of Michigan governmental or public law may be involved or challenged, the State has the right, at its own expense, to control the defense of that portion of the claim involving the principles of Michigan governmental or public law. But the State may retain control of the defense and settlement of a claim (but the Contractor may still participate in the defense, at its expense) by notifying the Contractor in writing within 10 days after the State's receipt of Contractor's information requested by the State under clause (ii) of this paragraph if the State determines that the Contractor has failed to demonstrate to the reasonable satisfaction of the State the Contractor's financial ability to carry out its defense and indemnity obligations under this Section; in which case the State must periodically advise the Contractor about the status and progress of the defense and must obtain the prior written approval of the Contractor before entering into any settlement of the claim or ceasing to defend against the claim. Any litigation activity on behalf of the State, or any of its subdivisions under this Section, must be coordinated with the Department of Attorney General. In the event the Contractor's attorney represents the State under this Section, the Contractor's attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.
- (c) If Contractor does not deliver a Notice of Election relating to any claim of which it is notified by the State as provided above, the State may defend the claim in the manner as it may deem appropriate, at the cost and expense of Contractor if it is determined that the claim was one against which Contractor was required to indemnify the State, in which case, upon request of the State, Contractor must promptly reimburse the State for all the reasonable costs and expenses for the defense of the claim.

2.150 Termination/Cancellation

2.151 NOTICE AND RIGHT TO CURE

If the Contractor breaches the contract, then the State shall provide the Contractor with written notice of the breach and a time period (not less than 30 days) to cure the Breach. The notice of breach and opportunity to

cure is inapplicable for successive or repeated breaches for which the State has provided prior notice and opportunities to cure. In addition the State may suspend the Contract immediately without notice if it determines in its sole discretion that the breach poses a serious and imminent threat to the health or safety of any person or the imminent loss, damage, or destruction of any real or tangible personal property.

2.152 TERMINATION FOR CAUSE

- (a) The State may terminate this contract, for cause, by notifying the Contractor in writing and providing opportunity for cure (if applicable) under Section 2.151, if the Contractor (i) breaches any of its material duties or obligations under this Contract (including a Chronic Failure to meet any particular SLA), or (ii) fails to cure a breach within the time period specified in the written notice of breach provided by the State
- (b) If this Contract is terminated for cause, the Contractor must pay, subject to Section 2.221, 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 and which the State would not have incurred but for such termination ("Re-procurement Costs"). Re-procurement costs are not consequential, indirect or incidental damages, and cannot be excluded by any other terms otherwise included in this Contract, provided the costs are not in excess of 50% more than the prices for the Service/Deliverables and Products provided under this Contract.
- (c) If the State chooses to partially terminate this Contract for cause, charges payable under this Contract shall be equitably adjusted to reflect those Services/Deliverables that are terminated and the State must pay for all Products delivered and all Services/Deliverables for which Final Acceptance has been granted provided up to the termination date. Services and related provisions of this Contract that are terminated for cause must cease on the effective date of the termination.
- (d) If the State terminates this Contract for cause under this Section, and it is determined, for any reason, that Contractor was not in breach of contract under the provisions of this section, that termination for cause must be deemed to have been a termination for convenience, effective as of the same date, and the rights and obligations of the parties must be limited to that otherwise provided in this Contract for a termination for convenience.

2.153 TERMINATION FOR CONVENIENCE

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

2.154 TERMINATION FOR NON-APPROPRIATION

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

2.155 TERMINATION FOR CRIMINAL CONVICTION

The State may terminate this Contract immediately and without further liability or penalty (subject to its obligation to pay for Services and Products delivered) in the event Contractor, an officer of Contractor, or an owner of a 25% or greater share of Contractor is convicted of a criminal offense related to a State, public or private contract or subcontract.

2.156 TERMINATION FOR APPROVALS RESCINDED

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

2.157 RIGHTS AND OBLIGATIONS UPON TERMINATION

- (a) If the State terminates this Contract for any reason, the Contractor must (a) stop all work as specified in the notice of termination, (b) take any action that may be necessary, or that the State may direct, for preservation and protection of Deliverables or other property derived or resulting from this Contract that may be in Contractor's possession, (c) return all materials and property provided directly or indirectly to Contractor by any entity, agent or employee of the State, (d) transfer title in, and deliver to, the State, unless otherwise directed, all Deliverables intended to be transferred to the State at the termination of the Contract and which are resulting from the Contract (which must be provided to the State on an "As-Is" basis except to the extent the amounts paid by the State in respect of the items included compensation to Contractor for the provision of warranty services in respect of the materials), and (e) take any action to mitigate and limit any potential damages, or requests for Contractor adjustment or termination settlement costs, to the maximum practical extent, including terminating or limiting as otherwise applicable those subcontracts and outstanding orders for material and supplies resulting from the terminated Contract.
- (b) If the State terminates this Contract, the State must pay Contractor for all charges due for Products delivered and Services properly provided in accordance with the requirements of the Contract before the date of termination (including any amounts previously withheld pursuant to the 10% holdback, if applicable) and, if applicable, as a separate item of payment under this Contract, for Work In Progress, on a percentage of completion basis at the level of completion. All completed or partially completed

Deliverables prepared by Contractor under this Contract intended to be transferred to the State at the termination of the Contract, at the option of the State, becomes the State's property, and Contractor is entitled to receive equitable fair compensation for the Deliverables. Regardless of the basis for the termination, the State is not obligated to pay, or otherwise compensate, Contractor for any lost expected future profits, costs or expenses incurred with respect to Services not actually performed for the State.

- (c) Upon a good faith termination, the State may assume, at its option, and to the extent permissible under such subcontracts or agreements, any subcontracts and agreements for services and deliverables provided under this Contract, and may further pursue completion of the Services/Deliverables under this Contract by replacement contract or otherwise as the State may in its sole judgment deem expedient.

2.158 RESERVATION OF RIGHTS

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

2.160 Termination by Contractor

2.161 TERMINATION BY CONTRACTOR

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

The Contractor may terminate this Contract if the State (i) materially breaches its obligation to pay the Contractor undisputed amounts due and owing under this Contract, (ii) breaches its other obligations under this Contract to an extent that makes it impossible or commercially impractical for the Contractor to perform the Services, or (iii) does not cure the breach within the time period specified in a written notice of breach. But the Contractor must discharge its obligations under **Section 2.160** before it terminates the Contract.

2.170 Transition Responsibilities – DELETED/NA

2.180 Stop Work

2.181 STOP WORK ORDERS

The State may, at any time, by written Stop Work Order to Contractor, require that Contractor stop all, or any part, of the work called for by the Contract for a period of up to 90 calendar days after the Stop Work Order is delivered to Contractor, and for any further period to which the parties may agree. The Stop Work Order must be identified as a Stop Work Order and must indicate that it is issued under this **Section**. Upon receipt of the stop work order, Contractor must immediately comply with its terms and take all reasonable steps to minimize incurring costs allocable to the work covered by the Stop Work Order during the period of work stoppage. Within the period of the stop work order, the State must either: (a) cancel the stop work order; or (b) terminate the work covered by the Stop Work Order as provided in **Section 2.182**.

2.182 CANCELLATION OR EXPIRATION OF STOP WORK ORDER

The Contractor shall resume work if the State cancels a Stop Work Order or if it expires. 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 30 calendar days after the end of the period of work stoppage; provided that, if the State decides the facts justify the action, the State may receive and act upon a Contractor proposal submitted at any time before final payment under the Contract. Any adjustment will conform to the requirements of **Section 2.024**.

2.183 ALLOWANCE OF CONTRACTOR COSTS

If the Stop Work Order is not canceled and the work covered by the Stop Work Order is terminated for reasons other than material breach, the termination shall be deemed to be a termination for convenience under **Section 2.153**, and the State shall pay 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.

2.190 Dispute Resolution

2.191 IN GENERAL

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

2.192 INFORMAL DISPUTE RESOLUTION

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

(1) The representatives of Contractor and the State must meet as often as the parties reasonably deem necessary to gather and furnish to each other all information with respect to the matter at 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.

(2) During the course of negotiations, all reasonable requests made by one party to another for non-privileged information reasonably related to the Contract shall be honored in order that each of the parties may be fully advised of the other's position.

(3) The specific format for the discussions shall 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.

(4) Following the completion of this process within 60 calendar days, the Director of Purchasing Operations, DTMB, or designee, shall issue a written opinion regarding the issue(s) in dispute within 30 calendar days. The opinion regarding the dispute must be considered the State's final action and the exhaustion of administrative remedies.

(b) This Section shall not be construed to prevent either party from instituting, and a party is authorized to institute, formal proceedings earlier to avoid the expiration of any applicable limitations period, to preserve a superior position with respect to other creditors, or under Section 2.193.

(c) The State shall not mediate disputes between the Contractor and any other entity, except state agencies, concerning responsibility for performance of work under the Contract.

2.193 INJUNCTIVE RELIEF

The only circumstance in which disputes between the State and Contractor shall not be subject to the provisions of **Section 2.192** is where a party makes a good faith determination that a breach of the terms of the Contract by the other party is that the damages to the party resulting from the breach shall be so immediate, so large or severe and so incapable of adequate redress after the fact that a temporary restraining order or other immediate injunctive relief is the only adequate remedy.

2.194 CONTINUED PERFORMANCE

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

2.200 Federal and State Contract Requirements

2.201 NONDISCRIMINATION

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

2.202 UNFAIR LABOR PRACTICES

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

2.203 WORKPLACE SAFETY AND DISCRIMINATORY HARASSMENT

In performing Services for the State, the Contractor 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>.

2.204 PREVAILING WAGE - RESERVED

2.210 Governing Law

2.211 GOVERNING LAW

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

2.212 COMPLIANCE WITH LAWS

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

2.213 JURISDICTION

Any dispute arising from the Contract 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 the jurisdiction on the grounds of lack of personal jurisdiction of the court or the laying of venue of the court or on the basis of forum non conveniens or otherwise. Contractor agrees to appoint agents in the State of Michigan to receive service of process.

2.220 Limitation of Liability

2.221 LIMITATION OF LIABILITY

Neither the Contractor nor the State shall be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages. This limitation of liability does not apply to (i) except as

expressly provided otherwise in the indemnification provisions, amounts for which Unisys indemnifies the State pursuant to its Unisys indemnification obligations under this Contract for: (a) claims for infringement of United States patent, copyright, trademark or trade secrets or; (b) claims for personal injury or damage to tangible property caused by the gross negligence or willful misconduct of a party; (ii) claims covered by other specific provisions of this Contract calling for liquidated damages; or (iii) to court costs or attorney's fees awarded by a court in addition to damages after litigation based on this Contract.

Unless further limited elsewhere in this Contract, the Contractor's liability for damages to the State from any cause, regardless of the form of action, is limited to two times the value of the amounts paid to Unisys under the Contract during the twelve (12) month period immediately prior to the date Unisys receives notice of the claim for the specific products or services supplied by Unisys that are the subject matter of the claim or \$500,000, whichever is higher. The foregoing limitation of liability does not apply to (i) except as expressly provided otherwise in the indemnification provisions, amounts for which Unisys indemnifies the State pursuant to its Unisys indemnification obligations under this Contract for claims for: (a) infringement of United States patent, copyright, trademarks or trade secrets; or (b) claims for personal injury or damage to tangible property caused by the gross negligence or willful misconduct a party ; (ii) to claims covered by other specific provisions of this Contract calling for liquidated damages; or (iii) 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 is limited to the value of the Contract.

