

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

December 28, 2004

NOTICE  
TO  
CONTRACT NO. 071B5200106  
between  
THE STATE OF MICHIGAN  
and

NAME & ADDRESS OF VENDOR  <b>OCE North America, Inc. 38695 Seven Mile Road – Suite 100 Livonia, MI 48152</b>	TELEPHONE (734) 779-1428 <b>Mark Leone</b>
	VENDOR NUMBER/MAIL CODE <b>(009)</b>
	BUYER/CA (517) 373-7374 <b>Joan Bosheff</b>
Contract Compliance Inspector: Vern Thelen <b>60-Month Lease of Two (2) Flash Fusion Printers - DMB</b>	
CONTRACT PERIOD: From: <b>October 15, 2004</b> To: <b>October 15, 2009</b>	
TERMS <b>Net 30 Days</b>	SHIPMENT <b>30 Days A.R.O.</b>
F.O.B. <b>Delivered – Installed</b>	SHIPPED FROM <b>N/A</b>
MINIMUM DELIVERY REQUIREMENTS <b>N/A</b>	

The terms and conditions of this Contract are those of **ITB #071I4001317**, this Contract Agreement and the vendor's quote dated **August 21, 2004**. In the event of any conflicts between the specifications, terms and conditions indicated by the State and those indicated by the vendor, those of the State take precedence.

**NOTE:** REMITTANCES ARE TO BE MADE TO MAIL CODE 005

Estimated Contract Value: **\$612,000.00**

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**THIS IS NOT AN ORDER:** This Contract Agreement is awarded on the basis of our inquiry bearing the **ITB #071I4001317**. A Purchase Order Form will be issued only as the requirements of the Department of Management and Budget are submitted to Acquisition Services. Orders for delivery may be issued directly by the **Department of Management and Budget** through the issuance of a Purchase Order Form.

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

<b>FOR THE VENDOR:</b>  <b>OCE North America, Inc.</b> _____ Firm Name  _____ Authorized Agent Signature  _____ Authorized Agent (Print or Type)  _____ Date	<b>FOR THE STATE:</b>  _____ Signature <b>William C. Walsh, Buyer Manager</b> _____ Name <b>Tactical Purchasing, Acquisition Services</b> _____ Title  _____ Date
---	---



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

Contract #071B5200106  
60-Month Lease of Flash Fusion Printers

Buyer Name: Joan Bosheff  
Telephone Number: (517) 373-7374  
E-Mail Address: bosheffj@michigan.gov

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## **ARTICLE 1 – STATEMENT OF WORK (SOW)**

### **1.0 Introduction**

#### **1.001 PROJECT TITLE AND DESCRIPTION**

This is a Contract for the 60-Month Lease of two (2) Flash Fusion Printers.

#### **1.003 PROJECT CONTROL**

##### Project Control

- a. The Contractor will carry out this project under the direction and control of the Department of Management and Budget.

### **1.1 Product Quality**

#### **1.101 SPECIFICATIONS**

Definite Specifications – All commodities and/or services to be furnished hereunder shall conform to the specifications as noted in copies of specifications attached.

### **1.2 Service Capabilities**

#### **1.201 CUSTOMER SERVICE/ORDERING**

The Contractor shall have the capacity to receive orders electronically, by phone, facsimile, and by written order. The Contractor shall provide a statewide toll-free phone number for phone orders. Contractor shall have internal controls, approved by Acquisition Services, to insure that authorized individuals with the State place orders. The Contractor shall verify orders that have quantities that appear to be abnormal or excessive.

The Contractor shall have an accessible customer service department with an individual specifically assigned to State of Michigan accounts. The Contractor shall have experienced sales representatives make timely personal visits to State accounts. The Contractor's customer service must respond to State agency inquiries promptly. The Contractor shall provide a statewide toll-free number for customer service calls.

#### **1.202 TRAINING**

The Contractor shall provide in- service training for personnel to achieve the level of proficiency necessary along with training on products, installation and product safety issues. In addition, the Contractor shall provide a technical representative to solve minor problems/questions by phone or on-site visits to solve more complex problems or questions. The Contractor shall also provide agency training jointly with the State as needed during the period covered by the contract at no additional charge.

#### **1.203 REPORTING**

The Contractor shall be able to provide various reports, when requested by the State. Examples include itemized report of total items (commodities and services) purchased by all agencies or individual agencies, open invoice reports, delivery compliance reports, quantity reports, service compliance reports, etc.

#### **1.205 SECURITY**

The Contract may require frequent deliveries to State of Michigan facilities. If the Contractor has performed security background checks on employees, the Contractor shall indicate the name of the company that performed the check as well as provide a document stating that each employee has satisfactorily completed a security check and is suitable for assignment to State facilities. Upon request by the State, the Contractor shall provide the results of all security background checks.



Upon review of the security measures, the State will decide whether to issue State ID badges to the Contractor’s delivery personnel or accept the ID badge issued to delivery personnel by the Contractor. The State may decide to also perform a security background check. If so, the Contractor will be required to provide to the State a list of all delivery people that will service State of Michigan facilities, including name and date of birth (social security number of driver license number would also be helpful). The Contractor and its subcontractors shall comply with the security access requirements of individual State facilities.

**1.3 Delivery Capabilities**

**1.301 RESERVED**

**1.302 RESERVED**

**1.303 RESERVED**

**1.304 RESERVED**

**1.305 DELIVERY TERM**

Prices are "F.O.B. Delivered and Installed" with transportation charges prepaid.

**1.306 RESERVED**

**1.4 Project Price**

**1.401 PRICING**

Pricing is provided on the attached Item Listing.

**1.402 QUICK PAYMENT TERMS**

The State of Michigan is interested in payment terms that reflect cost savings to the State based on an accelerated payment process.

**1.403 PRICE TERM**

Prices quoted are firm for the entire length of the Contract for the lease payment. Maintenance prices quoted are the maximum for a period of 365 days from the date the Contract becomes effective.

Maintenance prices are subject to change at the end of each 365-day period. Such changes shall be based on changes in actual costs incurred. Documentation of such changes must be provided with the request for price change in order to substantiate any requested change. Acquisition Services reserves the right to consider various pertinent information sources to evaluate price increase requests (such as the CPI and PPI, US City Average, as published by the US Department of Labor, Bureau of Labor Statistics). Acquisition Services also reserves the right to consider other information related to special economic and/or industry circumstances, when evaluating a price change request. Changes may be either increases or decreases, and may be requested by either party. Approved changes shall be firm for the remainder of the contract period unless further revised at the end of the next 365-day period.

Requests for price changes shall be RECEIVED IN WRITING AT LEAST THIRTY (30) DAYS PRIOR TO THEIR EFFECTIVE DATE, and are subject to written acceptance before becoming effective. In the event new prices are not acceptable, the CONTRACT may be cancelled. The continued payment of any charges due after September 30th of any fiscal year will be subject to the availability of an appropriation for this purpose.

**1.5 Quantity term**

Vendor agrees to supply all that the State requires.



## **ARTICLE 2 – GENERAL TERMS AND CONDITIONS**

### **2.0 Introduction**

#### **2.001 GENERAL PURPOSE**

The Contract is for the 60-Month Lease of two (2) Flash Fusion Printers for the State of Michigan. The Contractor will be required to furnish all such materials and services as may be ordered during the CONTRACT period. Quantities specified, if any, are estimates based on prior purchases, and the State is not obligated to purchase in these or any other quantities. Orders for delivery will be issued directly to the Contractor by the Department of Management and Budget on the Purchase Order Contract Release Form.

