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
PURCHASING OPERATIONS
P.O. BOX 30026, LANSING, MI 48909
OR
530 W. ALLEGAN, LANSING, MI 48933

July 9, 2009

CHANGE NOTICE NO. 4
TO
CONTRACT NO. 071B8200022
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR	TELEPHONE (517) 333-5593 **Michael Curley**
Xerox Corporation **4650 South Hagadorn Road** **East Lansing, MI 48823** **michael.curley@xerox.com**	BUYER/CA (517) 373-6535 **William C. Walsh, CPPB**
Contract Compliance Inspector: Vern Thelen **Printer/Copier Equipment Maintenance – DMB – Consolidated Print Center**	
CONTRACT PERIOD: From: **October 1, 2007** To: **September 30, 2010**	
TERMS **Net 45 Days**	SHIPMENT **N/A**
F.O.B. **N/A**	SHIPPED FROM **N/A**
MINIMUM DELIVERY REQUIREMENTS **As Needed per CCI**	

NATURE OF CHANGE(S):

Effective July 1, 2009, the following CHANGES are hereby made to this Contract:

***The following Printer/Copiers are hereby REMOVED from this Contract:**

Serial Numbers: H2L110939, H2L110941, H2L110595 and H2L111223.

***The monthly maintenance fee for the following equipment is hereby ADDED to this Contract:**

DocuSheeter 9543 - $790.00 per month

Hi Capacity Stacker POF-992586 - $100.00 per month

AUTHORITY/REASON:

Per request of Agency, (PRF dated 6/3/09), Vendor agreement (letter dated April 28, 2009), and DMB/Purchasing Operations' approval.

CURRENT AUTHORIZED SPEND LIMIT REMAINS: $1,987,763.53

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
PURCHASING OPERATIONS
P.O. BOX 30026, LANSING, MI 48909
OR
530 W. ALLEGAN, LANSING, MI 48933

April 6, 2009

CHANGE NOTICE NO. 3
TO
CONTRACT NO. 071B8200022
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR	TELEPHONE (517) 333-5593 **Michael Curley**
Xerox Corporation **4650 South Hagadorn Road** **East Lansing, MI 48823** **michael.curley@xerox.com**	BUYER/CA (517) 373-6535 **William C. Walsh, CPPB**
Contract Compliance Inspector: Vern Thelen **Printer/Copier Equipment Maintenance – DMB – Consolidated Print Center**	
CONTRACT PERIOD: From: **October 1, 2007** To: **September 30, 2010**	
TERMS **Net 45 Days**	SHIPMENT **N/A**
F.O.B. **N/A**	SHIPPED FROM **N/A**
MINIMUM DELIVERY REQUIREMENTS **As Needed per CCI**	

NATURE OF CHANGE(S):

Effective April 2, 2009, the following equipment is ADDED to this Contract:

No.	Machine/Location	Ser.#	Start Date	Controller	Print Module	Licenses
12	CPC DP 135	G3U100651	5/1/2009	VNH994173	DP2K135 Docuprint S/W Ser# P2KSW2	VIPP 1-3 Ser# VIPP1-3 Sixth Sense Enable

Effective March 16, 2009, the DMB Buyer for this Contract is hereby CHANGED to William C. Walsh, CPPB, Buyer Manager, (517) 373-6535. All other terms, conditions, specifications, and pricing remain unchanged.

AUTHORITY/REASON:

Per agency request, (PRF dated 3/5/09,) vendor agreement (Fax dated 3/3/09), and DMB/Purchasing Operations' approval.

CURRENT AUTHORIZED SPEND LIMIT REMAINS: $ 1,987,763.53

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
PURCHASING OPERATIONS
P.O. BOX 30026, LANSING, MI 48909
OR
530 W. ALLEGAN, LANSING, MI 48933

September 15, 2008

CHANGE NOTICE NO. 2
TO
CONTRACT NO. 071B8200022
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR **Xerox Corporation** **4650 South Hagadorn Road** **East Lansing, MI 48823** **michael.curley@xerox.com**	TELEPHONE (517) 333-5593 **Michael Curley** BUYER/CA (517) 241-3768 **Lance Kingsbury**
Contract Compliance Inspector: Vern Thelen **Printer/Copier Equipment Maintenance – DMB – Consolidated Print Center**	
CONTRACT PERIOD: From: **October 1, 2007**	To: **September 30, 2010**
TERMS **Net 30 Days**	SHIPMENT **N/A**
F.O.B. **N/A**	SHIPPED FROM **N/A**
MINIMUM DELIVERY REQUIREMENTS **As Needed per CCI**	

NATURE OF CHANGE(S):

Effective immediately, this Contract is hereby INCREASED $86,800.00, in order to provide maintenance for MSP for the existing Xerox Docutech printer and peripheral equipment through September 30, 2010.

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

AUTHORITY/REASON:

Per request from Agency (PRF dated 6/24/2008) and DMB/Purchasing Operations' approval.