2.230 Disclosure Responsibilities

2.231 DISCLOSURE OF LITIGATION

Contractor shall 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) shall notify the State of any material civil litigation, arbitration or proceeding which arises during the term of the Contract and extensions, to which Contractor (or, to the extent Contractor is aware, any Subcontractor) is a party, and which involves: (i) disputes that might reasonably be expected to adversely affect the viability or financial stability of Contractor or any Subcontractor; or (ii) a claim or written allegation of fraud against Contractor or, to the extent Contractor is aware, any Subcontractor by a governmental or public entity arising out of their business dealings with governmental or public entities. The Contractor shall disclose in writing to the Contract Administrator any litigation, investigation, arbitration or other proceeding (collectively, "Proceeding") within 30 days of its occurrence. Details of settlements that are prevented from disclosure by the terms of the settlement may be annotated. Information provided to the State from Contractor's publicly filed documents referencing its material litigation shall be deemed to satisfy the requirements of this Section 2.231.

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

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

2.232 CALL CENTER DISCLOSURE

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

As of the date of this Contract, and based on the products that the State currently has enrolled in Unisys maintenance services, Unisys Support Center Services for the State are routed through Salt Lake City and provided from from Bangalore, India. Contractor will notify the State if there is a change in its call center locations supporting the State,

2.233 BANKRUPTCY

The State may, without prejudice to any other right or remedy, terminate this Contract, in whole or in part, and, at its option, may take possession of the "Work in Process" and finish the Works in Process by whatever appropriate method the State may deem expedient if:

- (a) the Contractor files for protection under the bankruptcy laws;
- (b) an involuntary petition is filed against the Contractor and not removed within 30 days;
- (c) the Contractor becomes insolvent or if a receiver is appointed due to the Contractor's insolvency;
- (d) the Contractor makes a general assignment for the benefit of creditors; or
- (e) the Contractor or its affiliates are unable to provide reasonable assurances that the Contractor or its affiliates has the financial ability to deliver the services under this Contract.

Contractor will fix appropriate notices or labels on the Work in Progress which the State is intended to obtain title under the terms of this Contract 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 (as applicable).

2.240 Performance

2.241 TIME OF PERFORMANCE

- (a) Contractor shall use commercially reasonable efforts to provide the resources necessary to complete all Services and Deliverables according to the time schedules contained in the Statements of Work and other Exhibits governing the work, and with professional quality.
- (b) Without limiting the generality of **Section 2.241**, 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 must inform the State of the projected actual delivery date.
- (c) If the Contractor believes that a delay in performance by the State has caused or will cause the Contractor to be unable to perform its obligations according to specified Contract time periods, the Contractor must notify the State in a timely manner and must use commercially reasonable efforts to perform its obligations according to the Contract time periods notwithstanding the State's failure. Contractor will not be in default for a delay in performance to the extent the delay is caused by the State.

2.242 SERVICE LEVEL AGREEMENT (SLA)

- (a) SLAs will be completed with the following operational considerations:
 - (1) SLAs will not be calculated for individual Incidents where any event of Excusable Failure has been determined; Incident means any interruption in Services.
 - (2) SLAs will not be calculated for individual Incidents where loss of service is planned and where the State has received prior notification or coordination.
 - (3) SLAs will not apply if the applicable Incident could have been prevented through planning proposed by Contractor and not implemented at the request of the State. To invoke this consideration, complete documentation relevant to the denied planning proposal must be presented to substantiate the proposal.
 - (4) 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:
 - (i) 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.

- (ii) Time period(s) will not apply where Contractor needs to obtain timely and accurate information or appropriate feedback and is unable to obtain timely and accurate information or appropriate feedback from the State.
- (b) Chronic Failure for any Service(s) will be defined as three unscheduled outage(s) or interruption(s) on any individual Service for the same reason or cause or if the same reason or cause was reasonably discoverable in the first instance over a rolling 30 day period. Chronic Failure will result in the State's option to terminate the effected individual Service(s) and procure them from a different vendor for the chronic location(s) with Contractor to pay the difference in charges for up to three additional months. The termination of the Service will not affect any tiered pricing levels.
- (c) Root Cause Analysis will be performed on any Business Critical outage(s) or outage(s) on Services when requested by the Contract Administrator. Contractor will provide its analysis within two weeks of outage(s) and provide a recommendation for resolution.
- (d) All decimals must be rounded to two decimal places with five and greater rounding up and four and less rounding down unless otherwise specified.

2.243 LIQUIDATED DAMAGES

For Services subject to SLAs as documented in the Contract (which Services include those Services for which SLAs are designated in an SOW and those services identified as being subject to an SLA as documented in Article 1.104. C of the RFP and Unisys Proposal upon which this Contract is based) , the parties acknowledge that late or improper completion of the Work will cause loss and damage to the State, and that it would be impracticable and extremely difficult to fix the actual damage sustained by the State as a result. Therefore, Contractor and the State agree that if there is late or improper completion of such Work and the State does not elect to exercise its rights under **Section 2.152**, the State is entitled to collect liquidated damages in the amount of \$5,000.00 and an additional \$100.00 per day for each day Contractor fails to remedy the late or improper completion of the Work, provided such liquidated damages will not exceed, in the aggregate, an amount equal to two times the value of the amounts paid to Unisys under the Contract during the twelve (12) month period immediately prior to the date Unisys receives notice of the claim for the specific products or services supplied by Unisys that are the subject matter of the claim or \$500,000, whichever is higher.

Unauthorized Removal of any Key Personnel

It is acknowledged that an Unauthorized Removal will interfere with the timely and proper completion of the Contract, to the loss and damage of the State, and that it would be impracticable and extremely difficult to fix the actual damage sustained by the State as a result of any Unauthorized Removal. Therefore, Contractor and the State agree that in the case of any Unauthorized Removal in respect of which the State does not elect to exercise its rights under **Section 2.152**, the State may assess liquidated damages against Contractor as specified below.

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

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

2.244 EXCUSABLE FAILURE

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

If a party does not perform its contractual obligations for any of the reasons listed above, the non-performing party will be excused from any further performance of its affected obligation(s) for as long as the circumstances prevail. But the party must use commercially reasonable efforts to recommence performance whenever and to whatever extent possible without

delay. A party must promptly notify the other party in writing immediately after the excusable failure occurs, and also when it abates or ends.

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

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

2.250 Approval of Fixed-Price Deliverables under Individual Statements of Work

2.251 DELIVERY OF DELIVERABLES

A list 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") or a Custom Software Deliverable will be specified in each Statement of Work, if applicable. 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 this Contract.

Prior to delivering any Deliverable to the State, Contractor will first perform all required quality assurance activities, and, in the case of Custom Software Deliverables, System Testing to verify that the Deliverable is complete and in conformance with its specifications. Before delivering a Deliverable 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 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.

In discharging its obligations under this Section, Contractor shall be at all times (except where the parties agree otherwise in writing) in compliance with Level 3 of the Software Engineering Institute's Capability Maturity Model for Software ("CMM Level 3") or its equivalent.

2.252 CONTRACTOR SYSTEM TESTING

Contractor will be responsible for System Testing each Custom Software Deliverable in Contractor's development environment prior to turning over the Custom Software Deliverable to the State for User Acceptance Testing and approval. Contractor's System Testing shall include the following, at a minimum, plus any other testing required by CMM Level 3 or Contractor's system development methodology:

Contractor will be responsible for performing Unit Testing and incremental Integration Testing of the components of each Custom Software Deliverable.

Contractor's System Testing will also include Integration Testing of each Custom Software Deliverable to ensure proper inter-operation with all prior software Deliverables, interfaces and other components that are intended to inter-operate with such Custom Software Deliverable, and will include Regression Testing, volume and stress testing to ensure that the Custom Software Deliverables are able to meet the State's projected growth in the number and size of transactions to be processed by the Application and number of users, as such projections are set forth in the applicable Statement of Work.

Contractor's System Testing will also include Business Function Testing and Technical Testing of each Application in a simulated production environment. Business Function Testing will include testing of full work streams that flow through the Application as the Application will be incorporated within the State's computing environment. The State shall participate in and provide support for the Business Function Testing to the extent reasonably requested by Contractor. Within ten (10) days before the commencement of Business Function Testing pursuant to this Section, Contractor shall provide the State for State review and written approval Contractor's test plan for Business Function Testing.

Within five (5) Business Days following the completion of System Testing pursuant to this **Section**, Contractor shall provide to the State a testing matrix establishing that testing for each condition identified in the System Testing plans has been conducted and successfully concluded. To the extent that testing occurs on State premises, the State shall be entitled to observe or otherwise participate in testing under this Section as the State may elect.

2.253 APPROVAL OF DELIVERABLES, IN GENERAL

All Deliverables (Written Deliverables and Custom Software Deliverables) 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, in the case of Custom Software Deliverables, will include the successful completion of State User Acceptance Testing, 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.

The State's obligation to comply with any State Review Period is conditioned on the timely delivery of Deliverables being reviewed. If Contractor fails to provide a Deliverable to the State in a timely manner, the State will nevertheless use commercially reasonable efforts to complete its review or testing within the applicable State Review Period.

Before commencement of its review or testing of a Deliverable, the State may inspect the Deliverable to confirm that all components of the Deliverable (e.g., software, associated documentation, and other materials) have been delivered. If the State determines that the Deliverable is incomplete, the State may refuse delivery of the Deliverable without performing any further inspection or testing of the Deliverable. Otherwise, the review period will be deemed to have started on the day the State receives the Deliverable and the applicable certification by Contractor in accordance with this Section.

The State will approve in writing a Deliverable upon confirming that it conforms to and, in the case of a Custom Software Deliverable, performs in accordance with, its specifications without material deficiency. The State may, but shall not be required to, conditionally approve in writing a Deliverable 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 that remain outstanding at the time of State approval.

If, after three (3) opportunities (the original and two repeat efforts), Contractor is unable to correct all deficiencies preventing State approval of a Deliverable, 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 this Contract in force and do, either itself or through other parties, whatever Contractor has failed to do, in which event Contractor shall, as a liquidated damage, bear any excess expenditure incurred by the State in so doing beyond the contract price for such Deliverable and will pay the State an additional sum equal to ten percent (10%) of such excess expenditure to cover the State's general expenses without the need to furnish proof in substantiation of such general expenses; or (iii) terminate this Contract for default, either in whole or in part by notice to Contractor in accordance with Section 2.152. 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.

The State, at any time and in its own discretion, may halt the UAT or approval process if such process reveals deficiencies in or problems with a Deliverable 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 return the applicable Deliverable to Contractor for correction and re-delivery prior to resuming the review or UAT process and, in that event, Contractor will correct the deficiencies in such Deliverable in accordance with the Contract, as the case may be.

Approval in writing of a Deliverable by the State shall be provisional; that is, such approval shall not preclude the State from later identifying deficiencies in, and declining to accept, a subsequent Deliverable based on or which incorporates or inter-operates with an approved Deliverable, to the extent that the results of subsequent review or testing indicate the existence of deficiencies in the subsequent Deliverable, or if the Application of which the subsequent Deliverable is a component otherwise fails to be accepted pursuant to **Section 2.080**.