#### **2.002 ISSUING OFFICE AND CONTRACT ADMINISTRATOR**

The Contract is issued by Acquisition Services, State of Michigan, Department of Management and Budget, hereinafter known as Acquisition Services, for the Department of Management and Budget, Consolidated Print Center, hereinafter known as CPC. Where actions are a combination of those of Acquisition Services and CPC, the authority will be known as the State.

Acquisition Services is the sole point of contact in the State with regard to all procurement and contractual matters relating to the commodities and/or services described herein. Acquisition Services is the only office authorized to negotiate, change, modify, amend, alter, clarify, etc., the specifications, terms, and conditions of the Contract. Acquisition Services will remain the SOLE POINT OF CONTACT throughout the procurement process.

**Contractor proceeds at its own risk if it takes negotiation, changes, modification, alterations, amendments, clarification, etc., of the specifications, terms, or conditions of the contract from any individual or office other than Acquisition Services and the listed contract administrator**

All communications covering this procurement must be addressed to contract administrator indicated below:

Department of Management and Budget  
Acquisition Services  
ATTN: Joan Bosheff  
2nd Floor, Mason Building  
P.O. Box 30026  
Lansing, Michigan 48909  
Phone: (517) 373-7374  
E-Mail: [bosheffj@michigan.gov](mailto:bosheffj@michigan.gov)

#### **2.003 NOTICE**

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

#### **2.004 CONTRACT TERM**

The term of this Contract will be for 60 months and will commence on the date which the equipment is accepted by the State in the manner described in Section 2.105. Should the State elect to exercise any lease extension or purchase option, the Contractor shall offer continued maintenance support for a term negotiated by the parties.

**2.005 GOVERNING LAW**

The Contract shall in all respects be governed by, and construed in accordance with, the laws of the State of Michigan. By signing this agreement, the Contractor consents to personal jurisdiction in the state of Michigan. Any dispute arising herein shall be resolved in the State of Michigan.

**2.006 APPLICABLE STATUTES**

The following statutes, rules, and laws are applicable to the performance of this contract; some statutes are reflected in the clauses of this contract. This list is NOT exhaustive.

MI Uniform Commercial Code (MIUCC) MCL 440. (All sections unless otherwise altered by agreement)  
MI OSHA MCL §§ 408.1001 – 408.1094  
Freedom of Information Act (FIOA) MCL §§ 15.231, et seq.  
Natural Resources and Environmental Protection Act MCL §§ 324.101, et seq.  
MI Consumer Protection Act MCL §§ 445.901 – 445.922  
Laws relating to wages, payments of wages, and fringe benefits on state projects MCL §§ 408.551 – 408.558, 408.471 – 408.490, 1965 PA 390.  
Department of Civil Service Rules and regulations  
Elliot Larsen Civil Rights Act MCL §§ 37.2201, et seq.  
Persons with disabilities Civil Rights Act MCL §§ 37.1101, et seq.  
MCL §§ 423.321, et seq.  
MCL § 18.1264 (law regarding debarment)  
Davis-Bacon Act (DBA) 40 USCU §§ 276(a), et seq.  
Contract Work Hours and Safety Standards Act (CWHSSA) 40 USCS § 327, et seq.  
Business Opportunity Act for Persons with Disabilities MCL §§ 450.791 – 450.795  
Rules and regulations of the Environmental Protection Agency  
Internal Revenue Code  
Rules and regulations of the Equal Employment Opportunity Commission (EEOC)  
The Civil Rights Act of 1964, USCS Chapter 42  
Title VII, 42 USCS §§ 2000e et seq.  
The Americans with Disabilities Act (ADA), 42 USCS §§ 12101 et seq.  
The Age Discrimination in Employment Act of 1967 (ADEA), 29 USCS §§ 621, 623 et seq.  
The Old Workers Benefit and Protection Act of 1990 (OWBPA), 29 USCS §§ 626, et seq.  
The Family Medical Leave Act of 1993 (FMLA), 29 USC §§ 651 et seq.  
The Fair Labor Standards Act (FLSA), 29 USC §§ 201 et seq.  
Pollution Prevention Act of 1990 (PPA) 42 U.S.C. §13106  
Sherman Act, 15 U.S.C.S. § 1 et seq.  
Robinson-Patman Act, 15 U.S.C.S. § 13 et. seq.  
Clayton Act, 15 U.S.C.S. § 14 et seq.

**2.007 RELATIONSHIP OF THE PARTIES**

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

**2.008 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 this Contract.

**2.009 MERGER**

This document constitutes the complete, final, and exclusive agreement between the parties. All other prior writings and negotiations are ineffective.

**2.010 SEVERABILITY**

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

**2.011 SURVIVORSHIP**

Any provisions of the Contract that impose continuing obligations on the parties including, but not limited to the Contractor's indemnity and other obligations shall survive the expiration or cancellation of the Contract for any reason.

**2.012 NO WAIVER OF DEFAULT**

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

**2.013 PURCHASE ORDERS**

Orders for delivery of commodities and/or services may be issued directly by CPC through the issuance of a Purchase Order Form referencing this Contract (Blanket Purchase Order) agreement and the terms and conditions contained herein. Contractor is asked to reference the Purchase Order Number on all invoices for payment.

**2.1 Vendor/Contractor Obligations****2.101 ACCOUNTING RECORDS**

The Contractor and all subcontractors shall maintain all pertinent financial and accounting records and evidence pertaining to the Contract in accordance with generally accepted principles of accounting and other procedures specified by the State of Michigan. Financial and accounting records shall be made available, upon request, to the State of Michigan, its designees, or the Michigan Auditor General at any time during the Contract period and any extension thereof, and for three years from expiration date and final payment on the Contract or extension thereof.

**2.102 NOTIFICATION OF OWNERSHIP**

The Contractor shall make the following notifications in writing:



1. When the Contractor becomes aware that a change in its ownership or officers has occurred, or is certain to occur, that could result in changes in the valuation of its capitalized assets in the accounting records, the Contractor shall notify Acquisition Services within 30 days.
2. The Contractor shall also notify the Acquisition Services 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.

The Contractor shall:

1. Maintain current, accurate, and complete inventory records of assets and their costs;
2. Provide Acquisition Services or designated representative ready access to the records upon request;
3. Ensure that all individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives are identified accurately before and after each of the Contractor's ownership or officer changes; and
4. Retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each Contractor ownership or officer change.

### **2.103 SOFTWARE COMPLIANCE**

The Contractor warrants that all software for which the vendor 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 year 2000 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.

### **2.104 RESERVED**

### **2.105 PERFORMANCE AND RELIABILITY EVALUATION (PARE)**

The parties agree and acknowledge that the obligations under this Lease are conditioned, in part, upon the successful completion of a Performance and Reliability Evaluation (PARE), described in the Contract between the parties. Upon successful completion of the PARE, State shall confirm to the Contractor its written acceptance of the Equipment by executing a "Certificate of Acceptance." The PARE shall commence when the Equipment has been delivered and installed as provided in this section.

The standard of performance for the PARE will be closely monitored during the acceptance period.

The PARE will be considered successful if the system and each component are operational for 95% of scheduled operational hours during the acceptance period.

The average effectiveness level of the system is a percentage determined by dividing the total number of operational use hours of the system during the performance period by the total number of such hours plus equipment failure downtime.



