

This Contract is made this 30 day of June 2002 by and between **STATE OF MARYLAND** (hereinafter the "State"), acting through the **Maryland Department of Budget and Management**, 45 Calvert Street, Annapolis, MD 21401, and **INFORMATION BUILDERS, INC.**, Two Penn Plaza, New York, NY 10121-2898. The parties hereby agree as follows:

1. Definitions

As used in this Contract, the following terms shall have the meanings indicated:

1.1 "*Agency*" means any unit of State government including the University System of Maryland, Morgan State University, St. Mary's College and any instrumentality of the State.

1.2 "*Contract*" means this Contract between the State of Maryland and the Contractor, including all appendices.

1.3 "*Contractor*" means Information Builders, Inc. having its principal address at Two Penn Plaza, N.Y., N.Y. 10121-2898 and its Maryland address at 28 Malton Court, Baltimore, Md. 21234.

1.4 "*CPU*" means a central processing unit.

1.5 "*Defect*" means a repeatable and demonstrable error or malfunction of an application software package.

1.6 "*Disabling Code*" means computer instructions that alter, destroy or inhibit software and/or the State's processing environment, including but not limited to other programs, data storage and computer libraries. "Disabling Code" includes but is not limited to programs that self-replicate without manual intervention, instructions programmed to activate at a predetermined time or upon a specified event, and programs purporting to do a meaningful function but designed for a different function.

1.7 "*Enterprise Location*" means the Licensee's data center currently located at Louis L. Goldstein Treasury Building, 80 Calvert Street, Annapolis, Md. 21401.

1.8 "*FMIS*" means the Financial Management Information System of the State of Maryland.

1.9 "*Licensee*" means any Agency.

1.10 "*Micro-Products*" means IBI products that are designed for personal computers or network workstations including Power FMIS Reporting Packs.

1.11 "*MIPS*" means millions of instructions per second which is the measurement used to quantify the capacity of a CPU on which the licensed software is to be utilized pursuant to this Contract. The MIPS capacity of a CPU where the licensed software is installed shall be as set forth in the Gartner Group's published ratings.

1.12 *"Notice to Proceed"* means the written order signed by the Procurement Officer authorizing the Contractor to proceed with respect to any option contained in Section 2.

1.13 *"One Time License"* means a 99 year license for the Software for which the Licensee shall pay a lump sum fee.

1.14 *"Power FMIS Reporting Packs"* means a configuration of Contractor products that consists of Focus Six Managed Reporter with three tier reporting, EDA Relational Gateway, EDA/Table Services and the Data Driver to access FMIS (Currently DB2).

1.15 *"Procurement Officer"* means Jane Bailey, a representative of the State responsible for the overall management of this Contract.

1.16 *"Rental License"* means the right to use IBI software and receive software maintenance upon payment of an annual or monthly fee

1.17 *"Software"* means Mainframe Focus, EDA server, EDA Data Server, Power FMIS Reporting Packs, Report Writer Plus, Resource Governor, Resource Analyzer, Talk Technologies, Extended Matrix Reporting, MultiSession Option, DB2 Read Interface, IMS/DB Adapter, DB2 R/W Adapter, iWay Relational Adapter and iWay ETL Manager. Software includes the documentation.

1.18 *"Software Maintenance"* means providing technical support, software fixes and regularly scheduled software upgrades in accordance with the InfoResponse Silver Agreement attached as Appendix B.

1.19 *"Total MIPS"* means the aggregate authorized computing power expressed in MIPS of each and every CPU on which the Software is being utilized, or which may remotely access or otherwise use such Software.

1.20 *"Year 2000 compliance"* means that software (a) will not experience abnormally ending, invalid, or incorrect results due to incompatibility with the calendar year and (b) will be able to process date data accurately- including date data century recognition, calculations, that accommodate same century and multi-century formulas and date values (including leap year factors) and date data interface values that reflect the century- when used either stand-alone or in combination with other century compliant products used by the State.