2.254 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 Written 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 Written Deliverable is approved in the form delivered by Contractor or describing any deficiencies that shall be corrected prior to approval of the Written Deliverable (or at the State's election, subsequent to approval of the Written Deliverable). If the State delivers to Contractor a notice of deficiencies, Contractor will correct the described deficiencies and within five (5) 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 Written 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 Written Deliverable to confirm that the identified deficiencies have been corrected.

2.255 PROCESS FOR APPROVAL OF CUSTOM SOFTWARE DELIVERABLES

The State will conduct UAT of each Custom Software Deliverable in accordance with the following procedures to determine whether it meets the criteria for State approval – i.e., whether it conforms to and performs in accordance with its specifications without material deficiencies.

Within thirty (30) days (or such other number of days as the parties may agree to in writing) prior to Contractor's delivery of any Custom Software Deliverable to the State for approval, Contractor shall provide to the State a set of proposed test plans, including test cases, scripts, data and expected outcomes, for the State's use (which the State may supplement in its own discretion) in conducting UAT of the Custom Software Deliverable. Contractor, upon request by the State, shall provide the State with reasonable assistance and support during the UAT process.

For the Custom Software Deliverables listed in an attachment, the State Review Period for conducting UAT will be as indicated in the attachment. For any other Custom Software Deliverables not listed in an attachment, the State Review Period shall be the number of days agreed in writing by the parties (failing which it shall be forty-five (45) days by default). The State Review Period for each Custom Software Deliverable will begin when Contractor has delivered the Custom Software Deliverable to the State accompanied by the certification required by this **Section** and the State's inspection of the Deliverable has confirmed that all components of it have been delivered.

The State's UAT will consist of executing test scripts from the proposed testing submitted by Contractor, but may also include any additional testing deemed appropriate by the State. If the State determines during the UAT that the Custom Software Deliverable contains any deficiencies, the State will notify Contractor of the deficiency by making an entry in an incident reporting system available to both Contractor and the State. Contractor will modify promptly the Custom Software Deliverable to correct the reported deficiencies, conduct appropriate System Testing (including, where applicable, Regression Testing) to confirm the proper correction of the deficiencies and re-deliver the corrected version to the State for re-testing in UAT. Contractor will coordinate the re-delivery of corrected versions of Custom Software Deliverables with the State so as not to disrupt the State's UAT process. The State will promptly re-test the corrected version of the Software Deliverable after receiving it from Contractor.

Within three (3) business days after the end of the State Review Period, the State will give Contractor a written notice indicating the State's approval or rejection of the Custom Software Deliverable according to the criteria and process set out in this **Section**.

2.256 FINAL ACCEPTANCE

"Final Acceptance" shall be considered to occur when the Custom Software Deliverable to be delivered has been approved by the State and has been operating in production without any material deficiency for fourteen (14) consecutive days. If the State elects to defer putting a Custom Software Deliverable into live production for its own reasons, not based on concerns about outstanding material deficiencies in the Deliverable, the State shall nevertheless grant Final Acceptance of the Project.

2.260 Ownership

2.261 OWNERSHIP OF WORK PRODUCT BY STATE

With the exception of any pre-existing software or other intellectual property of Contractor or its licensors and any modifications or improvements to or derivative works of such items (“Contractor Intellectual Property”), the State owns all Deliverables, as they are work made for hire by the Contractor for the State. The State owns all United States and international copyrights, trademarks, patents or other proprietary rights in the Deliverables, excluding any Contractor Intellectual Property..

2.262 VESTING OF RIGHTS

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

2.263 RIGHTS IN DATA

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

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

2.264 OWNERSHIP OF MATERIALS

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

2.270 State Standards

2.271 EXISTING TECHNOLOGY STANDARDS

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

2.272 ACCEPTABLE USE POLICY

To the extent that Contractor has access to the State computer system, Contractor must comply with the State’s Acceptable Use Policy, see http://www.michigan.gov/documents/dmb/1460.00_184733_7.pdf . All Contractor employees must be required, in writing, to agree to the State’s Acceptable Use Policy before accessing the State system. The State reserves the right to terminate Contractor’s access to the State system if a violation occurs.

2.273 SYSTEMS CHANGES

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

2.280 Extended Purchasing

2.281 MIDEAL (MICHIGAN DELIVERY EXTENDED AGREEMENTS LOCALLY

Public Act 431 of 1984 permits MDTMB to provide purchasing services to any city, village, county, township, school district, intermediate school district, non-profit hospital, institution of higher education, community, or junior college. A current listing of approved program members is available at: www.michigan.gov/buymichiganfirst. Unless otherwise stated, the Contractor must ensure that the non-state agency is an authorized purchaser before extending the Contract pricing.

The Contractor will supply Contract Services and equipment to these local governmental agencies at the established State of Michigan contract prices and terms to the extent applicable and where available. The Contractor must send its invoices to, and pay the local unit of government, on a direct and individual basis.

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

Please Visit Mi DEAL at www.michigan.gov/buymichiganfirst under MiDeal.

Estimated requirements for authorized local units of government are not included in the quantities shown in this RFP.

Administrative Fee

1. The Contractor must remit an administrative fee on all sales transacted under this Contract, and remit the fee within 30 days after the end of each quarter. The administrative fee equals one percent (1%) of the total quarterly sales reported.
2. The Contractor must pay the administrative fee by check payable to the State of Michigan. The Contractor must identify the check as an "Administrative Fee" and include the following information with the payment: the applicable Contract Number, the total quarterly sales by volume and dollar amount, and the quarter covered.
3. The Contractor must send the check to the following address:

Department of Technology, Management and Budget
Financial Services – Cashier Unit
Lewis Cass Building
320 South Walnut St.
P.O. Box 30681
Lansing, MI 48909

2.282 STATE EMPLOYEE PURCHASES - RESERVED

2.290 Environmental Provision

2.291 ENVIRONMENTAL PROVISION

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

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

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

- (a) The Contractor shall use, handle, store, dispose of, process, transport and transfer any material considered a Hazardous Material according to all federal, State and local laws. The State shall provide a safe and suitable environment for performance of Contractor's Work. Before the commencement of Work, the State shall advise the Contractor of the presence at the work site of any Hazardous Material to the extent that the State is aware of the Hazardous Material. If the Contractor encounters material reasonably believed to be a Hazardous Material and which may present a substantial danger, the Contractor shall immediately stop all affected Work, notify the State in writing about the conditions encountered, and take appropriate health and safety precautions.
- (b) Upon receipt of a written notice, the State will investigate the conditions. If (a) the material is a Hazardous Material that may present a substantial danger, and (b) the Hazardous Material was not brought to the site by the Contractor, or does not result in whole or in part from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Materials, the State 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 Contractor shall resume Work as directed in writing by the State. Any determination by the Michigan Department of Community Health or the Michigan Department of Environmental Quality that the Hazardous Material has either been removed or rendered harmless is binding upon the State and Contractor for the purposes of resuming the Work. If any incident with Hazardous Material results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Work will not be counted in 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 according to Applicable Laws to the condition approved by applicable regulatory agency(ies).

Labeling: Michigan has a Consumer Products Rule pertaining to labeling of certain products containing volatile organic compounds. For specific details visit http://www.michigan.gov/deq/0,1607,7-135-3310_4108-173523--_00.html

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

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

2.300 Deliverables – Deleted/NA

2.310 Software Warranties

2.311 PERFORMANCE WARRANTY – DELETED/NA

2.312 NO SURREPTITIOUS CODE WARRANTY

The Contractor represents and warrants that it will not provide any copy of licensed Software to the State which contains any Self-Help Code and that it will not knowingly provide any Software containing any Unauthorized Code as defined below, subject to Contractor's obligations in this section to use up-to-date commercial virus detection software to detect and remove any Unauthorized Code. 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.

2.313 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.

2.314 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 either confirmation from the third party licensor of Contractor's license to use the third party software or a copy of any ownership agreement or license (redacted to exclude pricing or other confidential information) that authorizes the Contractor to use the Third-party Software.

2.315 PHYSICAL MEDIA WARRANTY

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 (30) thirty 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).

2.320 Software Licensing - Reserved

2.330 Source Code Escrow – DELETED/NA

EXHIBIT 1 Glossary

Days	Means calendar days unless otherwise specified.
24x7x365	Means 24 hours a day, seven days a week, and 365 days a year (including the 366th day in a leap year).
Additional Service	Means any Services/Deliverables within the scope of the Contract, but not specifically provided under any Statement of Work, that once added will result in the need to provide the Contractor with additional consideration.
Audit Period	See Section 2.110
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.
Blanket Purchase Order	An alternate term for Contract as used in the States computer system.
Business Critical	Any function identified in any Statement of Work as Business Critical.
Chronic Failure	Defined in any applicable Service Level Agreements.
Custom Software Deliverable	Custom software originally created during a Project according to agreed specifications in the Statement(s) of Work, excluding modifications or enhancements to or derivative works of any pre-existing Software of Contractor or its licensors.
Deliverable	Written Deliverables or Custom Software Deliverables originally created by Contractor and to be delivered to the State in the performance of Services under this Contract, as required or identified by a Statement of Work
DTMB	Michigan Department of Technology, Management and Budget
Environmentally preferable products	A product or service that has a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. Such products or services may include, but are not limited to, those that contain recycled content, minimize waste, conserve energy or water, and reduce the amount of toxics either disposed of or consumed.
Excusable Failure	See Section 2.244.
Hazardous material	Any material defined as hazardous under the latest version of federal Emergency Planning and Community Right-to-Know Act of 1986 (including revisions adopted during the term of the Contract).
Incident	Any interruption in Services.
ITB	A generic term used to describe an Invitation to Bid. The ITB serves as the document for transmitting the RFP to potential bidders
Key Personnel	Any Personnel designated in a Statement of Work as Key Personnel.
New Work	Any Services/Deliverables outside the scope of the Contract and not specifically provided under any Statement of Work, that once added will result in the need to provide the Contractor with additional consideration.
Ozone-depleting substance	Any substance the Environmental Protection Agency designates in 40 CFR part 82 as: (1) Class I, including, but not limited to, chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or (2) Class II, including, but not limited to, hydro chlorofluorocarbons
Post-Consumer Waste	Any product generated by a business or consumer which has served its intended end use, and which has been separated or diverted from solid waste for the purpose of recycling into a usable commodity or product, and which does not include post-industrial waste.
Post-Industrial Waste	Industrial by-products that would otherwise go to disposal and wastes generated after completion of a manufacturing process, but do not include internally generated scrap commonly returned to industrial or manufacturing processes.
Project	The Services, tasks, and Deliverables described in a mutually agreed Statement of Work.
Recycling	The series of activities by which materials that are no longer useful to the generator are collected, sorted, processed, and converted into raw materials and used in the production of new products. This definition excludes the use of these materials as a fuel substitute or for energy production.
Deleted – Not Applicable or Reserved	Section is not applicable or included in this RFP. This is used as a placeholder to maintain consistent numbering.