- a. Determination of System Readiness
  - 1. The PARE will begin on the installation dates when the Contractor certifies that the equipment is ready for use by the State.
- b. During the PARE:
  - 1. The PARE shall cover a period of 30 consecutive calendar days.
  - 2. All equipment shall operate in conformance with the Contractor's published specifications applicable to such items.
  - 3. Equipment shall not be accepted by the State and no charges will be paid by the State until the standard of performance is met.
  - 4. The PARE will not be complete until the equipment has met the required effectiveness level for the prescribed time period.
  - 5. If successful completion of the PARE is not attained within 30 days of the installation date, the State may terminate the Contract, or by mutual agreement of the State and Contractor, performance tests may continue. The State's option to terminate the Contract shall remain in effect until such time as a successful completion of the performance period is attained.
  - 6. Following the successful completion of the PARE period, the State and Contractor agree to use the first day of the PARE period as the equipment installation date.

**2.106 PREVAILING WAGE**

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

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

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

**2.107 RESERVED****2.108 COMPETITION IN SUBCONTRACTING**

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.

**2.109 CALL CENTER DISCLOSURE**

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

**2.2 Contract Performance****2.201 TIME IS OF THE ESSENCE**

The Contractor is on notice that time is of the essence in the performance of this contract. Late performance will be considered a material breach of this contract, giving the State a right to invoke all remedies available to it under this contract.

**2.202 CONTRACT PAYMENT**

The Contractor shall certify in writing to the State on the installation date that the equipment is installed and ready to use.

The Contractor will render invoices for monthly charges. The State shall pay all such invoices in accordance with the State's standard payment procedure as specified in Public Act 279 of 1984.

Payment for fractions of a calendar month shall be computed at the rate of 1/30 of the applicable monthly charge for each day the equipment was installed, except the 31<sup>st</sup> day any month will not be included in the computation of partial month billing for discontinued equipment. This partial month billing can only occur for the first month of operation. Subsequent bills are to be monthly costs only.

**2.203 RESERVED****2.204 RESERVED****2.205 ELECTRONIC PAYMENT AVAILABILITY**

Electronic transfer of funds is available to State contractors. Vendors are encouraged to register with the State of Michigan Office of Financial Management so the State can make payments related to this Contract electronically at [www.cpexpress.state.mi.us](http://www.cpexpress.state.mi.us).

**2.206 RESERVED****2.3 Contract Rights and Obligations****2.301 INCURRING COSTS**

The State of Michigan is not liable for any cost incurred by the Contractor prior to signing of the Contract. The State fiscal year is October 1st through September 30th. The Contractor should realize that payments in any given fiscal year are contingent upon enactment of legislative appropriations. Total liability of the State is limited to terms and conditions of the Contract.

**2.302 CONTRACTOR RESPONSIBILITIES**

The Contractor will be required to assume responsibility for all contractual activities, whether or not that Contractor performs them. Further, the State will consider the Contractor to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the anticipated Contract. If any part of the work is to be subcontracted, the Contractor must include a list of subcontractors, including firm name and address, contact person and a complete description of work to be subcontracted. The State reserves the right to approve subcontractors and to require the Contractor to replace subcontractors found to be unacceptable. The Contractor is totally responsible for adherence by the subcontractor to all provisions of the Contract. Any change in subcontractors must be approved by the State, in writing, prior to such change.



### 2.303 ASSIGNMENT AND DELEGATION

The Contractor's right, title and interest in and to this Lease, including lease payments and any other amounts payable by the State thereunder and all proceeds therefrom may only be assigned and reassigned to one or more assignees or subassignees by Contractor with the written consent of the State, which shall not be unreasonably withheld. Assignments may include without limitation assignment of all of Contractor's security interest in and to the equipment listed in this lease and all rights in, to and under the lease related to such equipment. In accordance with Section 149(a) of the Internal Revenue Code of 1986, as amended, Contractor shall keep a record of all assignments and provide written notice to the State. Contractor agrees to continue servicing the lease or arrange for a servicer with equal standards of high quality. Contractor also agrees remittance will remain with a single servicer.

None of the State's right, title and interest in, to and under any lease or any portion of the equipment listed in each lease may be assigned, sublease, or encumbered by lessee for any reason without obtaining prior written consent of Contractor.

**The Contractor must obtain the approval of the Director of Acquisition Services before using a place of performance that is different from the address that the Contractor provided in the bid.**

### 2.304 TAXES

Sales Tax: For purchases made directly by the State of Michigan, the State is exempt from State and Local Sales Tax. Prices shall not include such taxes. Exemption Certificates for State Sales Tax will be furnished upon request.

Federal Excise Tax: The State of Michigan may be exempt for Federal Excise Tax, or such taxes may be reimbursable, if articles purchased under this Contract are used for the State's exclusive use. Certificates exclusive use for the purposes of substantiating a tax-free, or tax-reimbursable sale will be sent to the Contractor upon request. If a sale is tax exempt or tax reimbursable under the Internal Revenue Code, prices shall not include the Federal Excise Tax.

The State's Tax Exempt Certification is available for vendor viewing upon request to the Contract Administrator.

### 2.305 INDEMNIFICATION

#### General Indemnification

To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold harmless the State, its departments, divisions, agencies, sections, commissions, officers, employees and agents, from and against all losses, liabilities, penalties, fines, damages and claims (including taxes), and all related costs and expenses (including reasonable attorneys' fees and disbursements and costs of investigation, litigation, settlement, judgments, interest and penalties), arising from or in connection with any of the following:

1. Any claim, demand, action, citation or legal proceeding against the State, its employees and agents arising out of or resulting from (1) the product provided or (2) performance of the work, duties, responsibilities, actions or omissions of the Contractor or any of its subcontractors under this Contract.
2. Any claim, demand, action, citation or legal proceeding against the State, its employees and agents arising out of or resulting from a breach by the Contractor of any representation or warranty made by the Contractor in the Contract;
3. Any claim, demand, action, citation or legal proceeding against the State, its employees and agents arising out of or related to occurrences that the Contractor is required to insure against as provided for in this Contract;



4. Any claim, demand, action, citation or legal proceeding against the State, its employees and agents arising out of or resulting from the death or bodily injury of any person, or the damage, loss or destruction of any real or tangible personal property, in connection with the performance of services by the Contractor, by any of its subcontractors, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable; provided, however, that this indemnification obligation shall not apply to the extent, if any, that such death, bodily injury or property damage is caused solely by the negligence or reckless or intentional wrongful conduct of the State;
5. Any claim, demand, action, citation or legal proceeding against the State, its employees and agents which results from an act or omission of the Contractor or any of its subcontractors in its or their capacity as an employer of a person.

#### Patent/Copyright Infringement Indemnification

To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold harmless the State, its employees and agents from and against all losses, liabilities, damages (including taxes), and all related costs and expenses (including reasonable attorneys' fees and disbursements and costs of investigation, litigation, settlement, judgments, interest and penalties) incurred in connection with any action or proceeding threatened or brought against the State to the extent that such action or proceeding is based on a claim that any piece of equipment, software, commodity or service supplied by the Contractor or its subcontractors, or the operation of such equipment, software, commodity or service, or the use or reproduction of any documentation provided with such equipment, software, commodity or service infringes any United States or foreign patent, copyright, trade secret or other proprietary right of any person or entity, which right is enforceable under the laws of the United States. In addition, should the equipment, software, commodity, or service, or the operation thereof, become or in the Contractor's opinion be likely to become the subject of a claim of infringement, the Contractor shall at the Contractor's sole expense (i) procure for the State the right to continue using the equipment, software, commodity or service or, if such option is not reasonably available to the Contractor, (ii) replace or modify the same with equipment, software, commodity or service of equivalent function and performance so that it becomes non-infringing, or, if such option is not reasonably available to Contractor, (iii) accept its return by the State with appropriate credits to the State against the Contractor's charges and reimburse the State for any losses or costs incurred as a consequence of the State ceasing its use and returning it.

