Form No. DMB 234 (Rev. 1/96)
AUTHORITY: Act 431 of 1984
COMPLETION: Required
PENALTY: Contract will not be executed unless form is filed

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

October 6, 2005

NOTICE
OF
CONTRACT NO. 071B5200330
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR **Xerox Corporation** **4650 South Hagadorn** **E. Lansing, MI 48823**	TELEPHONE: Greg Mohr **(517) 333-5569** VENDOR NUMBER/MAIL CODE **(001)** BUYER/CA (517) 373-7374 **Joan Bosheff**
Contract Compliance Inspector: Vern Thelen **60 – Month Rental of Digital Product System - DMB**	
CONTRACT PERIOD: From: **October 15, 2005** To: **October 15, 2010**	
TERMS **N/A**	SHIPMENT **N/A**
F.O.B. **Delivered & Installed**	SHIPPED FROM **N/A**
MINIMUM DELIVERY REQUIREMENTS **N/A**	

The terms and conditions of this Contract are those of ITB #071I5200148 this Contract Agreement and the vendor's quote dated April 4, 2005. In the event of any conflicts between the specifications, terms and conditions indicated by the State and those indicated by the vendor, those of the State take precedence.

Estimated Contract Value: $331,344.60

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Xerox Corporation **4650 South Hagadorn** **E. Lansing, MI 48823**	VENDOR NUMBER/MAIL CODE **(001)**
	BUYER/CA (517) 373-7374 **Joan Bosheff**

Contract Compliance Inspector: Vern Thelen

60 – Month Rental of Digital Product System - DMB

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TERMS **N/A**	SHIPMENT **N/A**	
F.O.B. **Delivered & Installed**	SHIPPED FROM **N/A**	
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MISCELLANEOUS INFORMATION:

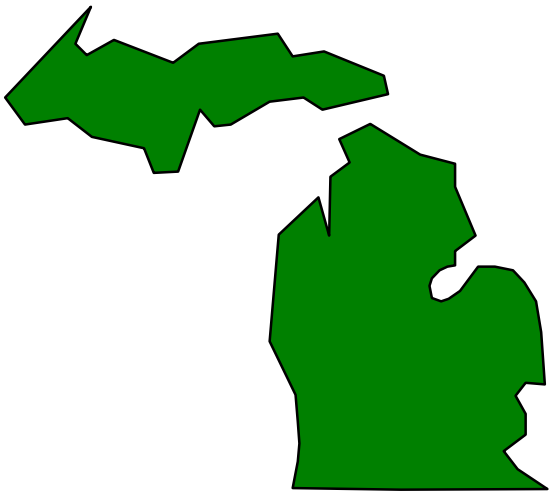
The terms and conditions of this Contract are those of ITB #071I5200148 this Contract Agreement and the vendor's quote dated April 4, 2005. In the event of any conflicts between the specifications, terms and conditions indicated by the State and those indicated by the vendor, those of the State take precedence.

Estimated Contract Value: $331,344.60

THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the ITB No.071I5200148. Orders for delivery of equipment will be issued directly by the Department of Management & Budget through the issuance of a Purchase Order Form.

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

FOR THE VENDOR:	**FOR THE STATE:**
Xerox Corporation Firm Name	Signature
Authorized Agent Signature	**Joan Bosheff, Buyer Specialist** Name/Title
Authorized Agent (Print or Type)	**Commodities Division, Acquisition Services** Title
Date	Date