Reuse	Using a product or component of municipal solid waste in its original form more than once.
RFP	Request for Proposal designed to solicit proposals for services
Services	Any function performed for the benefit of the State pursuant to an Order.
Source reduction	Any practice that reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment prior to recycling, energy recovery, treatment, or disposal.
State Location	Any physical location where the State performs work. State Location may include state-owned, leased, or rented space.
Statement of Work	A mutually agreed written description of the work to be performed for a Project under this Contract
Subcontractor	A company Contractor delegates performance of a portion of the Services under a Statement of Work, but does not include independent contractors engaged by Contractor solely in a staff augmentation role.
Unauthorized Removal	Contractor's removal of Key Personnel without the prior written consent of the State.
Waste prevention	Source reduction and reuse, but not recycling.
Waste reduction and Pollution prevention	The practice of minimizing the generation of waste at the source and, when wastes cannot be prevented, utilizing environmentally sound on-site or off-site reuse and recycling. The term includes equipment or technology modifications, process or procedure modifications, product reformulation or redesign, and raw material substitutions. Waste treatment, control, management, and disposal are not considered pollution prevention, per the definitions under Part 143, Waste Minimization, of the Natural Resources and Environmental Protection Act (NREPA), 1994 PA 451, as amended.
Work in Progress	A Deliverable that has been partially prepared, but has not been presented to the State for Approval.
Work Product	Refers to any data compilations, reports, and other media, materials, or other objects or works of authorship created or produced by the Contractor as a result of an in furtherance of performing the services required by this Contract.

EXHIBIT 2

Unisys Supplemental Contract Terms:

The following attached documents are included in this Exhibit 2:

- Unisys Master Agreement for Products and Services
- Unisys Support Services Addendum
- Unisys MCP Metered Software Schedule
- Unisys Order for Support Account Manager Services

Agreement Number



Master Agreement for Products and Services

This Master Agreement for Products and Services is between Unisys Corporation, a Delaware corporation, with offices at 801 Lakeview Drive, Suite 100, Blue Bell, Pennsylvania 19422 ("Unisys") and:

Client Name and Mailing Address

This Agreement consists of the terms and conditions on pages 1 through 5 and those of the following checked documents:

- 4305 4931-006 Equipment Sale Schedule
- 4305 4933-007 Software License Schedule
- 4305 4934-001 Information Services Schedule
- 4305 4940-005 Support Services Addendum
- 4305 4942-002 Support Services Schedule
- 4305 4944-002 Support Services Schedule for Desktop Equipment
- 4305 4935-002 Svstems Intearation Addendum
- 4305 4936-002 State and Local Government Addendum
- 4305 5383-002 Statement of Work
- 4305 7940-002 OS2200 Metering Software Schedule
- 4305 7942-003 MCP Metering Software Schedule
- 4305 7944-001 NDP Measured Software Schedule
- 4305 7975-002 Application Software Support Services Addendum
- 4305 7983-001 Application Support Services Schedule
- _____
- _____
- _____

The parties acknowledge they have read and understand this Agreement (pages 1 through 6, including all checked and attached schedules and addenda) and are not entering into this Agreement on the basis of any representations not expressly set forth in it.

Agreed and Accepted

Unisys Corporation

(Signature) _____ (Date)

(Printed/typed name)

(Title)

Client

(Signature) _____ (Date)

(Printed/typed name)

(Title)

Terms and Conditions

Intending to be legally bound by this Master Agreement for Products and Services (called the "Agreement"), Client and Unisys agree the following terms will apply to any order placed by Client and accepted by Unisys Corporation for the sale of equipment, for services provided, and for the license of software to Client under this Agreement. This Agreement does not obligate Client to place an order nor does it obligate Unisys to accept an order.

Section 1 - Definitions

"**Confidential Information**" is Software, diagnostics, support materials, documentation, and any other information and materials confidential to Unisys, its licensors, or Client.

A "**non Unisys Product**" or "**non Unisys Software**" is a Product or Software, as the case may be, that has been manufactured for or furnished to Unisys by a third-party manufacturer, supplier or publisher, and that does not bear a Unisys trademark.

An "**Order**" is an order, statement of work, purchase order, or a Unisys schedule submitted by Client and accepted by Unisys.

A "**Product**" is equipment, Software, Software maintenance releases and updates, and documentation (including manuals and education materials but not maintenance materials or tools) provided by Unisys under an Order.

"**Services**" are any work provided by Unisys under an Order.

"**Software**" is the object code version of computer programs, any image enabler, license or performance key, any source code version that Unisys may provide, and any documentation related to the programs, excluding maintenance materials. Software includes microcode that is not permanently fixed in equipment.

A "**Unisys Product**" or "**Unisys Software**" is a Product or Software, as the case may be, that Unisys manufactures or has manufactured for it and that bears a Unisys trademark.

Section 2 - Effective Date/Ordering Procedure

A binding contract between Unisys and Client for the sale and purchase of Products or Services or the license of Software under this Agreement begins on the later date when signed by both Client's authorized representative and an authorized representative of Unisys. Unisys will assign an agreement number ("Agreement Number") to identify this Agreement. Unisys may give information to Client concerning equipment, services, or software licenses that Client may wish to purchase from Unisys ("Quotes"). Quotes do not obligate Client or Unisys. Client may order Products or Services under this Agreement by giving orders to Unisys that reference the Agreement Number. When Client submits an order to Unisys, Client will pay Unisys any down payment or deposit shown in the order. Unisys may accept or decline Client orders. If Unisys declines Client's order, Unisys will return any down payment or deposit that Client paid Unisys with the order. This Agreement will apply to Orders and its terms will replace any preprinted terms contained in Client's Order. Unisys agrees to sell to Client the equipment, license the Software, and provide the Services, described in an Order. Unisys may substitute equal or better Product(s) on any Order.

Section 3 - Delivery and Installation/Transfer of Title

Each Order will require or authorize Unisys to ship Products to Client. Client will pay the applicable Unisys transportation charges, if any. Unisys will keep the risk of loss or damage to the Product until the Product is delivered to the location designated by Client. Title to equipment shall pass on delivery to the carrier. Unisys will provide Client with one (1) copy of any environmental specifications and the customary user documentation for the Products. Client will install the Product(s) unless Client's Order includes installation Services or Unisys includes installation with the Product(s). Client will prepare and maintain the proper operating

environment for the Products during any applicable warranty and Service period. If Unisys agrees to install a Product, Unisys will perform installation work during Unisys normal working hours. Client will pay for any site-specific installation materials for any installation by Unisys including any cables and special rigging and labor (including any costs to meet union or local law requirements).

Section 4 - Invoices

Unless the Order includes a different billing schedule, Unisys will invoice Client for: (a) Products, upon shipment; (b) maintenance plan Services and other recurring charges (other than usage charges), annually in advance; and (c) usage charges and other Services, as Client incurs the usage charges or as Unisys provides the Services.

Section 5 - Security Interest

Unisys will keep an interest (called a purchase money security interest) in equipment it sells Client until Client pays the purchase price. This Agreement is a security agreement. Client authorizes Unisys, or someone on Unisys behalf, to sign and file the necessary financing statements for Client. Unisys may also file a copy of this Agreement wherever necessary to protect its security interest. Unisys shall terminate such security interest upon Client's payment in full for such equipment. Client shall not, prior to payment in full to Unisys, sell, transfer, or otherwise dispose of the Product. In the event that Client does dispose of the Product prior to payment in full to Unisys, Client shall hold the proceeds in trust for Unisys.

Section 6 - Client Responsibilities

The parties agree that: (a) Client has independently determined that the Products and Services ordered under this Agreement meet its requirements; (b) Client will use the Products according to the manufacturers' instructions in the proper environment; (c) Client will back up information stored or processed by Products on computer-readable media that Client can easily restore if the information is lost or damaged from any cause; (d) Client is responsible for any results produced by the Products and Services; and (e) Client will comply with all applicable government export control laws and regulations. If Unisys is providing maintenance Support Services, Client will: (a) maintain the proper operating environment for Products; (b) provide adequate working and storage space for use by Unisys personnel near the equipment; (c) provide Unisys access to the equipment and sufficient computer time, subject only to Client's security rules; (d) follow Unisys procedures and instructions for operator maintenance and obtaining services; (e) provide a memory dump and additional data in machine readable form if requested; (f) reproduce suspected errors or malfunctions in Software; and (g) install available error corrections and maintenance releases authorized by the manufacturer on a current basis.

Section 7 - Unisys Support Materials

Client acknowledges that all support materials, including without limitation, diagnostic software and tools, are Confidential Information of Unisys and will be used only by Unisys maintenance personnel. This provision applies even though such materials may be listed in the Unisys price lists, catalogs, invoices or contracts.

Section 8 - Diagnostic Tools

For ease of service, Unisys may store proprietary and confidential diagnostic tools, software, and documentation, whether in printed or

electronic form, (collectively called "Tools") at Client's site or within a Product. These Tools may be pre-loaded on Client's equipment or embedded in a Product before delivery. Unisys does not license these Tools to Client. Unisys does not give Client or anyone else permission to access, monitor, use, copy, distribute, or change these Tools. Unisys acknowledges that during routine system back-ups, Client may not easily avoid copying software Tools and, to this extent, the copies are permitted provided Client protects these Tools as Unisys Confidential Information and Client does not remove any proprietary markings. Unisys may remove these Tools at will and Client gives Unisys permission and access to Client's site to do so.

Section 9 - License

Unisys either licenses Software directly or distributes Software that is licensed by a third party. In either case, Client does not obtain ownership of Software. If Unisys distributes any Software pursuant to a separate license agreement between Client and a third party, Client agrees that for any such third party Software: (a) the terms of such separate license agreement (including its warranties, restrictions and remedies, if any) shall apply to that Software, provided that (i) upon the Client's request during the request for quote process, Unisys will provide a copy of any such license agreements applicable to the Products being procured for the Client's review and approval prior to the Client's placement of the Order, and (ii) Unisys may not accept, on behalf of the State, any clickwrap web-based or other forms of license for such third party product and (b) in the case of Software licensed under an open source license agreement, nothing in this Agreement shall be read to add additional conditions or restrictions, or affect any rights and/or obligations Client may have, pursuant to any such open source license; otherwise, the following license terms will apply:

UNISYS LICENSES EACH COPY OF THE SOFTWARE AND DOCUMENTATION PROVIDED HEREUNDER TO CLIENT ON A PERSONAL, NON-EXCLUSIVE AND NON-TRANSFERABLE BASIS FOR CLIENT'S INTERNAL USE IN THE UNITED STATES BUT NOT AS A SERVICE BUREAU, NOR FOR OUTSOURCING, NOR FOR FACILITIES MANAGEMENT. UNISYS LICENSES THE SOFTWARE SOLELY FOR CLIENT'S USE ON A SINGLE MACHINE UNLESS THE ORDERED UNISYS LICENSE PLAN PROVIDES OTHERWISE. CLIENT MAY USE THE SOFTWARE TEMPORARILY ON A BACKUP MACHINE PROVIDED THE SOFTWARE IS USED ON ONLY ONE (1) MACHINE AT A TIME AND CLIENT REMOVES THE SOFTWARE FROM THE BACKUP MACHINE PROMPTLY AFTER EACH TEMPORARY USE.