#### Code Indemnification

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

#### Indemnification Obligation Not Limited

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

#### Continuation of Indemnification Obligation

The duty to indemnify will continue in full force and affect not withstanding the expiration or early termination of the Contract with respect to any claims based on facts or conditions, which occurred prior to termination.

Indemnification Procedures

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

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

**2.306 LIMITATION OF LIABILITY**

Except as set forth herein, neither the Contractor nor the State shall be liable to the other party for indirect or consequential damages, even if such party has been advised of the possibility of such damages. Such limitation as to indirect or consequential damages shall not apply to claims for infringement of United States patent, copyright, trademarks or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of this Contract calling for liquidated damages; to Contractor's indemnification obligations (2.305); or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on this Contract.

**2.307 CONTRACT DISTRIBUTION**

Acquisition Services shall retain the sole right of Contract distribution to all CPC unless other arrangements are authorized by Acquisition Services.

**2.308 FORM, FUNCTION, AND UTILITY**

If the Contract is for use of more than one State agency and if the good or service provided under this Contract do not meet the form, function, and utility required by a State agency, that agency may, subject to State purchasing policies, procure the good or service from another source.

**2.309 ASSIGNMENT OF ANTITRUST CAUSE OF ACTION**

For and in consideration of the opportunity to submit a quotation and other good and valuable consideration, the bidder hereby assigns, sells and transfers to the State of Michigan all rights, title and interest in and to all causes of action it may have under the antitrust laws of the United States or this State for price fixing, which causes of action have accrued prior to the date of payment and which relate solely to the particular goods, commodities, or services purchased or procured by this State pursuant to this transaction.

**2.310 RESERVED****2.311 RESERVED****2.312 RESERVED****2.313 RESERVED****2.314 WEBSITE INCORPORATION**

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

**2.4 Contract Review and Evaluation****2.401 CONTRACT COMPLIANCE INSPECTOR**

Upon receipt at Acquisition Services of the properly executed Contract Agreement, the person named below will be allowed to oversee the Contract performance on a day-to-day basis during the term of the Contract. However, overseeing the Contract implies **no authority to negotiate, change, modify, clarify, amend, or otherwise alter the terms, conditions, and specifications of such Contract(s). That authority is retained by Acquisition Services.** The Contract Compliance Inspector for this project is:

Vern Thelen  
DMB - Printing Services  
7461 Crowner Drive  
Lansing, MI 48909  
Phone: (517) 322-6764 Fax: (517) 322-5968  
E-Mail: thelenv@michigan.gov

**2.402 PERFORMANCE REVIEWS**

Acquisition Services in conjunction with CPC may review with the Contractor their performance under the Contract. Performance reviews shall be conducted quarterly, semi-annually or annually depending on Contractor's past performance with the State. Performance reviews shall include, but not limited to, quality of products/services being delivered and provided, timeliness of delivery, percentage of completion of orders, the amount of back orders, status of such orders, accuracy of billings, customer service, completion and submission of required paperwork, the number of substitutions and the reasons for substitutions, and other requirements of the Contract.



Upon a finding of poor performance, which has been documented by Acquisition Services, the Contractor shall be given an opportunity to respond and take corrective action. If corrective action is not taken in a reasonable amount of time as determined by Acquisition Services, the Contract may be canceled for default. Delivery by the Contractor of unsafe and/or adulterated or off-condition products to any State agency is considered a material breach of Contract subject to the cancellation provisions contained herein.

#### **2.403 RESERVED**

### **2.5 Quality and Warranties**

#### **2.501 PROHIBITED PRODUCTS**

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

#### **2.502 QUALITY ASSURANCE**

The State reserves the right to periodically test products, which have been received to verify compliance with specifications. If laboratory analysis shows that the product does not meet specifications or fails to perform satisfactorily at any time, the Contractor shall be responsible for:

1. All costs of testing and laboratory analysis.
2. Disposal and/or replacement of all products which fail to meet specifications.
3. All costs of repair and/or replacement of equipment deemed to have been damaged by substandard products as determined by the State.

#### **2.503 INSPECTION**

All goods are subject to inspection and testing. In the event goods are defective in material or workmanship, or otherwise fail to meet the requirements of the Contract, the State shall have the right to reject the goods or retain the goods and correct the defects. The Contractor shall pay the State for expenses incurred in correcting defects. Rejected goods will be held for 45 days after delivery. The Contractor must arrange for the return of said goods, including paying for handling, packing, and transportation costs. The State has the authority to dispose of the goods without further liability to the State in the event the Contractor fails to make arrangements within the specified time period.

#### **2.504 GENERAL WARRANTIES (goods)**

*Warranty of Merchantability* – Goods provided by vendor 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 vendor or on the container or label.

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

*Warranty of title* – Vendor shall, in providing goods to the State, convey good title in those goods, whose transfer is right and lawful. All goods provided by vendor shall be delivered free from any security interest, lien, or encumbrance of which the State, at the time of contracting, has no knowledge. Goods provided by vendor, under this agreement, shall be delivered free of any rightful claim of any third person by of infringement or the like.

#### **2.505 CONTRACTOR WARRANTIES**

The Contract will contain customary representations and warranties by the Contractor, including, without limitation, the following:



1. The Contractor will perform all services in accordance with high professional standards in the industry;
2. The Contractor will use adequate numbers of qualified individuals with suitable training, education, experience and skill to perform the services;
3. The Contractor will use its best efforts to use efficiently any resources or services necessary to provide the services that are separately chargeable to the State;
4. The Contractor will use its best efforts to perform the services in the most cost effective manner consistent with the required level of quality and performance;
5. The Contractor will perform the services in a manner that does not infringe the proprietary rights of any third party;
6. The Contractor will perform the services in a manner that complies with all applicable laws and regulations;
7. The Contractor has duly authorized the execution, delivery and performance of the Contract;
8. The Contractor is capable in all respects of fulfilling and shall fulfill all of its obligations under this contract.
9. The contract appendices, attachments, and exhibits identify all equipment and software services necessary for the deliverable(s) to perform and operate in compliance with the contract's requirements.
10. The Contractor 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 use, as applicable, of any and all Deliverables.
11. If, under this Contract, Contractor procures any equipment, software or other Deliverable for the State (including equipment, software and other Deliverables manufactured, re-marketed or otherwise sold by Contractor under Contractor's name), then in addition to Contractor's other responsibilities with respect to such items as set forth in this Contract, Contractor shall assign or otherwise transfer to the State or its designees, or afford the State the benefits of, any manufacturer's warranty for the Deliverable.
12. The contract signatory has the power and authority, including any necessary corporate authorizations, necessary to enter this contract, on behalf of Contractor.
13. The Contractor is qualified and registered to transact business in all locations where required.
14. Neither the Contractor nor any Affiliates, nor any employee of either, has, shall have, or shall acquire, any contractual, financial, business, or other interest, direct or indirect, that would conflict in any manner or degree with Contractor's performance of its duties and responsibilities to the State under this Contract or otherwise create an appearance of impropriety with respect to the award or performance of this Agreement. Contractor shall notify the State within two (2) days of any such interest that may be incompatible with the interests of the State.
15. All financial statements, reports, and other information furnished by Contractor to the State as part of its response to the ITB or otherwise in connection with the award of this Contract fairly and accurately represent the business, properties, financial condition, and results of operations of Contractor as of the respective dates, or for the respective periods, covered by such financial statements, reports, other information. Since the respective dates or periods covered by such financial statements, reports, or other information, there have been no material adverse changes in the business, properties, financial condition, or results of operations of Contractor. All written information furnished to the State by or behalf of Contractor in connection with this Contract, including its bid, is true, accurate, and complete, and contains no untrue statement of material fact or omits any material fact necessary to make such information not misleading.