STATE OF MICHIGAN
Department of Management and Budget
Acquisition Services

Contract #071B5200330
60-Month Lease/Purchase of Digital Production System

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

TABLE OF CONTENTS

ARTICLE 1 – STATEMENT OF WORK (SOW) 1
1.0 Introduction 1
1.001 PROJECT TITLE AND DESCRIPTION 1
1.002 PROJECT CONTROL 1
1.003 COMMENCEMENT OF WORK 1
1.1 Product Quality 1
1.101 SPECIFICATIONS 1
1.2 Service Capabilities 1
1.201 CUSTOMER SERVICE/ORDERING 1
1.202 TRAINING 1
1.203 REPORTING 2
1.205 SECURITY 2
1.3 Delivery Capabilities 2
1.301 DELIVERY TERM 2
1.4 Project Price 2
1.401 PROPOSAL PRICING 2
1.402 QUICK PAYMENT TERMS 2
1.403 PRICE TERM 2
1.5 Quantity term 2
ARTICLE 2 – GENERAL TERMS AND CONDITIONS 3
2.0 Introduction 3
2.001 GENERAL PURPOSE 3
2.002 ISSUING OFFICE AND CONTRACT ADMINISTRATOR 3
2.003 NOTICE 3
2.004 CONTRACT TERM 3
2.005 GOVERNING LAW 4
2.006 APPLICABLE STATUTES 4
2.007 RELATIONSHIP OF THE PARTIES 5
2.008 HEADINGS 5
2.009 MERGER 5
2.010 SEVERABILITY 5
2.011 SURVIVORSHIP 5
2.012 NO WAIVER OF DEFAULT 5
2.013 PURCHASE ORDERS 5
2.1 Vendor/Contractor Obligations 5
2.101 ACCOUNTING RECORDS 5
2.102 NOTIFICATION OF OWNERSHIP 6
2.103 SOFTWARE COMPLIANCE 6
2.104 LABOR RELATIONS 6
2.105 RESERVED 7
2.106 PREVAILING WAGE 7
2.107 WORKPLACE DISCRIMINATION 7
2.108 COMPETITION IN SUBCONTRACTING 7
2.109 CALL CENTER DISCLOSURE 8
2.2 Contract Performance 8
2.201 TIME IS OF THE ESSENCE 8
2.202 CONTRACT PAYMENT 8
2.203 ELECTRONIC PAYMENT AVAILABILITY 8
2.3 Contract Rights and Obligations 8
2.301 INCURRING COSTS 8
2.302 CONTRACTOR RESPONSIBILITIES 8
2.303 ASSIGNMENT AND DELEGATION 9
2.304 TAXES 9
2.305 INDEMNIFICATION 9
2.306 LIMITATION OF LIABILITY 12
2.307 CONTRACT DISTRIBUTION 12

2.308 FORM, FUNCTION, AND UTILITY 12
2.309 ASSIGNMENT OF ANTITRUST CAUSE OF ACTION 12
2.210 LIABILITY INSURANCE 12
2.311 WEBSITE INCORPORATION 15
2.4 Contract Review and Evaluation 15
2.401 CONTRACT COMPLIANCE INSPECTOR 15
2.402 PERFORMANCE REVIEWS 15
2.5 Quality and Warranties 16
2.501 PROHIBITED PRODUCTS 16
2.502 QUALITY ASSURANCE 16
2.503 INSPECTION 16
2.504 GENERAL WARRANTIES (goods) 16
2.505 CONTRACTOR WARRANTIES 16
2.506 RESERVED 18
2.6 Breach of Contract 18
2.601 BREACH DEFINED 18
2.602 NOTICE AND THE RIGHT TO CURE 18
2.603 EXCUSABLE FAILURE 18
2.7 Remedies 19
2.701 CANCELLATION 19
2.702 LIQUIDATED DAMAGES 20
2.8 Changes, Modifications, and Amendments 20
2.801 APPROVALS 20
2.802 TIME EXTENTIONS 20
2.803 MODIFICATION 20
2.804 RESERVED 21
2.805 RESERVED 21

Attachments:

Specifications
Item Listing

ARTICLE 1 – STATEMENT OF WORK (SOW)

1.0 Introduction

1.001 PROJECT TITLE AND DESCRIPTION

This Contract is for the 60-Month Rental of one (1) Digital Production System.

1.002 PROJECT CONTROL

Project Control

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

1.003 COMMENCEMENT OF WORK

The Contractor shall show acceptance of this agreement by signing a copy of this contract and returning it to the contract administrator. The Contractor shall not proceed with performance of the work to be done under this agreement, including the purchase of necessary materials, until both parties have signed this agreement to show acceptance of its terms.

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 all personnel assigned to State of Michigan facilities (i.e. delivery people), 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 DELIVERY TERM

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

1.4 Project Price

1.401 PROPOSAL 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 are firm for the entire length of the Contract.

1.5 Quantity term

The Contractor agrees to supply all that the State requires.

ARTICLE 2 – GENERAL TERMS AND CONDITIONS

2.0 Introduction

2.001 GENERAL PURPOSE

This Contract is for the 60-Month Rental of one (1) Digital Product System 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. Orders for delivery will be issued directly to the Contractor by the Department of Management and Budget on the Purchase Order Contract Release Form.

Indicated on the Item Listing is the "ship to" address for the participating agency. However, if the Contractor and the State agree, additional State agencies may participate should the need develop.

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, Print and Graphic Services, hereinafter known as P&GS. Where actions are a combination of those of Acquisition Services and P&GS, 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

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 (CWHSAA) 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 the State Departments 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 vendor 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 LABOR RELATIONS

Pursuant to 1980 Public Act 278, as amended, MCL 423.231, et seq., the State shall not award a Contract or subcontract to an employer whose name appears in the current register of employers failing to correct an **unfair labor practice** compiled pursuant to Section 2 of the Act. A Contractor of the State, in relation to the Contract, shall not enter into a Contract with a subcontractor, manufacturer, or supplier whose name appears in this register. Pursuant to Section 4 of 1980 Public Act 278, MCL 423.324, the State may void any Contract if, subsequent to award of the Contract, the name of the Contractor as an employer, or the name of the subcontractor, manufacturer or supplier of the Contractor appears in the register.