CLIENT WILL NOT COPY SOFTWARE OR DOCUMENTATION EXCEPT FOR ONE (1) ARCHIVAL COPY OF THE SOFTWARE, WHICH MUST BEAR ALL THE LEGENDS AND NOTICES OF THE ORIGINAL ITEM. NO LICENSE IS GRANTED TO CLIENT TO USE ANY UNISYS PROPRIETARY SOFTWARE TO ASSESS, TEST, OR DEVELOP ANY HARDWARE PRODUCTS OR DEVICE HANDLER SOFTWARE, OPERATING SYSTEM SOFTWARE OR HARDWARE DIAGNOSTIC SOFTWARE THAT WILL BE MARKETED BY CLIENT OR OTHERS FOR COMPENSATION. CLIENT MAY DEVELOP OTHER SOFTWARE PROGRAMS AND MAY TEST FULLY-DEVELOPED, COMMERCIALY-AVAILABLE THIRD PARTY HARDWARE PRODUCTS OR SOFTWARE PROGRAMS WHERE SUCH TESTING IS SOLELY INTENDED FOR CLIENT'S INTERNAL EVALUATION OF THE FITNESS OF SUCH PRODUCT OR PROGRAM FOR CLIENT'S OWN INTERNAL DATA PROCESSING PURPOSES. CLIENT WILL NOT DECOMPIL, REVERSE ENGINEER OR DISASSEMBLE SOFTWARE, EXCEPT AS PERMITTED BY LAW. UPON NOTICE TO CLIENT, UNISYS MAY AUDIT CLIENT'S USE OF THE SOFTWARE TO DETERMINE CLIENT'S COMPLIANCE WITH THIS LICENSE PROVIDED UNISYS COMPLIES WITH CLIENT'S CUSTOMARY SECURITY RULES AND DOES NOT UNREASONABLY INTERFERE WITH CLIENT'S PERMITTED USE, AND IN SUCH EVENT, CLIENT AGREES TO PROVIDE RELEVANT INFORMATION AND REASONABLE FACILITIES.

CLIENT OR UNISYS MAY END ANY LICENSE AT THE CLOSE OF THE APPLICABLE LICENSE PERIOD BY GIVING THIRTY (30) DAYS PRIOR WRITTEN NOTICE, OR ELSE THE LICENSE WILL RENEW OR CONTINUE IN ACCORDANCE WITH THE TERMS IN THE CORRESPONDING SOFTWARE LICENSE SCHEDULE (OR IN THE ABSENCE OF A SOFTWARE LICENSE SCHEDULE, FOR ANOTHER LIKE PERIOD), SUBJECT TO ALL THE TERMS STATED HEREIN, AT UNISYS THEN-CURRENT CHARGES. FOR

SOFTWARE LICENSED BY UNISYS, EACH SUCH LICENSE ENDS WHEN CLIENT STOPS USING THE EQUIPMENT ON WHICH THE SOFTWARE WAS FIRST LICENSED. WHEN A LICENSE ENDS, CLIENT WILL DESTROY (AND, IN WRITING, CERTIFY DESTRUCTION) OR RETURN TO UNISYS ALL COPIES OF THE CORRESPONDING SOFTWARE (INCLUDING COPIES ON THE EQUIPMENT), DOCUMENTATION, AND ANY OTHER RELATED CONFIDENTIAL INFORMATION IN CLIENT'S POSSESSION THAT WAS PROVIDED UNDER THE LICENSE.

FEDERAL GOVERNMENT USE OF SOFTWARE - THE SOFTWARE AND ANY ACCOMPANYING DOCUMENTATION ARE COMMERCIAL ITEMS THAT HAVE BEEN DEVELOPED ENTIRELY AT PRIVATE EXPENSE. THEY ARE DELIVERED AND LICENSED AS COMMERCIAL COMPUTER SOFTWARE AND COMMERCIAL SOFTWARE DOCUMENTATION WITHIN THE MEANING OF THE APPLICABLE ACQUISITION REGULATION(S). THIS LICENSE SHALL PRESCRIBE EXCLUSIVELY THE GOVERNMENT'S USE AND DISCLOSURE OF THE SOFTWARE AND DOCUMENTATION.

Section 10 - Equipment Warranties

Equipment may be new, newly manufactured, or assembled from new or serviceable used parts that are like new in performance. Unless the Order or the Unisys Limited Warranty Statement that accompanies the equipment provides a different warranty period, and excluding equipment provided "AS IS", Unisys promises that Unisys branded equipment will be free from defects in material and workmanship, will be Year 2000 Ready, and will substantially conform to relevant Unisys published specifications for twelve (12) months after shipment to Client. Unisys will repair or replace, at its option and expense, items of equipment that do not meet this warranty provided Client reports the problem to Unisys during the warranty period. Unisys may fulfill warranty obligations at a Unisys designated site or depot and, when applicable, Client agrees to send equipment to the Unisys site at Client's expense and risk. Unisys will return the equipment at Unisys expense and risk if the equipment was defective. Replaced items, whether under a warranty or Service event, become Unisys property. This warranty does not extend to damage caused by normal wear and tear, accident, misuse, disaster, improper supplies or alterations, attachments, parts or repairs not provided or authorized by Unisys.

Section 11 - Software Warranties

Unisys warrants that Unisys Software designated "W" within a Software License Schedule will conform substantially to the then-current published functional specifications and will be Year 2000 Ready for ninety (90) days from Client's receipt provided Client uses it properly. Unisys will provide a workaround or correction for material errors in Unisys Software that prevent its use in a production environment, provided that Client reports the problem in writing to Unisys during this warranty period. This warranty does not extend to non-conformities resulting from accident, misuse, disaster, or alterations or modifications not provided or authorized by Unisys.

Section 12 - Unwarranted/AS IS Unisys and Non Unisys Products and Services

Unisys provides all non Unisys Products, all Unisys Software not designated "W" within a Software License Schedule, and all Unisys Software licensed to Client beyond its initial license period (whether under a renewal or subsequent license) "AS IS" and without Unisys warranty. For non Unisys Products, the respective manufacturer, supplier, or publisher may provide its own warranties or remedies to Client, and Client agrees to look solely to any such warranties and remedies. Except as specifically described in Section 16, Client agrees that Unisys will have no liability for any non Unisys Products or third party services that Client acquires under this Agreement, even if Unisys recommended these products or services to Client.

Section 13 - Services Warranties

Unisys has the ability to perform the Services and Unisys will provide suitable resources to perform the work according to the description of

Services, including any Ordered maintenance Service plan. All Services exclude damage repair or correction of defects or errors related to: (a) time and date data functionality for Unisys Products not designated Year 2000 Ready or non Unisys Products not Year 2000 Ready as initially manufactured; and, (b) supplies not obtained from Unisys, and (c) design, manufacture, materials or workmanship related to non Unisys products and services, or Product(s) for which Unisys has discontinued engineering support; and (d) unauthorized alterations or attachments; and (e) intentional damage caused by non Unisys personnel. In addition, Services exclude replacement of supplies expended during normal operation (including batteries, ink and other consumables).

Section 14 - No Other Warranties

Except as described in this Agreement or an Order, Unisys makes no other warranties. **TO THE EXTENT PERMITTED BY LAW, UNISYS DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE FOR PRODUCTS AND SERVICES AND NON-INFRINGEMENT.** Unisys warranties extend solely to Client. The following language relates only to Products subject to federal or state consumer warranty laws: If the disclaimer of implied warranties does not apply to Client, Unisys limits the length of these warranties to the applicable Unisys warranty period. Some states do not allow limitations on how long an implied warranty lasts, so the above limitation may not apply to Client. This warranty gives Client specific legal rights, and Client may also have other rights, which vary from state to state.

Section 15 - Maintenance Service Description

According to the service plan ordered by Client, Unisys will, with respect to covered equipment and Software, use commercially reasonable efforts to:

(a) diagnose and repair equipment that does not work according to the manufacturer's specification because of normal wear and tear, provided the equipment is in good working order at the start of the Unisys services, properly configured at the minimum hardware and software levels designated by Unisys, and Client complies with the manufacturer's instructions for the proper use, care, supplies, and environment for the equipment.

(b) diagnose and provide to Client workarounds or corrections for (i) material defects in the currently-supported version(s) of Unisys proprietary Software that prevent Client's use of this Software in a production environment; and (ii) non Unisys Software where the manufacturer makes such support available to Unisys for Client's benefit under a valid license.

Client must give Unisys prior written notice of any proposed changes (including alterations or attachments to equipment, software, components,

boards or subassemblies) to Products covered by a Unisys warranty or enrolled in a Unisys Service plan. Unisys has no obligation to provide maintenance Support Services for changed equipment or Software. Unisys may agree to maintain, support or correct such changed Products for an additional charge.

Section 16 - RESERVED

Section 17 - RESERVED

Section 18 - Ideas

Any ideas, concepts, know-how, data processing techniques, Software, documentation, diagrams, specifications, schematics or blueprints developed by Unisys personnel (alone or jointly with Client) in connection with the Services will be and remain the property of Unisys. Subject to payment of any license fees required under the Agreement, Unisys grants Client a non-exclusive license to use any of the foregoing in accordance with the terms of the Agreement.

Section 19 - Termination and Cancellation

Unisys may terminate maintenance Support Services on ninety (90) days prior written notice if Unisys determines that any alterations, attachments, Client Software modification or failure to install a maintenance release will interfere with Service provision. Unisys may terminate maintenance Support Services or change the terms of support to Client for a Product on the earlier of (a) ninety (90) days notice via written notification or posting by Unisys at its support website www.service.unisys.com or (b) at the expiration of the then-current term for those Support Services.

Either party may terminate any license for Software or any Support Services upon expiration of the applicable term upon thirty (30) days prior written notice. The license or service will renew or extend in accordance with the provisions of this Agreement, if such notice is not given. The licenses for any Software automatically terminate upon Client's discontinuance of use of the equipment on which the Software was licensed, at which time Client must either destroy or return the Software and documentation to Unisys. Upon termination or cancellation of Support Services, all Tools will be returned to Unisys.

Any terms of the Agreement that by their nature extend after the end of the Agreement will remain in effect until fulfilled. The rights or duties relating to protection of Confidential Information, indemnities, security interests, or compliance with export regulations will survive termination or cancellation of this Agreement.

Section 20 - RESERVED

Section 21 - RESERVED



Support Services Addendum

Agreement Number

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This Addendum amends the agreement referenced above by the Agreement Number (the "Agreement"), and applies to: (a) all orders for Support Services accepted with this Addendum or subsequently accepted under the Agreement, and (b) existing orders for Support Services under the Agreement upon expiration of the then-current term. Only definitions, descriptions and levels of this Addendum will apply to these Services. The terms of this Addendum will control over any contradictions with terms of the Agreement. Except as defined in this Addendum, all capitalized terms shall have the meaning used in the Agreement. Products covered by the Support Services are listed on the Support Services Schedule ("Schedule").

Section A. Definitions and General Terms and Conditions

Principal Period of Maintenance ("PPM") means 8:00 AM to 5:00 PM, Client's local time, Monday through Friday excluding Unisys designated holidays.

Commencement Date means, unless specified otherwise on the Schedule, (i) for the initial Order for Support Services for the Product, the latest of the date the Product is shipped by Unisys or downloaded by Client or Unisys accepts an Order for Support Services and (ii) for renewals and extensions, the anniversary of the Commencement Date of the initial Order for Support Services under (i) above.

7 X 24 means seven (7) days per week, twenty-four (24) hours per day including Unisys designated holidays.

Next Business Day (NBD) Service means Unisys will make every reasonable effort to respond to Client's request for on-site Support Services received during a PPM no later than the close of business of the next PPM.

4 Hour Response (4HR) means that if Client is located within a Primary Service City, Unisys will make every reasonable effort to respond to Client's requests for on-site Support Services within four (4) hours. Response is measured, during the Client's contracted hours of coverage, from the time that Unisys receives the request for service from Client until Unisys arrives at Client's site.