**2.506 RESERVED****2.507 RESERVED****2.508 EQUIPMENT WARRANTY**

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

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

Within one (1) State business days of notification from the State, the Contractor shall adjust, repair or replace all equipment that is defective or not performing in compliance with the Contract. The Contractor shall assume all costs for replacing parts or units and their installation including transportation and delivery fees, if any.

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

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

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

All warranty work shall be performed on the State of Michigan worksite(s).

**2.509 RESERVED****2.6 Breach of Contract****2.601 BREACH DEFINED**

Failure to comply with articles, sections, or subsections of this agreement, or making any false statement in this agreement will be considered a material breach of this agreement giving the state authority to invoke any and all remedies available to it under this agreement.

In addition to any remedies available in law and by the terms of this contract, if the Contractor breaches Sections 2.508, 2.509, or 2.510, such a breach may be considered as a default in the performance of a material obligation of this Contract.

**2.602 NOTICE AND THE RIGHT TO CURE**

In the event of a curable breach by the Contractor, the State shall provide the Contractor written notice of the breach and a time period to cure said breach described in the notice. This section requiring notice and an opportunity to cure shall not be applicable in the event of successive or repeated breaches of the same nature or if the State 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.



### 2.603 EXCUSABLE FAILURE

1. Neither party shall be liable for any default or delay in the performance of its obligations under the Contract if and to the extent such default or delay is caused, directly or indirectly, by: fire, flood, earthquake, elements of nature or acts of God; riots, civil disorders, rebellions or revolutions in any country; the failure of the other party to perform its material responsibilities under the Contract (either itself or through another contractor); injunctions (provided the injunction was not issued as a result of any fault or negligence of the party seeking to have its default or delay excused); or any other cause beyond the reasonable control of such party; provided the non-performing party and its subcontractors are without fault in causing such default or delay, and such default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing party through the use of alternate sources, workaroud plans or other means, including disaster recovery plans. In such event, the non-performing party will be excused from any further performance or observance of the obligation(s) so affected for as long as such circumstances prevail and such party continues to use its best efforts to recommence performance or observance whenever and to whatever extent possible without delay provided such party promptly notifies the other party in writing of the inception of the excusable failure occurrence, and also of its abatement or cessation.
2. If any of the above enumerated circumstances substantially prevent, hinder, or delay performance of the services necessary for the performance of the State's functions for more than 14 consecutive 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 from an alternate source, and the State shall not be liable for payments for the unperformed services under the Contract for so long as the delay in performance shall continue; (b) the State may cancel any portions of the Contract so affected and the charges payable hereunder shall be equitably adjusted to reflect those services canceled; or (c) the Contract will be canceled without liability of the State to the Contractor as of the date specified by the State in a written notice of cancellation to the Contractor. 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 as a result of the excusable failure condition. Defaults or delays in performance by the Contractor which are caused by acts or omissions of its subcontractors will not relieve the Contractor of its obligations under the Contract except to the extent that a subcontractor is itself subject to any excusable failure condition described above and the Contractor cannot reasonably circumvent the effect of the subcontractor's default or delay in performance through the use of alternate sources, workaroud plans or other means.

## 2.7 Remedies

### 2.701 CANCELLATION

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

1. Material Breach by the Contractor. In the event that the Contractor breaches any of its material duties or obligations under the Contract, which are either not capable of or subject to being cured, or are not cured within the time period specified in the written notice of breach provided by the State, or pose a serious and imminent threat to the health and safety of any person, or the imminent loss, damage or destruction of any real or tangible personal property, the State may, having provided written notice of cancellation to the Contractor, cancel this Contract in whole or in part, for cause, as of the date specified in the notice of cancellation.

In the event that this Contract is cancelled for cause, in addition to any legal remedies otherwise available to the State by law or equity, the Contractor shall be responsible for all costs incurred by the State in canceling the Contract, including but not limited to, State administrative costs, attorneys fees and court costs, and any additional costs the State may incur to procure the services required by this Contract from other sources. All excess re-procurement costs and damages shall not be considered by the parties to be consequential, indirect or incidental, and shall not be excluded by any other terms otherwise included in the Contract.



In the event the State chooses to partially cancel this Contract for cause charges payable under this Contract will be equitably adjusted to reflect those services that are cancelled.

In the event this Contract is cancelled for cause pursuant to this section, and it is therefore determined, for any reason, that the Contractor was not in breach of contract pursuant to the provisions of this section, that cancellation for cause shall be deemed to have been a cancellation for convenience, effective as of the same date, and the rights and obligations of the parties shall be limited to that otherwise provided in the Contract for a cancellation for convenience.

2. Cancellation For Convenience By the State. The State may cancel this Contract for its convenience, in whole or part, if the State determines that such a cancellation is in the State's best interest. Reasons for such cancellation shall be left to the sole discretion of the State and may include, but not 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 Contract services no longer practical or feasible, and (c) unacceptable prices for additional services requested by the State. The State may cancel the Contract for its convenience, in whole or in part, by giving the Contractor written notice 30 days prior to the date of cancellation. If the State chooses to cancel this Contract in part, the charges payable under this Contract shall be equitably adjusted to reflect those services that are cancelled.
3. Non-Appropriation. In the event that funds to enable the State to effect continued payment under this Contract are not appropriated or otherwise made available. The 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 project. If funds are not appropriated or otherwise made available, the State shall have the right to cancel this Contract at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of cancellation to the Contractor. The State shall give the Contractor written notice of such non-appropriation or unavailability within 30 days after it receives notice of such non-appropriation or unavailability.
4. Criminal Conviction. In the event the Contractor, an officer of the Contractor, or an owner of a 25% or greater share of the Contractor, is convicted of a criminal offense incident to the application for or performance of a State, public or private Contract or subcontract; or convicted of a criminal offense including but not limited to any of the following: embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, attempting to influence a public employee to breach the ethical conduct standards for State of Michigan employees; convicted under State or federal antitrust statutes; or convicted of any other criminal offense which in the sole discretion of the State, reflects upon the Contractor's business integrity.
6. Approvals Rescinded. The State may terminate this Contract without further liability or penalty in the event any final administrative or judicial decision or adjudication disapproves a previously approved request for purchase of personal services pursuant to Constitution 1963, Article 11, section 5, and Civil Service Rule 7. Termination may be in whole or in part and may be immediate as of the date of the written notice to Contractor or may be effective as of the date stated in such written notice.