The Contractor represents and warrants that the company does not appear in the current register of employers failing to correct an unfair labor practice.

2.105 RESERVED

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 WORKPLACE DISCRIMINATION

The Contractor represents and warrants that in performing services for the State pursuant to this Contract, the Contractor agrees not to discriminate against any employee or applicant for employment, with respect to their hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, ancestry, age, sex, height, weight, marital status, physical or mental handicap or disability. The Contractor further agrees that every subcontract entered into for the performance of any Contract or purchase order resulting here from will contain a provision requiring non-discrimination in employment, as herein specified, binding upon each subcontractor. This covenant is required pursuant to the Elliot Larsen Civil Rights Act, 1976 Public Act 453, as amended, MCL 37.2201, et seq., and the Persons With Disabilities Civil Rights Act, 1976 Public Act 220, as amended, MCL 37.1101, et seq., and any breach thereof may be regarded as a material breach of the Contract or purchase order.

Vendor hereby represents that in performing this contract it will not violate The Civil Rights Act of 1964, USCS Chapter 42, including, but not limited to, Title VII, 42 USCS §§ 2000e et seq.; the Americans with Disabilities Act (ADA), 42 USCS §§ 12101 et seq.; or 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.; or the Fair Labor Standards Act (FLSA), 29 USC §§ 201 et seq.

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 31st 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 ELECTRONIC PAYMENT AVAILABILITY

Electronic transfer of funds is available to State contractors. The Contractor is 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.

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 Contract 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

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 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 P&GS 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 the 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.

2.210 LIABILITY INSURANCE

A. <u>Insurance</u>

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

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

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

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

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

See www.michigan.gov/cis

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

Before both parties sign the Contract or before the purchase order is issued by the State, the Contractor must furnish to the Director of Acquisition Services, certificate(s) of insurance verifying insurance coverage ("Certificates"). The Certificate must be on the standard "accord" form or equivalent. **THE CONTRACT OR PURCHASE ORDER NO. MUST BE SHOWN ON THE CERTIFICATE OF INSURANCE TO ASSURE CORRECT FILING.** All Certificate(s) are to be prepared and submitted by the Insurance Provider. All Certificate(s) shall contain a provision indicating that coverage afforded under the policies WILL NOT BE CANCELLED, MATERIALLY CHANGED, OR NOT RENEWED without THIRTY (30) days prior written notice, except for ten (10) days for non-payment of premium, having been given to the Director of Acquisition Services, Department of Management and Budget. The notice must include the Contract or Purchase Order number affected and be mailed to: Director, Acquisition Services, Department of Management and Budget, P.O. Box 30026, Lansing, Michigan 48909. Failure to provide evidence of coverage, may, at the State's sole option, result in this Contract's termination.

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

1. Commercial General Liability with the following minimum coverage:

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

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

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

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

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

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

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

4. Employers liability insurance with the following minimum limits:

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

5. Employee Fidelity, including Computer Crimes, insurance naming the State as a loss payee, providing coverage for direct loss to the State and any legal liability of the State arising out of or related to fraudulent or dishonest acts committed by the employees of Contractor or its Subcontractors, acting alone or in collusion with others, in a minimum amount of one million dollars ($1,000,000.00) with a maximum deductible of fifty thousand dollars ($50,000.00).

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

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

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

B. <u>Subcontractors</u>

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

C. <u>Certificates of Insurance and Other Requirements</u>

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

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

2.311 WEBSITE INCORPORATION

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

2.4 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
Department of Management and Budget
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 P&GS 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.

2.5 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, it 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

2.6 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, workaround plans or other means, including disaster recovery plans. In such event, the non-performing party will be excused from any further performance or observance of the obligation(s) so affected for as long as such circumstances prevail and such party continues to use its 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, workaround 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.

5. 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 LIQUIDATED DAMAGES

A. The State and the Contractor hereby agree to the specific standards set forth in this Contract. It is agreed between the Contractor and the State that the actual damages to the State as a result of Contractor's failure to provide promised services would be difficult or impossible to determine with accuracy. The State and the Contractor therefore agree that liquidated damages as set out herein shall be a reasonable approximation of the damages that shall be suffered by the State as a result thereof. Accordingly, in the event of such damages, at the written direction of the State, the Contractor shall pay the State the indicated amount as liquidated damages, and not as a penalty. Amounts due the State as liquidated damages, if not paid by the Contractor within fifteen (15) days of notification of assessment, may be deducted by the State from any money payable to the Contractor pursuant to this Contract. The State will notify the Contractor in writing of any claim for liquidated damages pursuant to this paragraph on or before the date the State deducts such sums from money payable to the Contractor. No delay by the State in assessing or collecting liquidated damages shall be construed as a waiver of such rights.