2 Hour Response (2HR) means that if Client is located within a Primary Service City, Unisys will make every reasonable effort to respond to the Client's request for on-site Support Services within two (2) hours. Response is measured from the time that Unisys receives the request for service from Client until Unisys arrives at Client's site.

Off Hours means all contracted hours of Support Services other than the PPM.

Primary Service City means an area that includes a 50-mile (80-kilometer in Canada) radius from the center of a Unisys designated Primary Service City. If Unisys moves its Primary Service City or Client relocates its site so that Client's site is no longer within a 50-mile (80-kilometer in Canada) radius from the center of a Unisys Primary Service City, Unisys reserves the right to adjust 2HR and 4HR or to change the contracted Service Level.

Failed Unit means a unit of equipment enrolled under Support Services, which is identified by Client as not in working order and deemed eligible by Unisys for exchange.

Client Replaceable Unit (CRU) means a component or other non-critical plug-in assembly delivered to the Client on the next business day for Client's personnel to affix the repair/replacement.

Exchange Unit means new, repaired, or previously used equipment in working order that Unisys conveys to Client as a replacement for a Failed Unit. The Failed Unit will become the property of Unisys upon Client's receipt of the Exchange Unit or, if later, upon receipt of the Failed Unit by Unisys. Client warrants that title to the Failed Unit and Unisys warrants that title to the Exchange Unit will be free and clear of all claims, liens, and encumbrances including security interests.

Service Levels mean various groupings of the Services Elements described in Section B.

Initial Term of Services means that unless specified otherwise on the Schedule or in the Agreement, the Initial Term for Support Services will be twelve (12) months from the Commencement Date. Except as specified in Section C of this Addendum, Products subsequently added to a system already enrolled under Support Services must be enrolled at the same Service Level as the system to which it is attached. Unless otherwise specified on the Schedule, the Initial Term of Support Services for Products subsequently enrolled under Support Services will end with the applicable term of Support Services for those previously enrolled Products and, for purposes of changes to Support Services charges, will be deemed to have the same anniversary of the Commencement Date of Services as those previously enrolled Products. Unisys will invoice Client for Support Services for Metered Software for the Term in advance. Unisys may change Support Services charges on each anniversary of the Commencement Date upon ninety (90) days prior written notice to Client. Unisys may charge Client time and material rates for service on Products that are not identified by the manufacturer's style and model number on the Schedule or for service on enrolled Products that are outside the scope of the contracted services. Unisys may terminate Support Services, modify Service Elements, Service Plans or discontinue Support Services for Products upon the earlier of (a) ninety (90) days prior notice via written notification or posting by Unisys at its support website: www.service.unisys.com or (b) at the expiration of the then-current Term, whether the Initial Term or any renewal or extension of the Initial Term, for those Support Services. If Client does not want to continue receiving the Support Services under such changed terms, Client may end contracted Support Services by giving Unisys written notice no later than thirty (30) days prior to the end of this ninety (90) day period and Unisys will refund any unearned payments for the Support Services. Following the Initial Term, Support Services will continue on an annual renewal basis at Unisys then-current list prices until terminated or canceled according to the terms of the Agreement.

Section B. Description of Service Elements

Equipment On-Call Remedial Maintenance includes on-site repair or Exchange Unit service of equipment, at Unisys option, if a problem remains unresolved after Client has utilized Support Center Services as prescribed.

Replacements for certain failed components such as keyboards, mice, and other non-critical plug-in assemblies designated by Unisys as Client Replaceable may, at Unisys option, be shipped directly to Client for Client installation. Should Client elect to have the Unisys Customer Infrastructure Representative visit the site to install such components, additional charges may apply.

Mail-In Service allows Client, at its expense and risk, to ship a Failed Unit to the Unisys designated location. Within seven (7) business days of receipt, Unisys will, at its option, either repair the Failed Unit or give Client an Exchange Unit.

Advance Exchange Service allows Client to notify Unisys of a Failed Unit enrolled in Support Services. Upon notification, Unisys will ship an Exchange Unit to the Client using a next day delivery service. Client will install the Exchange Unit and shall ship the Failed Unit to Unisys within fourteen (14) days after Client's receipt of the Exchange Unit. Client agrees to pay Unisys an additional fee, as determined by Unisys, if Client fails to return Failed Unit within fourteen (14) days of Client's receipt of Exchange Unit. Advance Exchange Service is limited to selected equipment.

Equipment Maintenance Parts are parts required for Product repairs made by Unisys personnel. NBD, 2HR and 4HR do not apply to Parts availability.

Essential Engineering Changes are changes released by Unisys for safety purposes or changes Unisys determines are essential to the performance of equipment. Changes will be installed at a mutually acceptable time during the applicable hours of contracted coverage. For non Unisys equipment, Unisys will install Essential Engineering Changes (a) based upon the availability of required materials at no cost to Unisys, and (b) at current hourly labor charges.

Electronic Call Home Support allows Unisys Support Centers to receive system data via the Internet from Client and perform remote failure analysis. Client will supply the equipment, software, and communication facilities to use the Electronic Call Home Support capabilities of the Product as outlined in the Unisys product support plan. If Client does not permit Unisys to use Electronic Call Home Support as defined in the Product's support plan, Client agrees to pay additional charges for Support Services as determined by Unisys. Electronic Call Home Support is limited to selected products.

Equipment Preventive Maintenance, including the installation of engineering changes deemed appropriate by Unisys, will be performed at Client's location according to the manufacturer's recommendations at a mutually acceptable time during the applicable hours of contracted coverage.

Support Center Service provides assistance by electronic or voice communication during the PPM on operating the Products, identifying Product errors or malfunctions and advising on known detours, reporting software problems via a User Communication Form (UCF), and determining the need for on-site Support. Support Center Services during Off Hours consist of expediting response to network down and system emergencies.

Services Not Included in Support Services

Support Services do not include: (a) repair of failures due to manufacturer's design or other defects; (b) repair of failures due to abuse, accidents, neglect, or improper use, including damage to LCD screens or other Laptop Computer components; (c) repair of failures due to external factors (including failure or fluctuation of electrical power or air conditioning, fire, or flood); (d) repair of failures due to excessive use, wear, and tear, which is in excess of manufacturer's recommended duty cycle; (e) refurbishment including restorations due to obsolescence (when parts for Equipment are not readily available on commercially reasonable terms) or end of life cycle failures including phosphorus "burn in" or "low intensity" characteristics of monitors; (f) repair of machines not identified as Equipment; (g) the loading of software, software configurations or any data files; and (h) the backup of any data files.

If Unisys determines Equipment requires refurbishment rather than repair, Unisys will notify Client and remove the Equipment from Support Services.

Client may ask Unisys to do the refurbishment on an hourly billable service basis and Unisys may provide refurbishment of Equipment subject to the availability of parts, manufacturer's support, and trained personnel.

User Communication Service provides for reporting of suspected Product errors or malfunctions or suggested new feature changes. Unisys will make reasonable efforts to provide detours or corrections for Unisys Products or non Unisys Products if available to Unisys at no additional charge from the vendor. Client will install all error corrections. User Communication Service and UCF submissions are available only for Products for which Unisys is then currently providing development center support (also called engineering support).

Software Maintenance Release Service provides error corrections and maintenance releases that Unisys develops or provides for currently supported Software level(s). Unisys licenses these releases only for use on the designated computer system(s) under the applicable license agreement. Client will install all applicable error corrections and maintenance releases. Certain software products may require Unisys Subscription Service in order to receive Software Maintenance Release Service.

Electronic Support Service provides Client with access to an Internet web site to place Product service requests, to obtain information on known errors and corrections, and to receive information on Unisys products and services.

Software On-Site Support provides software support at the Client's site if Unisys determines that a Software Product problem remains unresolved and on-site assistance is required, after Client has used Support Center Services as prescribed. Desktop and selected non Unisys software Products are not eligible for Software On-Site Support.

Systems Operations Review provides an annual meeting, at a time mutually agreed to between Unisys and Client, to conduct a computer systems operation review. Client is responsible for scheduling the meeting. This service applies to systems designated by Unisys as enterprise servers or mainframes.

Support Center Response Commitment (available only during the PPM) provides electronic or voice response by Unisys to Client's declared emergencies no later than one (1) hour after receipt of Client's request for service at the Support Center designated by Unisys.

Section C. Service Level Descriptions

The following describes the six Service Levels and the Service Elements included in each of the Service Levels. **Not all Service Elements and Service Levels are available for all Products. Refer to Descriptions of Service Elements for additional details.** Individual Service Elements contained in a higher Service Level than contracted are provided at Client request, as available, at then-current Unisys conditions and charges. All hardware and software Products within a system configuration must be enrolled under the same Service Level except for desktop and network products and application software. All Client Replaceable Units are shipped to the Client to arrive the next business day regardless of the service level subscribed.

Service Elements	Service Levels – Hardware Support Services					
	1 <i>Mail-In</i>	2 <i>Advanced Exchange</i>	3 <i>Standard PPM</i>	4 <i>Standard PPM</i>	5 <i>Business Critical 7X24</i>	6 <i>Business Critical 7X24</i>
Equipment On-Site Remedial Maintenance Service			NBD*	4HR	4HR	2HR
Mail-In Service	X					
Advance Exchange Service		X				
Equipment Maintenance Parts	X	X	X	X	X	X
Essential Engineering Changes	X	X	X	X	X	X
Electronic Call Home Support			X	X	X	X
Equipment Preventive Maintenance			X	X	X	X

*Note: CRU maintenance plans are required.

Service Elements	Service Levels – Software Support Services					
	1	2	3	4	5	6
Support Center Service	X	X	X	X	X	X
User Communication Service	X	X	X	X	X	X
Software Maintenance Release Service	X	X	X	X	X	X
Electronic Support Service	X	X	X	X	X	X
Software On-Site Support					X	X
Systems Operations Review					X	X
Support Center Response Commitment						X

Metering Terms and Conditions

The software style(s) listed above provide metered usage rights ("Metered Usage") for the described software.

Pre-Paid Metered Usage

For Metered Usage designated as "Pre-Paid," Client will initially receive the stated amount of processing power capability, expressed in terms of MIPS (Millions Instructions Per Second) usage ("MIPS Balance"). The MIPS Balance will be available to Client upon shipment of the associated software key, and will be decremented based upon Client's Metered Processing Power Usage (as described below). Unisys will transmit to Client a monthly statement reflecting Client's MIPS usage for the preceding month and current MIPS Balance. Client will have ninety (90) days from the end of the Term of Usage to deplete any remaining MIPS Balance. Fees paid for any MIPS balance or associated support are non-refundable. Upon the earlier of (a) the close of the applicable Term of Usage or (b) the depletion of the MIPS Balance to zero (0), Client's Pre-Paid usage will convert to month-to-month term Billable Usage (as described below) with a zero (0) Baseline (as defined below), at Unisys then-current MIPS usage fees. Unused MIPS Balances are not transferable. Limited use of this software style with a backup machine is permitted as described below in the section titled "Backup Usage."