## 2.702 RESERVED

## 2.703 LIQUIDATED DAMAGES

The installation dates of the equipment set forth in the Contract have been fixed so that the utilization of the equipment is consistent with the timing schedules of Lessee's programs. If any of the units of equipment are not installed within the time specified in Contract, the delay will interfere with the proper implementation of the Lessee's programs utilizing the equipment leased with option to purchase pursuant to this contract, to the loss and damage of the Lessee. From the nature of the case, it would be impracticable and extremely difficult to fix the actual damage sustained in the event of any such delay. The Lessee and the Contractor, therefore, presume that in the event of any such delay, the amount of damage which will be sustained from a delay will be the amount set forth below, and they agree that in the event of any such delay, the Contractor shall pay such amount as liquidated damages and not as a penalty. The Lessee, at its option, for amounts due the Lessee as liquidated damages, may deduct such from any money payable to the Contractor or may bill the Contractor as a separate item.



a. Equipment

1. If the Contractor does not install or delivery the system and/or machines (designated by the Contractor's type and model number), and special features and accessories included in Contract with the system and/or machines, ready for use, on or before the installation date, the Contractor shall pay to the Lessee, as fixed and agreed, liquidated damages for each calendar day between the delivery date specified in Contract and the date of the certification for such equipment, but not more than 180 calendar days in lieu of all other damages due to such non-installation, an amount of 1/30th of the monthly minimum payment (including contracted maintenance) for the system.
2. If some, but not all, of the machines on Contract are installed or delivered ready for use, by the installation date, and the Lessee makes operational use of any such installed machines, liquidated damages shall not accrue against the machines used. The use of machines for scheduled program development shall be included as operational use.
3. If the delay is more than thirty (30) calendar days, then by written notice to the Contractor, the Lessee may terminate the right of the Contractor to install and may obtain substitute equipment. In this event, the Contractor shall be liable for liquidated damages in the amounts specified above until acceptable substitute equipment is installed, ready for use, or for 180 days from the installation date, whichever occurs first. The Contractor shall also be liable for outbound preparation and shipping costs for contracted items returned under this clause.

b. Exception

Except with respect to defaults of subcontractors, the Contractor shall not be liable for liquidated damages when delays arise out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the State in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but, in every case, the delays must be beyond the control and without the fault or negligence of the Contractor. If the delays are caused by the default of a subcontractor, if such default arises out of causes beyond the control of both the Contractor and subcontractor and without the fault or negligence of any of them, the Contractor shall not be liable for liquidated damages for delays unless the supplies or services to be furnished by the subcontractors were obtainable from other sources in sufficient time to permit the Contractor to meet the required performance schedule.

**2.704 RESERVED**

**2.705 RESERVED**

**2.8 Changes, Modifications, and Amendments**

**2.801 APPROVALS**

The Contract may not be modified, amended, extended, or augmented except by a writing executed by the parties hereto, and any breach or default by a party shall not be waived or released other than in writing signed by the other party.

**2.802 TIME EXTENTIONS**

Time extensions for contract changes will depend upon the extent, if any, by which the changes cause delay in the completion of the various elements of performance as described in the statement of work. The change order granting the time extension may provide that the contract completion date will be extended only for those specific elements related to the changed work and that the remaining contract completion dates for all other portions of the work will not be altered. The change order also may provide an equitable readjustment of liquidated damages under the new completion schedule.

**2.803 MODIFICATION**

Acquisition Services reserves the right to modify this contract at any time during the contract term. Such modification may include changing the locations to be serviced, additional locations to be serviced, method or manner of performance of the work, number of days service is to be performed, addition or deletion of tasks to be performed, addition or deletion of items, and/or any other modifications deemed necessary. Any changes in pricing proposed by the Contractor resulting from the proposed changes are subject to acceptance by the State. Changes may be increases or decreases. **IN THE EVENT PRICES ARE NOT ACCEPTABLE TO THE STATE, THE CONTRACT SHALL BE SUBJECT TO COMPETITIVE BIDDING BASED UPON THE NEW SPECIFICATION.**

**The State reserves the right to add an item(s) that is not described on the item listing and is available from the Contract vendor.** The item(s) may be included on the Contract only if prior written approval has been granted by Acquisition Services.

**2.804 RESERVED****2.805 RESERVED****2.806 SITE PREPARATION**

- a. Site preparation specifications for equipment listed in the Contract shall be furnished by the Contractor promptly upon request by the Lessee. These specifications shall be in such detail to ensure that equipment to be installed shall operate efficiently from the point of view of environment.
- b. The State will prepare the sites as specified by the Contractor. Subsequent alterations or modifications in site preparation required by the Contractor, which are attributable to Contractor's requirements and which involve additional expense to the State, shall be made at the expense of the Contractor.
- c. The Contractor will notify the State in writing as to the adequacy of the State's planned layout of the equipment within ten (10) days after receipt of the State's plan.

**2.807 MAINTENANCE OF EQUIPMENT**

- a. A warranty period of six (6) months for parts and labor shall be included in this contract.
- b. Contractor shall be responsible for any required preventative maintenance. Preventative maintenance must be performed at no additional cost, between the hours of 8:00 AM to 5:00 PM, at a time agreeable to the Lessee.
- c. Contractor must supply, upon request, a monthly service report to the designated representative of Lessee for service performed. The monthly report shall commence only at the specific written request of the contract administrator.

The following information is required on the Contractor Service Report:

\*Serial/Model number of equipment being repaired

\*Service performed

\*Date/Time equipment repaired

\*Date/Time service request received

\*Location of service

\*Cause of breakdown or need of service



- \*Service field engineer's name performing service
- \*Service report control number
- \*Replacement part description
- d. Principle Period of Maintenance (PPM) will be the same hours as the State's normal working hours (currently Monday through Friday, 8:00 AM to 5:00 PM, excluding a one (1) hour lunch period, excepting State observed holidays).
- e. The PPM hours may be changed upon 30 days written notice by mutual agreement, except that the Contractor shall make every reasonable effort to change his schedule in a shorter period of time.
- f. After the initial 12 months of the Maintenance Contract, provided the Contractor has given thirty (30) days prior written notice and furnished documentation, the Lessee may agree to change the maintenance charges paid to the Contractor not to exceed five (5) percent a year.
- g. All repairs performed must be guaranteed for 30 days.
- h. The State has the option to switch the type of maintenance for any or all devices with thirty (30) days written notice.
  1. Monthly

The Contractor shall normally respond within eight (8) PPM hours after notification by the State that the equipment is inoperative. The equipment shall be repaired within four (4) PPM hours of arrival at the site. If the Contractor fails to repair the equipment within the above period, the Contractor shall allow credit, for each work day the equipment is inoperative, in an amount of 1/30 of the monthly minimum maintenance charge for equipment furnished by the Contractor that is not operable as a result of the inoperative equipment (not be exceed one month charge in any calendar month). Equipment which experiences repeated failures may be deemed unreliable equipment under 7.j. below.
- i. Malfunction Reports

The Contractor shall furnish a malfunction incident report to the State upon completion of each maintenance call. Such reports shall initiate at the request of the Contract Administrator and shall continue until designated to halt. The report shall include, as a minimum, the following:

  1. Date and time (hours, minutes, and a.m. or p.m.) notified (to be supplied by user and verified by Contractor).
  2. If applicable, date and time (hours, minutes, and a.m. or p.m.) of arrival (to be supplied by user and verified by Contractor).
  3. Type and model number(s) of machine(s).
  4. Time (hours, minutes, and a.m. or p.m.) repair completed.
  5. Description of malfunction (equipment or software).
  6. If charges are applicable, the estimated full amount.
- j. Unreliable Equipment

In the event of equipment failure to the degree that productivity is seriously impaired, the State shall call for a review of the malfunction reports for the preceding 60 working days. This will be the basis for such review.



If accumulated malfunction time (determined by the malfunction reports) for this period is equal to or exceeds 5 work days excluding travel during this 60 working day period, the State at its option may declare that productivity has been seriously impaired. The malfunction condition(s) shall be corrected within five (5) working days of such review. If the condition(s) is not corrected, the State reserves the option to require the Contractor to replace the equipment, in whole or in part, or provide suitable substitute equipment acceptable to the State as a loan without additional charge to the State. At the end of the five working day period and upon written notice to the Contractor, the State may exercise other options to initiate termination proceedings as provided hereunder. The Contractor is obligated to continue in compliance with contractual terms contained herein until such options are exercised.