2. Scope of Services

2.1 The Contractor agrees to supply the following in accordance with the terms and conditions set forth in this agreement:

- A. The Contractor shall supply Mainframe Focus, EDA server, I-Way and Copy Manager as described in this Contract and the software license agreement and addendum, attached as Appendix A. The monthly license fee for the Software is \$26,897. The fee is based on 650 MIPS and includes InfoResponse Silver Service.

- B. The Contractor shall provide InfoResponse Silver Service maintenance for the Software that was purchased as a One Time License as listed on Appendix G.
- C. The Contractor shall also supply the following products to the following agencies for the annual fees listed on Appendix H. All fees include InfoResponse Silver Service.

2.2 The Contractor shall provide the foregoing in accordance with the terms and conditions of this Contract and the following appendices, which are incorporated as part of this Contract:

- a. Appendix A: Software License Agreement with Addendum
- b. Appendix B: Info Response Silver Agreement
- c. Appendix C: State of Maryland Bid Affidavit
- d. Appendix D: State of Maryland Contract Affidavit
- e. Appendix E: Contractor Amended and Restated Source Code Trust Agreement
- f. Appendix F: Contractor's Current Price List
- g. Appendix G: Purchased Software
- h. Appendix H: Leased Software

2.3 If there are any inconsistencies between the Contract and any of the foregoing appendices, the following order of precedence shall determine the prevailing provision:

- a. The Contract
- b. Appendix A: Software License Agreement with Addendum

3. Term

The Contractor shall provide the services and products described in Section 2 in accordance with the terms of this Contract beginning June 30, 2002 and ending on June 30, 2007 unless earlier terminated in accordance with this Contract.

4. Consideration

4.1 The total amount to be paid to Contractor for the Software and Products during the term of this Contract shall not exceed \$3,800,000. Payments for Rental Licenses and Software Maintenance shall be made on an annual basis determined by the term of the Rental License or Software Maintenance.

4.2 Payments to the Contractor shall be made no later than 30 days after the Department's receipt of a proper invoice from the Contractor. Each invoice must reflect the Contractor's federal tax identification number, which is 132807185. Charges for late payment of invoices other than as prescribed by Title 15, Subtitle 1, of the State Finance and Procurement Article of the Annotated Code of Maryland, as from time to time amended, are prohibited.

4.3 The purchase price of any IBI proprietary software licenses shall be based on the current price schedule furnished by IBI at the time of acquisition less the State's volume discounts applicable at the time of purchase.

5. Changes

5.1 The Procurement Officer may, at any time, by written order and without notice to the sureties, make changes in the work within the general scope of the contract, including but not limited to changes in the specifications, in method or manner of performance of the work, in State-furnished facilities or assistance, services to be performed or software to be provided. No other order, statement, or conduct of the Procurement Officer or any other person shall be treated as a change under or entitle the Contractor to an equitable adjustment under section 5.2.

5.2 Except as otherwise provided in this Contract, if any change causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work, whether or not changed by the order, an equitable adjustment in the contract price shall be made and the Contract modified in writing accordingly. The Contractor must assert, in writing, its right to an adjustment under this section, within 30 days of receipt of a written change order and shall include a written statement setting forth the general nature and cost of such claim. No claim by the Contractor shall be allowed if asserted after final payment under this agreement. Any claim for services shall be limited by the hourly rate schedule provided in Appendix D, in effect during the time for which the claim is made.

5.3 Failure to agree to any adjustment under this section shall be a dispute under the Disputes clause. Nothing in this section shall excuse the Contractor from proceeding with the change order.

5.4 At any time during the term of this Agreement, Licensee may change the Enterprise Location by written notice to Contractor.