B. The Contractor shall not be liable for liquidated damages when, in the opinion of the State, incidents or delays result directly from 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, fires, floods, epidemics, and labor unrest; but in every case the delays must be beyond the control and without the fault or negligence of the Contractor.

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

SPECIFICATIONS
DIGITAL PRODUCTION SYSTEM

Capabilities
- Copy, Print, Scan, Finish

Scanner
- Scan speed: 110 ipm (single- and two-sided originals) minimum
- Scan to File Resolution: 300, 400, 600, dpi
- Paper size originals: 5.5” x 8.5” to 11” x 17”
- Paper feed capacity: 100 sheets minimum
- Paper weight ranges: 16 lb. to 80 lb. cover.
- Automatic deskewing feature

Printer

Features
- Copies, prints, scans, and finishes concurrently at up to 110 images per minute
- Integrated controller with interface
- Customizable image quality controls
- Stores jobs on the integrated CD-RW drive or the on-board hard drive

Performance
- Rated copy/print speed:
  - 8.5" x 11" media: 110 ipm minimum
  - 11" x 17" media: 55 ipm minimum
- Resolution: 600 x 600 dpi minimum
- Recommended average monthly volume: 100,000 - 500,000 images per month
- Minimum print size 8” x 10” or exceeding
- Maximum print size 12” x 18” or exceeding

Paper Handling
- Paper sources: Minimum 3 paper trays per feed module, adaptable to additional feed modules
- Paper Capacity: 4,000 sheets per module minimum (20 lb bond)
- Weights: 16 lb. to 110 lb. index
- Vacuum air shuttle feed system
- Media Types: Transparencies, tabs, plastic tabs, labels, bond, Bristol, cover, index, offset, recycled, carbonless, pre-printed offset forms
- Finisher: 2 trays minimum – Top & Bottom
- Finisher capacity: Top tray 250 sheets minimum (20 lb bond)
  Bottom, Stacker 3000 sheets minimum (20 lb bond), offset between sets or jobs
- Finisher ability
  - Stapling: multiposition, none, top, bottom, both, (100 sheets)
  - Collating
  - Impositioning

Input
- Automatic Document Feeder: 200 sheets
- Electronic Input: Network, CD, On-Board Storage

Key Applications

- Mid production environments requiring lower volumes of complex documents
- Appropriate for jobs requiring:
  - Custom feature selection on each page
  - Integration of hardcopy originals and digital print files
  - Output that is stapled, folded or imposed into booklets
  - Network printing

Technology

- CPU: 650 MHz Ultra SPARC IIe
- Memory: 1 GB
- Hard Disk: 80 GB
- Optional second hard drive: 146 GB
- PDLs: Adobe PostScript® 3, TIFF, PCL 6, PDF, Multi-page TIFF
- Interfaces: 10/100 BaseT (Ethernet), TCP/IP, LPR, IPP, HTTP, Token Ring, Novell® (SPX/IPX), AppleTalk®
- CD-RW/DVD-ROM Drive
- 15" color flat panel monitor (attached), USB keyboard, USB mouse

Product must be compatible with Xerox controller and job submission architecture. If additional job management software is needed to make product bid compatible, the software costs must be included.

MANUFACTURER: Xerox MODEL: Nuvera 120

PRICING SHEET

Commodity Code	Quantity	Unit	Description	Unit Cost
600-38	60	MO	Sixty-month rental of one (1) Digital Product System Printing System to include the following: P120 Copier/Printer, DTCPSW, ETHERCON, MPOSITN, MFFPRO, and NOTCONECT. Unit price reflects trade-in of one (1) Xerox 5896, Serial #T5C025345, and one (1) Xerox Docutech, Serial #G8T070865, in the total amount of $16,000.00.	$3,050.25
			Pricing includes 200,000 copies/prints per month and all supplies except paper and staples. Prints/Copies over 200,000 per month to be billed at $0.0041 per print/copy.	
			One-time charge of the following:	
			Analyst Support	$1,000.00
			Training	$2,500.00
			MAKE: Xerox	
			MODEL: Nuvera 120	

Ship-To Location: Department of Management and Budget
Print and Graphic Services
General Services Building
7461 Crowner Drive
Lansing, Michigan 48913