When the Contractor provides replacement equipment or substitute equipment, charges will be limited to normal monthly charges for the equipment replaced or for substitute equipment, whichever is less.

The Contractor shall be liable for all outbound preparation and shipping costs for equipment returned pursuant to this provision.

- i. Should equipment fail to maintain an average equipment uptime of 95% over a rolling 90-day period, the State may cancel the contract provided that the State notifies the Contractor in writing of the performance failure and allows the Contractor thirty (30) days to correct the problem to the original standard.

## **2.808 RISK OF LOSS OR DAMAGE**

- a. For Leased Equipment

The Contractor shall specify the care and maintenance to be provided by the Contractor while the leased property is in the custody and control of the State of Michigan. The State shall otherwise maintain the leased property in good condition according to commonly accepted and/or agreed procedures and practices, with reasonable wear and tear excepted. The State shall not be responsible for loss or damage to the property from any cause or occasion which is absent of negligence by the State, its officers or employees.

The State shall not assume responsibility for any liability, cost, damages or expense arising out of death or injury to any person or damage to property caused or occasioned by the Contractor's ownership and/or maintenance of the leased property. The State shall assume responsibility as permitted by the laws of the State of Michigan for any liability, cost, damages or expense arising out of death or injury to any person or damage to property caused or occasioned by the State's use, maintenance or control of the leased property.

The State shall not assume responsibility for any property or liability insurance desired by the Contractor in connection with the leased property, however, the Contractor may include relevant insurance expenses along with other factors considered in the lease rate(s).

- b. During the lease period, the conditions described above for leased property apply. When the purchase option is exercised without further time payments and ownership transfers to the State, all risks of loss or damage to the property and future responsibility for liabilities in connection with the property transfer to the State.
- c. The Contractor shall insure the respective interests of the State and the Contractor in the property against loss or damage from at least the perils specified hereafter, and the Contractor shall include the cost of such insurance in the conditional purchase payments. In the event that the annual premium for the insurance at the time of successive payments should increase or decrease more than \$50.00, the Contractor may increase or shall decrease the remaining payments accordingly, provided such insurance has been obtained at a reasonable cost in relation to available sources. Upon approval of the payment increase or decrease, a Contract Change Notice and a revised amortization schedule will be issued.

The Contractor shall insure the property against loss or damage from:



\*All physical loss, except for causes or circumstances commonly excluded by authorized insurers.

### **2.809 PURCHASE OPTION**

The State reserves the unilateral right to exercise a purchase option for the equipment. The State may exercise this right by paying the Contractor a "Concluding Payment" based on the payment terms specified in the Lease Payment Schedule. The Concluding Payment for a given date shall be defined as the sum of the outstanding principal balance as of that date, plus any unpaid accrued interest as of that date. Upon receiving payment of the Concluding Payment, the Contractor shall transfer any and all of its rights, title, and interest to the equipment and covenant to the State that the equipment is free of any liens or encumbrances.

The principal amount to be paid to Contractor under this Contract shall not be in excess of the total fair market value of the equipment. In making such determination, consideration will be given to the costs of the equipment, the uses and purposes served by the equipment and the benefit that will accrue to the parties by reason of this Contract and to the general public by reason of the State's use of the equipment. Contractor understands that as of the date of execution of this Contract, The State has an appropriation for the equipment for the current fiscal year as defined in 1984 PA 431, MCL 18.1491.

### **2.810 STATE'S DEFAULT**

Any of the following events shall constitute an "Event of Default" under this Lease: (a) Failure by the State to pay any lease payment due under the lease payment schedule or other payment required to be paid under this Contract at the time specified therein; (b) Failure by the State to observe and perform any covenant, condition or agreement on its part to be observed or performed other than as referred to in subparagraph (a) above for a period of thirty (30) thirty business days after written notice specifying such failure and requesting that it be remedied is given to the State by the Contractor; or (c) Any representation or warranty made by the State in or pursuant to this Contract proves to be false in any material respect when made and such breach of representation and warranty is not cured within ten (10) business days of the State's receipt of written notice of such breach.

### **2.811 CONTRACTOR'S REMEDIES ON DEFAULT BY STATE**

Whenever the State defaults and the default is not cured within the period specified in Paragraph 2.810 above, Contractor shall have the right, at its sole option without any further demand, to take one of the following remedial steps: (a) By written notice to the State, declare all lease payments payable to the end of the period for which an appropriation has been made to be immediately due and payable; (b) Take whatever action at law or in equity may appear necessary or desirable to enforce its rights under this Contract or as a secured party in any or all of the equipment including peaceably obtaining possession of the equipment.

### **2.812 RELOCATION AND RETURN OF EQUIPMENT**

#### **a. Relocation**

1. The State reserves the right to move the equipment acquired under this contract from one State office to any other State office within the State
2. The State will notify the Contractor in writing of all equipment relocations within 30 days following the move.
3. The State will provide a relocation site that conforms to the Contractor's specification according to Contractor.
4. The State shall arrange and pay for all transportation, rigging, drayage and any other relocation charges.
5. Rearrangement of equipment within the same office for the State's convenience shall be at the State's expense.

**d. Return of Equipment**

1. If equipment is returned to the Contractor for failure to fulfill contractual obligations, the following procedure will be used:
  - a) Within 20 days of written notification to the Contractor, the equipment will be prepared by the Contractor for removal and shall provide the State with required shipping instructions.
  - b) Within 30 days, the State shall ship the equipment in accordance with above instructions (d1.a).
2. All shipping costs will be borne by the Contractor.

**2.813 TAX COVENANT**

It is the intention of the State and Contractor that the interest portion of the lease payments received by Contractor be and remain free from federal income taxation. The State covenants that it will not intentionally perform any act or enter into any agreement or use or permit the use of the equipment or any portion thereof in a manner that shall have the effect of terminating the exemption from federal income taxation of the interest portion of the lease payments.

**2.814 IRS REPORTING**

The parties shall cooperate to ensure compliance with IRS reporting requirements. Contractor shall prepare for the Lessee's signature after the PARE period and Equipment acceptance by the Lessee, an IRS Form 8038G, or take such other action requested by other Lessee agencies, including, but not limited to, the Lessee Treasurer's Office. Contractor shall provide the Director of Acquisition Services of the Department of Management and Budget with a copy of the IRS Form 8038G and Affidavit if Mailing in the form for the IRS Form 8038G filed with the IRS. However, the parties acknowledge that Contractor has the exclusive responsibility to file IRS Form 8038G and has exclusive liability for any penalties, costs, damages, or other consequences resulting from a failure to properly and timely file.

**2.815 TITLE**

Title to equipment, accessories and devices leased with Option to Purchase under this Contract shall remain with the Contractor until the State makes the final payment. If the purchase option is exercised by the State, title will pass to the State at that time.