6. Licensing

6.1 Licensee shall have the right to make an unlimited number of copies of Mainframe Focus, EDA Server, I-Way and Copy Manager for use on an unlimited number of CPUs at the authorized Enterprise Location provided that Licensee does not exceed the Total MIPS specified. The State shall notify the Contractor within 30 business days that it has exceeded the then current MIPS limitation

6.2 Contractor agrees to provide Software Maintenance in accordance with the InfoResponse Silver Agreement, including all updates for all Software provided payment has been made by Licensee.

6.3 Contractor has entered into a Source Code Escrow Agreement dated October 31, 1997 with David J. Sweet of Walter Conston Alexander & Green, 90 Park Avenue, New York, New York 10016 as Escrowee. A copy of the Source Code Agreement is attached as Appendix E. Pursuant to the terms of the Agreement, the Escrowee is authorized to release the Source Code (or portions thereof) to Licensee in certain circumstances which protect the Licensee, all as more fully set forth

in the Source Code Escrow Agreement. Licensee hereby is designated as a Beneficiary under said agreement and IBI hereby agrees to promptly so notify the Trustee and to provide a copy of such notice to the Procurement Officer. The Contractor shall make no changes that would diminish the State's rights under the Source Code Escrow Agreement without the State's consent. The Contractor has designated United Corporate Services, Inc., 20 South Charles Street, Suite 200, Baltimore, Maryland 21201 as a Maryland agent for services of process in connection with any claim by the State under the Source Code Escrow Agreement. Contractor shall provide written notice to the Maryland Department of Budget and Management within thirty business days after any change (other than the addition of Beneficiaries) to the Source Code Agreement. Such notice shall include the specific changes to be made, including any change to the Escrowee. Contractor agrees to designate the State as a beneficiary under the Source Code Escrow Agreement and to provide evidence of such designation within 5 business days of the execution of this Agreement by the State.

6.4 The Licenses for the Rental Software described in section 2.1 A shall be for a term commencing on June 30, 1, 2002 and ending on June 30, 2007. The Licenses for the Rental Software listed in section 2.1 C shall be for a term commencing on the end date listed in section 2.1 C and ending one year later. The State, at its sole option, may extend the term of any Rental License listed in section 2.1 C for four successive calendar years at the annual fee stated in section 2.1 C. The Licenses for any Rental Licenses acquired during the term of this Agreement shall be for a term commencing on the date of the acquisition and ending one year later. Rental Licenses acquired during the term may, at the State's sole option, be extended for successive annual terms at the fee paid for the initial term but no term may begin after June 30, 2007.

6.5 At any time during the term of this Contract, the Licensee may convert a Rental License to a One Time License. Licensee shall be entitled to credits equal to fifty percent of the twelve (12) most recent monthly payments.

6.6 At any time during the term of this Contract, Licensee may increase the maximum Total MIPS permitted for the Software by licensing additional MIPS in blocks of 50. The fee for each block of 50 shall be \$2,069.00 per month.

6.7 Licensee agrees to provide Contractor with a complete inventory (including CPU model numbers and serial numbers) of Licensee's mainframes using Contractor's products at the Enterprise Location. Licensee agrees that every six months during the term of the Contract it shall provide Contractor with an update of the inventory as well as a statement of the Total MIPS in use.

6.8 In the event that the State elects to migrate IBI licensed software from one CPU to another larger CPU then the State shall be obligated to pay an adjusted MIPS based fee based on the rate charged for the larger CPU. The State will continue to pay the current MIPS base fee during the migration period provided that the migration period does not exceed 90 days and the State does not exceed the basis for the current MIPS based licensing agreement. In the event that the migration period exceeds 90 days then the State will be obligated to pay a prorated MIPS based fee calculated on the number of MIPS used on each CPU in use for each day in excess of 90 days. If the State elects to migrate from one CPU to a smaller CPU, the State shall be entitled to a reduction in the MIPS fee based on the rate charged for the smaller CPU.