Billable Metered Usage

For Metered Usage designated as "Billable Usage," Unisys will provide Client a metering key with a minimum ("Baseline") and maximum ("Ceiling") level of processing power as defined by the Image Enabler style(s), expressed in terms of monthly MIPS usage. The Baseline requires a separate license schedule and license fee. To the extent Client's Metered Processing Power Usage (as described below) exceeds the Baseline, Client agrees to pay Unisys a monthly MIPS usage fee for this excess processing power (not to exceed the Ceiling), which will be invoiced by Unisys monthly in arrears, based upon the pricing tiers set forth above. After the initial year of the Term of Usage, the MIPS metered usage pricing is subject to change once every twelve (12) months upon ninety (90) days prior written notice to Client, provided such increase shall not be in excess of five percent (5%) over the rates then in-effect. At the close of the applicable Term of Usage, Client's Billable Usage will continue on a month-to-month term with a zero (0) Baseline, at Unisys then-current MIPS usage fees. Use of this software style with a backup machine is described below in the section titled "Backup Usage."

Metered Processing Power Usage

The processing power delivered is the result of overall system use, and is expressed as monthly MIPS usage calculated as follows: (a) each minute that the machine is operational during the month, the total number of seconds that all processors in each partition are busy is measured; (b) the Step (a) measurement is converted into the number of "busy processors" by dividing by sixty (60) seconds; (c) the processing power delivered by the number of busy processors calculated in step (b) is determined using an algorithm that accounts for the non-linear relationship between processing power and the number of processors in a multi-processor system; (d) the total processing power delivered by the number of busy processors for the sampling interval is multiplied by sixty (60) seconds (the length of sampling interval) to yield the processing power (in relative performance measurement ("RPM") × seconds) delivered for the sampling interval; (e) the processing power for the current sampling interval is recorded and accumulated for the current reporting period; (f) at the end of the reporting period, the accumulated recorded processing power is converted from RPM × seconds to monthly RPMs by dividing by the number of seconds in a "standard month" ($365.25 \text{ days} / 12 = 30.4375 \text{ days} = 2,629,800 \text{ seconds}$), rounding the result to the nearest integer (this calculation normalizes the monthly processing power over the same time period for each monthly report); and (g) monthly RPMs are converted to monthly MIPS by dividing by 24.3, and rounding to the nearest integer.

Backup Usage

The following describe the various options available to Clients that own one or more other ClearPath systems and wish to use one as a backup machine for a metered ClearPath system:

(a) Non-Metered Disaster Recovery for Pre-Paid Metered Usage. In the event of a disaster (unplanned outage), Client may transfer the operating system software license, temporarily, for use on a single, non-metered backup system at a fixed performance level equal to Client's average Pre-Paid Metered Usage run-rate (Initial MIPS balance / ETP term). In order to obtain full use of this performance level, Client may need to purchase additional performance capacity for its back-up system to the extent the total desired performance would exceed the back-up system's enabled performance capacity. Client agrees to remove the operating system software from the back-up machine promptly after the temporary use.

(b) Non-Metered Disaster Recovery for Billable Metered Usage. In the event of a disaster (unplanned outage), Client may temporarily transfer its operating system software license to a single, non-metered back-up system at a fixed performance level equal to Client's Baseline. In order to obtain full use of this performance level, Client may need to purchase additional performance capacity for its back-up system to the extent the total desired performance would exceed the back-up system's enabled performance capacity. Client agrees to remove the operating system software from the back-up machine promptly after the temporary use.

(c) Purchased Business Continuity MIPS. Business Continuity MIPS ("BC MIPS") grant Client a means to ensure production processing continuity in the event of a planned or unplanned outage of its metered ClearPath system ("Outage"). The amount of BC MIPS, if any, purchased by Client is listed above ("BC MIPS Balance"). The BC MIPS Balance includes twelve (12) days of free test MIPS for each year of the ETP term (a day of MIPS is computed by dividing the Initial MIPS balance by the Term of Usage and dividing this quotient by 30). In the event of an Outage, Client may, up to the amount of its BC MIPS Balance, continue its production processing on a backup metered ClearPath system ("BC System"). The BC MIPS balance will be decremented based upon Client's Metered Processing Power Usage on the BC System. Each BC MIPS Balance is available for use only during the Term of Usage for the associated Metered Usage software style. Unused BC MIPS Balances are not transferable.

Additional Terms

Metering Software. Metered Processing Power Usage is measured and recorded through the use of a software-based measuring tool ("Metering Software") that is licensed to Client by Unisys. Client shall not alter, disable or otherwise circumvent the Metering Software, system counters and log files embedded in its system. The Metering Software shall be configured to automatically send usage reports to Unisys via email on the first day of each month (based on universal time). In the event of a system console failure or any other event that causes a usage report not to be automatically sent to Unisys, Client shall, upon request, manually send such usage report to Unisys.

Approximated Metered Usage in Event of Disaster. If, in the event of a disaster, the Metering Software is unable to complete a usage report for a given month, Client's Metered Processing Power Usage for that month will be the average of Client's monthly MIPS usage for the prior three (3) months of reported usage. Where the Metering Software is able to report usage for only a portion of a given month, MIPS usage for the omitted period will be computed as follows and added to the reported usage to determine Client's Metered System Usage for the month: (a) Client's reported monthly MIPS usage for the prior three (3) months will be summed and divided by 91.3125 ($365.25 \text{ days} / 12 \times 3 = 91.3125 \text{ days}$) to arrive at Client's average daily MIPS usage; (b) the value determined in step (a) will be multiplied by the number of unreported days for the incomplete month's report (partially reported days will be approximated in quarter-day intervals).



Order for Unisys Support Account Manager Service

Agreement number

This Order for Unisys Support Account Manager Service is comprised of an agreement between Unisys and the Client identified by the Agreement Number above, which includes the Support Services Addendum and the Support Services Schedule ("Agreement") and this Order. Unless stated otherwise in this Order, all terms and conditions contained in the Agreement shall apply.

Additional Terms and Conditions are applicable and are attached as a part of this order. *(Check if applicable)*

Section A. Definitions

"System" means the equipment and software listed on the Support Services Schedule, which is the subject of this Order.

"Support Account Manager (SAM)" means a member of a Unisys designated support specialist team who works closely with the Client's IT staff and serves as the single-point-of-contact for Service delivery within the Client Support Center. The SAM has detailed knowledge of Client's specific hardware and software configuration, product usage and operating environment.

"Support Account Manager Service" is an optional and separately priced service, which is the subject of this Order, and which provides for the services of a SAM as further defined herein. The Service Levels described in this Order apply to Systems that operate under either a Unisys proprietary or Microsoft Windows Operating System.

Section B. Effective Date and term

Effective Date – This Order becomes effective on the Support Services Commencement Date listed in the Support Services Schedule or if a

Commencement Date is not listed in the Support Services Schedule when otherwise signed by duly authorized representatives of each party and will continue in effect until terminated according to its terms.

Hours of Service – Same as the Support Services coverage level of the Systems for which this optional service is provided.

Term – The initial term for Service is twelve (12) months unless otherwise listed on the Support Services Schedule.

Section C. Available Service Levels

The following is a list of the Service Levels available for order and the respective Service Elements contained in each Service Level. You may refer to the Description of Service Elements below for additional details. Individual Service Elements contained in a Service Level higher than contracted may be available at Client request subject to availability at then-current Unisys conditions and charges.

The contracted Service Level and charge (if applicable) is listed on the Support Services Schedule and contains the following Service Elements:

Service Elements	Basic SAM Services	Enhanced SAM Services	Support Consulting	Remote Systems Health Checks
Support Account Manager	X	X		
Initial On-site Technical Review Meeting	X	X		
• Site Profile	X	X		
Quarterly On-Site Review Meetings	X ⁽¹⁾	X ⁽²⁾		
Quarterly Telephone Review Meetings	X ⁽³⁾			
• Quarterly System Healthcheck	X	X		X ⁽³⁾
• Electronic Update Notification	X	X		X
• Vendor Supportability Plan	X	X		
Monthly Support Status Review Call	X	X		
Escalation Management (hours of coverage same as Support Services contracted Service Level)	X	X		
Support Consulting ⁽⁴⁾	20 Hours	20 Hours	20 Hours	

(1) 2 per year, including the initial on-site meeting

(2) 4 per year, including the initial on-site meeting

(3) 2 per year performed remotely

(4) Does include travel time and does not include travel and lodging expenses which will be charged separately.

Section D. Description of Service Elements

Initial On-site Technical Review Meeting is performed by the SAM who will meet with Client representatives to obtain detailed technical environmental information required to support the Client's unique site profile. This Client-specific profile is maintained on Unisys internal systems and can be accessed by Unisys support personnel when delivering Service to the Client. The SAM will also review Unisys support procedures and instruct the Client on how to request support and status open support requests.

Site Profile includes: (a) Client-specific data files detailing the Client's environment and the responsibilities of key Client personnel for the System; (b) supported software levels in use on the System at the site; (c) non Unisys supported software and its interface with Unisys software; (d) key software product interdependencies for the System; (e) information on current System problems and workarounds; (f) information on upcoming System upgrades or installations; (g) a listing of Unisys personnel and their responsibilities as they relate to the support of the System; (h) hardware related information such as configurations, microcode levels, engineering release levels, and plateau levels for the System; and (i) other information that may assist Unisys support personnel in the effective delivery of Service for the System.

Quarterly Reviews of Software Incidents are performed at the Client Location or remotely depending on the level of Service contracted for as detailed in the table above and are coordinated by the SAM. Meetings are held at one designated Client location each quarter or via the telephone to review the latest quarterly status report. Discussion topics include: (a) System software support calls and status; (b) open issues; and (c) resolution of System software support service requests and problems reported via UCFs.

Quarterly System Healthcheck is a quarterly report that details Unisys' observations and recommendations relative to the Client's System performance and operational health. While not an in-depth or all-inclusive analysis, System Healthcheck reports are designed: (a) to proactively highlight potential problem areas warranting further evaluation; and (b) to provide remotely collected data on system load, memory, processor, network, and disk usage. System Health Checks can be ordered alone or as part of Basic SAM Services or Enhanced SAM Services. When ordered as part of SAM, System Health check reports will be provided in conjunction with the quarterly reviews of Software Incidents. Reports are provided AS IS without warranty and

Client, not Unisys, is responsible for the implementation of any conclusions or recommendations contained in reports provided to Client and their consequences.

Electronic Update Notification is provided to the Client via e-mail by the SAM to alert Client of critical patches that must be installed to maintain optimal performance of its System. The Client is responsible for the installation of all patches.

Vendor Supportability Plan documents the support responsibilities of the major vendors involved in the Client's solution. This written plan will include contact information, responsibilities, and basic escalation processes necessary for efficient support handling.

Monthly Support Status Review Call provides communication between Unisys and the Client regarding open activities or actions, upcoming planned events, plans for new software upgrades and migration (including a review of any known problems), and any additional topics.

Escalation Management is provided by the SAM to manage all Service related issues that are critical to Client performance during the Client's contracted period of maintenance.

Support Consulting provides the Client with consulting services that can be used to obtain assistance from Unisys for technical issues related to product usage and administrative/operational tasks. Support Consulting hours include the standard travel time to the Client site. Support Consulting can be ordered as part of Basic SAM Services, Enhanced SAM Services or alone in blocks of twenty (20) hours. The hours of consulting services included in each Service Level are described in Section C.

Hours of Support Consulting are subject to Unisys personnel availability and are to be used at a time to be mutually agreed upon, in one (1) hour increments within one (1) year of order.