## SPECIFICATIONS

<b>Printing Speed:</b>	Minimum 48 feet per minute	
<b>Printing Resolution:</b>	240, 300, and 600 dip (auto resolution)	
<b>Printing Method:</b>	LED electrophotography, flash fusing without paper contact	
<b>Form Sizes:</b>	Width: 6.5" to 18" infinitely variable Length: 7" to 14" in 1/6" increments	
<b>Form Types:</b>	Continuous form, plain white paper stock, colored stock, card stock, pre-printed, perforated, or pinfed	
<b>Form Weights:</b>	17-42 lb. Bond	
<b>Paper Feed:</b>	Self-loading tractor fed continuous forms, box or roll feed (pinfed)	
<b>Paper Transport:</b>	Pinfed	
<b>PDL Support:</b>	Adobe Postscripts (3), PCL (4 and 5E). TIFF, ASCII, PDF, AFPDS, LCDS, Metacode, IPDS	
<b>Connectivity:</b>	Channel, ESCON, SCSI (HVD or LVD), 10/100/1000Base-T Gigabit Ethernet or 1000Base-SX Gigabit Ethernet	
<b>Print Controller:</b>	SRA	
<b>Electrical:</b>	200-240V	210V
	+10% to -10%	10%
	Frequency: 50 Hz +/-2	60 Hz +/- 2 Hz
	Safety fuse: 30A	30A
<b>Power Cable &amp; Plug:</b>	Nema L6-30	
<b>Operating Temperature Range:</b>	59 degrees F through 80 degrees F	
<b>Operating Humidity Range:</b>	45% through 55%	



**PRICING SHEET**

Commodity Code	Quantity	Unit	Description	Unit Cost
985-64	60	MO	<p>Sixty-month lease of two (2) Flash Fusion Printers. Pricing shall include all printer hardware, monthly maintenance, consumables based on 4% coverage and usage charges based on a minimum of 675,000 feet. Unit cost reflects trade-in of one (1) Unisys 8090A, Serial # 35072, in the amount \$4,500.00 (\$75.00/month). (Unit cost is \$5,100.00 per printer per month.)</p> <p>Usage charges over 675,000 feet per month:  <u>\$3.90/thousand feet</u>                      (cost not to include consumables)</p> <p>Consumable usage above 675,000:  <u>\$3.75/thousand feet (based on 4% page coverage)</u></p> <p>Vendor shall respond within four (4) hours from time call is placed on all maintenance/repair calls. Service Toll free telephone number is 800-892-7677.</p> <p>Buy-out cost per printer upon completion of 60-month lease:  <u>\$25,000 per machine</u></p> <p><b>MAKE: <u>Oce</u></b></p> <p><b>MODEL: <u>Vario Stream 6100</u></b></p>	<u>\$10,200.00</u>

**TERMS AND CONDITIONS****CONTRACT #071B5200106**

State of Michigan                      Date: 10/04/04                      Models:                      2-6100's

Amount Financed:                      \$181,816.00    End of Term Option:                      \$50,000.00

**CALCULATED PAYMENT**Terms in Months:                      60    Calculated P&I:                      \$2,975.00  
Payments per Year:                      12**This schedule is for information purposes only. Customer is required to make all payments under lease contract.**

<u>Pmt#</u>	<u>Payment \$</u>	<u>Principal</u>	<u>Interest</u>	<u>Customer Buyout</u>
1	\$2,975.00	\$2,975.00	\$0.00	\$178,841.00
2	\$2,975.00	\$1,799.13	\$1,175.87	\$177,041.87
3	\$2,975.00	\$1,810.96	\$1,164.04	\$175,230.90
4	\$2,975.00	\$1,822.87	\$1,152.13	\$173,408.04
5	\$2,975.00	\$1,834.85	\$1,140.15	\$171,573.18
6	\$2,975.00	\$1,846.92	\$1,128.08	\$169,726.26
7	\$2,975.00	\$1,859.06	\$1,115.94	\$167,867.20
8	\$2,975.00	\$1,871.28	\$1,103.72	\$165,995.92
9	\$2,975.00	\$1,883.59	\$1,091.41	\$164,112.33
10	\$2,975.00	\$1,895.97	\$1,079.03	\$162,216.35
11	\$2,975.00	\$1,908.44	\$1,066.56	\$160,307.92
12	\$2,975.00	\$1,920.99	\$1,054.01	\$158,386.93
13	\$2,975.00	\$1,933.62	\$1,041.38	\$156,453.31
14	\$2,975.00	\$1,946.33	\$1,028.67	\$154,506.98
15	\$2,975.00	\$1,959.13	\$1,015.87	\$152,547.85
16	\$2,975.00	\$1,972.01	\$1,002.99	\$150,575.85
17	\$2,975.00	\$1,984.97	\$990.03	\$148,590.87
18	\$2,975.00	\$1,998.03	\$976.97	\$146,592.85
19	\$2,975.00	\$2,011.16	\$963.84	\$144,581.68
20	\$2,975.00	\$2,024.39	\$950.61	\$142,557.30
21	\$2,975.00	\$2,037.70	\$937.30	\$140,519.60
22	\$2,975.00	\$2,051.09	\$923.91	\$138,468.51
23	\$2,975.00	\$2,064.58	\$910.42	\$136,403.93
24	\$2,975.00	\$2,078.15	\$896.85	\$134,325.78
25	\$2,975.00	\$2,091.82	\$883.18	\$132,233.96
26	\$2,975.00	\$2,105.57	\$869.43	\$130,128.39
27	\$2,975.00	\$2,119.41	\$855.59	\$128,008.97
28	\$2,975.00	\$2,133.35	\$841.65	\$125,875.62
29	\$2,975.00	\$2,147.38	\$827.62	\$123,728.25
30	\$2,975.00	\$2,161.50	\$813.50	\$121,566.75
31	\$2,975.00	\$2,175.71	\$799.29	\$119,391.04
32	\$2,975.00	\$2,190.01	\$784.99	\$117,201.03
33	\$2,975.00	\$2,204.41	\$770.59	\$114,996.62
34	\$2,975.00	\$2,218.91	\$756.09	\$112,777.71
35	\$2,975.00	\$2,233.49	\$741.51	\$110,544.22
36	\$2,975.00	\$2,248.18	\$726.82	\$108,296.04
37	\$2,975.00	\$2,262.96	\$712.04	\$106,033.08



38	\$2,975.00	\$2,277.84	\$697.16	\$103,755.24
39	\$2,975.00	\$2,292.82	\$682.18	\$101,462.42
40	\$2,975.00	\$2,307.89	\$667.11	\$99,154.53
41	\$2,975.00	\$2,323.07	\$651.93	\$96,831.46
42	\$2,975.00	\$2,338.34	\$636.66	\$94,493.13
43	\$2,975.00	\$2,353.71	\$621.29	\$92,139.41
44	\$2,975.00	\$2,369.19	\$605.81	\$89,770.22
45	\$2,975.00	\$2,384.77	\$590.23	\$87,385.45
46	\$2,975.00	\$2,400.45	\$574.55	\$84,985.01
47	\$2,975.00	\$2,416.23	\$558.77	\$82,568.78
48	\$2,975.00	\$2,432.12	\$542.88	\$80,136.66
49	\$2,975.00	\$2,448.11	\$526.89	\$77,688.55
50	\$2,975.00	\$2,464.20	\$510.80	\$75,224.35
51	\$2,975.00	\$2,480.41	\$494.59	\$72,743.95
52	\$2,975.00	\$2,496.71	\$478.29	\$70,247.23
53	\$2,975.00	\$2,513.13	\$461.87	\$67,734.10
54	\$2,975.00	\$2,529.65	\$445.35	\$65,204.45
55	\$2,975.00	\$2,546.29	\$428.71	\$62,658.16
56	\$2,975.00	\$2,563.03	\$411.97	\$60,095.14
57	\$2,975.00	\$2,579.88	\$395.12	\$57,515.26
58	\$2,975.00	\$2,596.84	\$378.16	\$54,918.42
59	\$2,975.00	\$2,613.92	\$361.08	\$52,304.50
60	\$2,975.00	\$2,631.10	\$343.90	\$49,673.40
EOT	\$50,000.00	\$49,673.40	\$326.60	\$0.00