6.9 During the term of this agreement, the State shall have the right to acquire licenses for Software either as a one-time License in accordance with IBI's then current schedule or as an annual license by paying, in advance, an annual License Fee, enhancement, maintenance and support fee of 32% of Contractor's current list price for the one-time License. Whether buying on a one-time basis or on a maintenance basis, Contractor guarantees that the cost to the State shall be its most favored customer pricing in accordance with Section 7.11 of this Agreement.

6.10 During the term of this agreement, the State may acquire any licenses for Micro-Products and shall be entitled to a 25% discount from the Contractor's then published prices on each such license acquired. Contractor guarantees that this discount is its most favored customer pricing in accordance with Section 7.11 of this Agreement.

6.11 Whenever an Agency acquires a License under this Agreement, the Contractor shall immediately notify the Procurement Officer. Within 15 days of the close of each calendar quarter, Contractor agrees to provide a quarterly report to the Procurement Officer of all licenses currently licensed by all Agencies. The report shall be in a form prescribed by the Procurement Officer and shall, at a minimum specify the Agency, software, price and the term of the License. The report shall reflect current purchases and an inventory of all previously acquired software.

6.12 Upon two business days prior notification, during regular business hours, Contractor shall have the right to inspect the Enterprise Location in order to determine that Licensee is not in default of this Agreement. In addition, the Licensee agrees that it shall keep at its usual place of business such records as may be necessary to enable the applicable fees payable to Contractor to be ascertained. Such inspection and audit rights may be exercised by Contractor's representative (which may be an outside certified public accountant or other representative acceptable to both parties). All information transmitted to Contractor pursuant to the above shall be confidential and may not be disclosed by the Contractor to any other party.

6.13 All licenses granted under this contract shall be governed by the Master License Agreement and Addendum attached hereto as Appendix A.

7. Warranties

The Contractor warrants that:

7.1 The work performed under this Contract conforms to the requirements of this Contract and shall be performed in a good and workman-like manner in accordance with generally accepted industry standards.

7.2 The Software provided under each License shall work substantially as described in the applicable user manual.

7.3 All Software shall be Year 2000 compliant.

7.4 Contractor uses its reasonable best efforts to protect all Software (and the tapes or other media in which they are embedded) from computer viruses and other contaminants. Contractor warrants that to the best of its knowledge the Software (and the tapes or other media in which they are embedded) provided by it do not contain any viruses or programming codes or instructions that are constructed to damage, interfere with or otherwise adversely affect the Software, data files , or hardware except as hereinafter set forth. Contractor does utilize a mechanism to verify that users of its Software are valid and current Licensees. This mechanism is employed by Contractor solely to prevent unauthorized use of its Software or the proliferation or unauthorized copies thereof. Provided the Licensee follows the verification procedures that will appear on the operators console, a valid Licensee's use of the Software will not be interrupted.

7.5 The State's use of the Software provided under this Contract does not and will not violate or infringe upon any patent, trademark, copyright, trade secret or other property right of any person.

7.6 Except as specifically agreed by an Agency, all Software which will hereinafter be provided under this Contract, and specifically excluding software which has previously been provided under prior licenses or agreements, will be new and unused and, as of the date of delivery, is the most current version of the software manufactured and available from the Contractor.

7.7 It is qualified to do business in the State of Maryland and it will take such action as, from time to time, may be necessary to remain so qualified during the term of this Agreement.

7.8 It is not in arrears with respect to the payment of any moneys due and owing the State of Maryland, or any department or unit thereof, including, but not limited to, the payment of taxes and employee benefits, and it shall not become so in arrears during the term of this Contract.

7.9 It shall comply with all federal, State and local laws applicable to its activities and obligations under this Contract.

7.10 It shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Contract.

7.11 It shall provide prices, terms and conditions to the State which are as favorable as those provided to other commercial customers of the Contractor to the extent that the State is licensing like product, in a like quantity and under like terms and conditions as other commercial customers of the Contractor.