Consulting services that exceed the hours as shown in Section C. will be invoiced to Client as services are performed at Unisys then current T&M rates. In addition to the fees for Services, Client will also pay the following: (a) travel and lodging charges; (b) Unisys standard hourly charges for all services outside the scope of this Order which are agreed upon by Unisys and provided at Client's request; and (c) any tax Unisys becomes obligated to pay by virtue of this Agreement, exclusive of taxes based on the net income of Unisys and any tax from which the relevant taxing authority deems Client is exempt



The parties acknowledge they have read and understand this Order (including all attached schedules and amendments) and are not entering into this Order on the basis of any representations not expressly set forth in it.

Agreed and Accepted

Unisys Corporation

Client:

(Signature) (Date)

(Signature) (Date)

(Printed/typed name)

(Printed/typed name)

(Title)

(Title)

(Telephone number) (Fax number)

(Telephone number) (Fax number)



EXHIBIT 3

Terms of Use for Unisys Support Services Portal

Unisys Terms of Use

ATTENTION: PLEASE READ THESE TERMS OF USE ("TERMS") BEFORE USING THIS WEBSITE ("SITE"). IF YOU DO NOT ACCEPT THESE TERMS, PLEASE DO NOT USE THIS SITE.

UNISYS CORPORATION ("UNISYS") RESERVES THE RIGHT TO CHANGE THESE TERMS AT ANY TIME, WITHOUT NOTICE TO YOU. ACCORDINGLY, YOU ARE ADVISED TO VISIT THIS PAGE TO REVIEW THE MOST CURRENT VERSION.

Use of Site

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Limitation of Liability

IN NO EVENT SHALL UNISYS OR ANY OTHER PARTY INVOLVED IN PRODUCING OR DELIVERING THIS SITE BE LIABLE TO ANY PARTY FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES OF ANY TYPE WHATSOEVER EVEN IF IT HAS BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER IN AN ACTION UNDER CONTRACT, TORT, NEGLIGENCE, OR ANY OTHER THEORY, RELATED TO OR ARISING FROM THIS SITE OR FROM ANY USE OF THIS SITE, OR FROM ANY SITE OR RESOURCES LINKED TO, REFERENCED BY, OR ACCESSED THROUGH THIS SITE, INCLUDING, WITHOUT LIMITATION, ANY LOST PROFITS, BUSINESS INTERRUPTION, LOST SAVINGS OR LOSS OF PROGRAMS OR OTHER DATA, EVEN IF UNISYS IS EXPRESSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

Forward Looking Statements

Statements prepared by Unisys and made on this Site that are not historical facts are forward-looking statements as defined in the Private Securities Litigation Reform Act of 1995. These forward-looking statements are subject to various risks and uncertainties that could cause actual results to differ materially from



expectation. These factors are discussed more fully in the company's Securities and Exchange Commission reports, including its most recently filed annual report on Form 10-K and subsequently filed quarterly reports on Form 10-Q. All such forward-looking statements should be considered in light of these factors.

Links to Third Party Sites

As a convenience, this Site may provide links to third party sites. Unisys does not review or control, and is thus not responsible for, these third party sites or their content. Such links should not be assumed to constitute an endorsement or recommendation by Unisys. By clicking on any of these links, you are leaving the Unisys Site and accessing these other sites at your own risk.

Linking to This Site

You may create links to this Site from other sites, provided that, without separate written permission, you do not use the Unisys logo to create the link and do not present the link to this Site in a manner that it is associated with advertising or appears to be an endorsement by Unisys of any organization, product or services. You agree that the link will not appear on a website that a reasonable person may consider obscene, defamatory, harassing, grossly offensive, or malicious.

Trademarks

Unisys and the Unisys logo are trademarks of Unisys Corporation. A list of other Unisys marks is available [here](#). All other marks on this Site are the property of their respective owners.

User Feedback

Unless otherwise stated, any communication provided by you to Unisys in connection with this Site will be received only on a non-confidential basis. There shall be no obligation on the part of Unisys with respect to use or disclosure of any information in such communication. Unisys Corporation shall have the unrestricted right to copy, use and distribute any information you communicate to it, including but not limited to any ideas, concepts, know-how, techniques, software, documentation, diagrams, schematics or blueprints. Additionally, all such information may be used by Unisys in any manner for any purpose including, but not limited to, developing and manufacturing products and providing services.

User Forums

Unisys may provide chat room, bulletin boards, blogs or other user forums ("Forums") that allow third parties to post content and comments. Unisys has the right, but not the obligation, to review or monitor third postings ("Submissions") and to remove Submissions that contains material Unisys deems offensive, abusive, defamatory, obscene or otherwise unacceptable. However, Unisys shall not be liable for claims arising from those Submissions whether arising under the laws of copyright, libel, privacy, obscenity or otherwise.

You agree not to transmit or post on these Forums any Submissions that (i) are defamatory, threatening, obscene or harassing (ii) contain a virus, worm, Trojan horse or any other harmful component (iii) incorporate copyrighted or other proprietary material of any third party without that party's permission or (iv) otherwise violate any applicable laws.

Governing Law

These Terms shall be governed in all respects by the laws of the State of Michigan, without regard to its conflict of laws provisions.

Import/Export

You may not access, download, use, or export information (including software, products or services) contained on this Site in violation of any applicable laws or regulations including, without limitation, U.S. export laws.

Privacy

For information on how Unisys handles your personal information, see our [Privacy Policy](#).

Indemnification

RESERVED-DELETED

No Waiver



The failure by Unisys to insist upon or enforce strict performance of any provision of these Terms shall not be construed as a waiver of any provision or right.

Notices and Procedures for making Claims of Copyright Infringement.

Unisys will process and investigate notifications of alleged infringement and will take appropriate action under the Digital Millennium Copyright Act, Title 17, United States Code, Section 512 ("DMCA") and other applicable intellectual property laws. Notifications of claimed copyright infringement should meet the requirements set forth in Section 512(c)(3)(A) of the DMCA and should be sent to the Unisys

Designated Agent(s):

Stephanie Thier and Robert Marley

Unisys Corporation

MS E8-114

Unisys Way

Blue Bell, PA U.S.A. 19424

Tel: (215) 986-2955

Fax: (215) 986-3090



EXHIBIT 4
[TERMS FROM EXHIBIT 7 SAFEGUARDING CONTRACT LANGUAGE TO IRS
PUBLICATION 1075]

CONTRACT LANGUAGE FOR GENERAL SERVICES

I. PERFORMANCE

In performance of this contract, the Contractor agrees to comply with and assume responsibility for compliance by his or her employees with the following requirements:

- (1) All work will be performed under the supervision of the contractor or the contractor's responsible employees.
- (2) Any Federal tax returns or return information (hereafter referred to as returns or return information) made available shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Inspection by or disclosure to anyone other than an officer or employee of the contractor is prohibited.
- (3) All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output and products will be given the same level of protection as required for the source material.
- (4) No work involving returns and return information furnished under this contract will be subcontracted without prior written approval of the IRS.
- (5) The contractor will maintain a list of employees authorized access. Such list will be provided to the agency and, upon request, to the IRS reviewing office.
- (6) The agency will have the right to terminate the contract if the contractor fails to provide the safeguards described above.

II. CRIMINAL/CIVIL SANCTIONS

- (1) Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as five years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized future disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRC Sections 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.
- (2) Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Inspection by or disclosure to anyone without an official need to know constitutes a criminal misdemeanor punishable upon conviction by a



fine of as much as \$1,000.00 or imprisonment for as long as 1 year, or both, together with the costs of prosecution.

Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee [United States for Federal employees] in an amount equal to the sum of the greater of \$1,000.00 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. The penalties are prescribed by IRC Sections 7213A and 7431.

(3) Additionally, it is incumbent upon the contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

(4) Granting a contractor access to FTI must be preceded by certifying that each individual understands the agency's security policy and procedures for safeguarding IRS information. Contractors must maintain their authorization to access FTI through annual recertification. The initial certification and recertification must be documented and placed in the agency's files for review. As part of the certification and at least annually afterwards, contractors should be advised of the provisions of IRC Sections 7431, 7213, and 7213A (see Exhibit 6, *IRC Sec. 7431 Civil Damages for Unauthorized Disclosure of Returns and Return Information* and Exhibit 5, *IRC Sec. 7213 Unauthorized Disclosure of Information*). The training provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. (See Section 10) For both the initial certification and the annual certification, the contractor should sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

III. INSPECTION

The IRS and the Agency shall have the right to send its officers and employees into the offices and plants of the contractor for inspection of the facilities and operations provided for the performance of any work under this contract. On the basis of such inspection, specific measures may be required in cases where the contractor is found to be noncompliant with contract safeguards.

CONTRACT LANGUAGE FOR TECHNOLOGY SERVICES

I. PERFORMANCE

In performance of this contract, the contractor agrees to comply with and assume responsibility for compliance by his or her employees with the following requirements:

- (1) All work will be done under the supervision of the contractor or the contractor's employees.



- (2) Any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material will be treated as confidential and will not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Disclosure to anyone other than an officer or employee of the contractor will be prohibited.
- (3) All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output will be given the same level of protection as required for the source material.
- (4) The contractor certifies that the data processed during the performance of this contract will be completely purged from all data storage components of his or her computer facility, and no output will be retained by the contractor at the time the work is completed. If immediate purging of all data storage components is not possible, the contractor certifies that any IRS data remaining in any storage component will be safeguarded to prevent unauthorized disclosures.
- (5) Any spoilage or any intermediate hard copy printout that may result during the processing of IRS data will be given to the agency or his or her designee. When this is not possible, the contractor will be responsible for the destruction of the spoilage or any intermediate hard copy printouts, and will provide the agency or his or her designee with a statement containing the date of destruction, description of material destroyed, and the method used.
- (6) All computer systems receiving, processing, storing, or transmitting Federal tax information must meet the requirements defined in IRS Publication 1075. To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operational, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to Federal tax information.
- (7) No work involving Federal tax information furnished under this contract will be subcontracted without prior written approval of the IRS.
- (8) The contractor will maintain a list of employees authorized access. Such list will be provided to the agency and, upon request, to the IRS reviewing office.
- (9) The agency will have the right to terminate the contract if the contractor fails to provide the safeguards described above.

II. CRIMINAL/CIVIL SANCTIONS:

- (1) Each officer or employee of any person to whom returns or return information is or may be disclosed will be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as 5 years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized further disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRC sections 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.
- (2) Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return



information made available in any format shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of the contract. Inspection by or disclosure to anyone without an official need to know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee [United States for Federal employees] in an amount equal to the sum of the greater of \$1,000 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. These penalties are prescribed by IRC section 7213A and 7431.

(3) Additionally, it is incumbent upon the contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

(4) Granting a contractor access to FTI must be preceded by certifying that each individual understands the agency's security policy and procedures for safeguarding IRS information. Contractors must maintain their authorization to access FTI through annual recertification. The initial certification and recertification must be documented and placed in the agency's files for review. As part of the certification and at least annually afterwards, contractors should be advised of the provisions of IRC Sections 7431, 7213, and 7213A (see Exhibit 6, *IRC Sec. 7431 Civil Damages for Unauthorized Disclosure of Returns and Return Information* and Exhibit 5, *IRC Sec. 7213 Unauthorized Disclosure of Information*). The training provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. (See Section 10) For both the initial certification and the annual certification, the contractor should sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

III. INSPECTION:

The IRS and the Agency shall have the right to send its officers and employees into the offices and plants of the contractor for inspection of the facilities and operations provided for the performance of any work under this contract. On the basis of such inspection, specific measures may be required in cases where the contractor is found to be noncompliant with contract safeguards.