7.12 EXCEPT FOR ITS WARRANTY SET FORTH HEREIN, CONTRACTOR MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF THE MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

8. Liability

8.1 In the event of loss of any State data or records where such loss is due to the intentional act or negligence of the Contractor or any of its subcontractors, the Contractor shall be responsible,

irrespective of cost to the Contractor, for recreating such lost data or records from the last known backup of said data or records provided by the State. The State remains solely responsible system access and for performing nightly backups on data residing on network servers as well as the mainframe.

8.2 Except as provided in section 8.1, the liability of the Contractor with respect to the Software shall be governed by the provisions of Appendix B.

9. Non-Hiring of Employees

No employee of the State of Maryland or any unit thereof whose duties as such employee include matters relating to or affecting the subject matter of this Contract shall during the pendency and term of this contract and while so employed, become or be an employee of the Contractor or any entity that is a subcontractor on this contract.

10. Disputes

This Contract shall be subject to the provisions of Title 15, Subtitle 2, of the State Finance and Procurement Article of the Annotated Code of Maryland, as from time to time amended, and COMAR 21.10 (Administrative and Civil Remedies). Pending resolution of a claim, the Contractor shall proceed diligently with the performance of the Contract in accordance with the Procurement Officer's decision. Unless a lesser period is provided by applicable statute, regulation, or the Contract, the Contractor must file a written notice of claim with the Procurement Officer within 30 days after the basis for the claim is known or should have been known, whichever is earlier. Contemporaneously with or within 30 days of the filing of a notice of claim, the Contractor must submit to the Procurement Officer its written claim containing the information specified in COMAR 21.10.04.02. The Contractor is entitled to pursue its remedies under the Procurement Law and Regulations.

11. Maryland Law

This Contract shall be construed, interpreted, and enforced according to the laws of the State of Maryland.

12. Nondiscrimination in Employment

The Contractor agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry, or physical or mental handicap unrelated in nature and extent so as reasonably to preclude the performance of such employment; (b) to include a provision similar to that contained in subsection (a), above, in any underlying subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

13. Contingent Fee Prohibition

The Contractor warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency working for the Contractor to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, partnership, corporation or other entity, other than a bona fide employee, bona fide salesperson or commercial selling agency, any fee or other consideration contingent on the making of this Agreement.

14. Nonavailability of Funding

If the General Assembly fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period of this Contract succeeding the first fiscal period, this Contract shall be canceled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either the State's rights or the Contractor's rights under any termination clause in this Contract. The effect of termination of the Contract hereunder will be to discharge both the Contractor and the State from future performance of the Contract, but not from their rights and obligations existing at the time of termination. The Contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the Contract. The State shall notify the Contractor as soon as it has knowledge that funds may not be available for the continuation of this Contract for each succeeding fiscal period beyond the first.

15. Termination for Cause

If the Contractor fails to fulfill its obligations under this Contract properly and on time, or otherwise violates any provision of the Contract, the State may terminate the Contract by written notice to the Contractor. The notice shall specify the acts or omissions relied upon as cause for termination. All finished or unfinished work provided by the Contractor shall, at the State's option, become the State's property. The State of Maryland shall pay the Contractor fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by the Contractor's breach. If the damages are more than the compensation payable to the Contractor, the Contractor will remain liable after termination and the State can affirmatively collect damages. Termination hereunder, including the termination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.11B.

16. Termination for Convenience

The performance of work under this Contract may be terminated by the State in accordance with this clause in whole, or from time to time in part, whenever the State shall determine that such termination is in the best interest of the State. The State will pay all reasonable costs associated with this Contract that the Contractor has incurred up to the date of termination, and all reasonable costs associated with termination of the Contract; provided, however, the Contractor shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination.

Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.12 (A)(2).

17. Delays and Extensions of Time

The Contractor agrees to perform this agreement continuously and diligently. No charges or claims for damages shall be made by the Contractor for any delays or hindrances, regardless of cause, in the performance of services under this Contract. Time extensions will be granted only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to acts of God, acts of the public enemy, acts of the State in either its sovereign or contractual capacity, acts of another contractor in the performance of a contract with the State, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of either the Contractor or the subcontractors or suppliers.

18. Suspension of Work

The Procurement Officer unilaterally may order the Contractor in writing to suspend, delay, or interrupt all or any part of its performance for such period of time as the Procurement Officer may determine to be appropriate for the convenience of the State.

19. Pre-Existing Regulations

In accordance with the provisions of Section 11-206 of the State Finance and Procurement Article, Annotated Code of Maryland, as from time to time amended, the regulations set forth in Title 21 of the Code of Maryland Regulations (COMAR 21) in effect on the date of execution of this Contract are applicable to this Contract.

20. Financial Disclosure

The Contractor shall comply with the provisions of Section 13-221 of the State Finance and Procurement Article of the Annotated Code of Maryland, as from time to time amended, which requires that every business that enters into contracts, leases, or other agreements with the State of Maryland or its agencies during a calendar year under which the business is to receive in the aggregate, \$100,000 or more, shall within 30 days of the time when the aggregate value of these contracts, leases or other agreements reaches \$100,000, file with the Secretary of the State of Maryland certain specified information to include disclosure of beneficial ownership of the business.

21. Political Contribution Disclosure

The Contractor shall comply with the provisions of Article 33, Sections 14-101 through 14-104 of the Annotated Code of Maryland, which require that every person that enters into contracts, leases, or other agreements with the State of Maryland, a county or an incorporated municipality or their agencies, during a calendar year under which the person receives in the aggregate, \$100,000 or

more, shall, file with the State Board of Elections a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election. The statement shall be filed with the State Board of Elections: (1) before a purchase or execution of a lease or contract by the State, a county, an incorporated municipality, or their agencies, and shall cover the preceding two calendar years; and (2) if the contribution is made after the execution of a lease or contract, then twice a year, throughout the contract term, on: (a) February 5, to cover the 6-month period ending January 31; and (b) August 5, to cover the 6-month period ending July 31.

22. Retention of Records.

The Contractor shall retain and maintain all records and documents in any way relating to this Contract for three years after final payment by the State of Maryland under this Contract or any applicable statute of limitations, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State, including the Procurement Officer or the Procurement Officer's designee, at all reasonable times. All records related in any way to the Contract are to be retained for the entire time provided under this section.

23. Subcontracting; Assignment

The Contractor may not subcontract any portion of the services provided under this Contract without obtaining the prior written approval of the State of Maryland, nor may the Contractor assign this Contract or any of its rights or obligations hereunder, without the prior written approval of the State. Any such subcontract or assignment shall include the terms of sections 9 and 11 through 22 of this Contract and any other terms and conditions that the State deems necessary to protect its interests. The State shall not be responsible for the fulfillment of the Contractor's obligations to the subcontractors.

24. Administrative

24.1 Procurement Officer. The work to be accomplished under this Contract shall be performed under the direction of the Procurement Officer. All matters relating to the interpretation of this Agreement shall be referred to the Procurement Officer for determination.

24.2 Notices. All notices hereunder shall be in writing and either delivered personally or sent by certified or registered mail, postage prepaid as follows:

If to the State:

Louis Laricci
Office of Information Technology
Department of Budget and Management
45 Calvert St.
Annapolis, Md. 21401

Jane Bailey
Procurement Office
Dept. of Budget and Management
45 Calvert Street
Annapolis, Md. 21041

If to the Contractor: (To be completed)

Harry Lerner
Information Builders, Inc.
Two Penn Plaza
New York, N.Y. 10121-2898

IN WITNESS THEREOF, the parties have executed this Contract this 30th day of June, 2002.

State of Maryland

Information Builders, Inc.

T. Eloise Foster
T. Eloise Foster
Secretary

Gerry D. Cohen
Gerry D. Cohen
President

Approved for form and legal sufficiency
this 4th day of June 2002.

Cecilia Januskiewicz
Cecilia Januskiewicz
Assistant Attorney General