REVISED CURRENT AUTHORIZED SPEND LIMIT: $1,987,763.53

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
PURCHASING OPERATIONS
P.O. BOX 30026, LANSING, MI 48909
OR
530 W. ALLEGAN, LANSING, MI 48933

January 4, 2008

CHANGE NOTICE NO. 1
TO
CONTRACT NO. 071B8200022
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR **Xerox Corporation** **4650 South Hagadorn Road** **East Lansing, MI 48823** **michael.curley@xerox.com**	TELEPHONE (517) 333-5593 **Michael Curley** BUYER/CA (517) 241-3768 **Lance Kingsbury**
Contract Compliance Inspector: Vern Thelen **Printer/Copier Equipment Maintenance – DMB – Consolidated Print Center**	
CONTRACT PERIOD: From: **October 1, 2007**	To: **September 30, 2010**
TERMS **Net 30 Days**	SHIPMENT **N/A**
F.O.B. **N/A**	SHIPPED FROM **N/A**
MINIMUM DELIVERY REQUIREMENTS **As Needed per CCI**	

NATURE OF CHANGE(S):

Effective immediately, this Contract is hereby INCREASED $27,000.00.

This Change Notice is for the maintenance on the Docutech Printer located at: Michigan State Police Department; 714 S. Harrison Rd.; East Lansing, MI 48823 <u>and ONLY effective through September 30, 2008.</u>

The Contract Compliance Inspector at this location is: Marcia White (517) 336.6183.

See below pages for pricing and printer information related to this additional service.

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

AUTHORITY/REASON:

Per request from Agency (PRF dated 9/28/2007) and DMB/Purchasing Operations.

REVISED CURRENT AUTHORIZED SPEND LIMIT: $1,900,963.53

551R8200014

Serial Number - 8VE050179

Worksheet created on September 20, 2007 09:15:36 AM EST
Customer Number: 305507659 Contract Type: Rental/Maintenance

Contract Office:	Install Address: Update Address	Bill To Address: Update Address
	MICH STATE POLICE DEPARTMENTAL SVCS 714 S HARRISON RD EAST LANSING MI 48823	DEPT OF STATE POLICE DEPARTMENTAL SVCS ATTN DAVID ZINK 714 S HARRISON RD EAST LANSING MI 48823

Market Code: 6180PM Model: Bill Code: 5933| Pool ID: 000000000
Contract Period: 10/01/07 to 09/30/08
Price Plan: Supply Maint-Cost Per Copy Plan PO#: 551N7200143

Serial #	Description	Qty	Unit Issue	Unit Price	Amount
8VE050179	DT PRINT MODUE	12	Mo	$1,725.00	$20,700.00
Accessories:					
0VF025771	FINISHER 60 HZ			$0.00	$0.00
6180INT				$0.00	$0.00
6PC051510	INTERPOSER			$0.00	$0.00
AGATE				$0.00	$0.00
DTFIN3				$0.00	$0.00
NGATE				$0.00	$0.00
PHUB				$0.00	$0.00

Allowance: 200000

Estimated Excess Meters:
Meter 1 Excess Prints of 0, bill at $0.0000
Meter 2 Excess Prints of 0, bill at $0.0000

Total Estimated Excess Prints Per Period $0.00
Total Estimated Excess Prints Per Year $0.00

TOTAL ANNUAL ESTIMATE $20,700.00

5 1 R0a00.4

Serial Number - R9H300927

Worksheet created on September 20, 2007 09:27:29 AM EST

Customer Number: 305507659 Contract Type: Rental/Maintenance

Contract Office:	Install Address: Update Address	Bill To Address: Update Address
	MICH STATE POLICE DEPARTMENTAL SVCS 714 S HARRISON RD EAST LANSING MI 48823	DEPT OF STATE POLICE DEPARTMENTAL SVCS ATTN DAVID ZINK 714 S HARRISON RD EAST LANSING MI 48823

Market Code: CNTRLUL2C Model: F BillCode: 5933| Pool ID: 000000000
Contract Period: 10/01/07 to 09/30/08
Price Plan: Maintenance Plan- No Supplies PO#: 551N2000038 NR07

Serial #	Description	Qty	Unit Issue	Unit Price	Amount
R9H300927	CONTROLLER	12	Mo	$195.00	$2,340.00
Accessories:					
512MEMUP				$0.00	$0.00
H8Y3	8 GB TAPE DRIVE			$0.00	$0.00
R3P3	9.1GB EXT HARD DRV			$0.00	$0.00

Allowance: 0

Estimated Excess Meters:
Meter 1 Excess Prints of 0, bill at $0.0000

Total Estimated Excess Prints Per Period $0.00
Total Estimated Excess Prints Per Year $0.00

TOTAL ANNUAL ESTIMATE $2,340.00

551R8200014

Serial Number - RDF930858

Worksheet created on September 20, 2007 02:49:02 PM EST

Customer Number: 305507659 Contract Type: Rental/Maintenance

Contract Office:	Install Address: Update Address	Bill To Address: Update Address
	MICH STATE POLICE DEPARTMENTAL SVCS 714 S HARRISON RD EAST LANSING MI 48823	DEPT OF STATE POLICE DEPARTMENTAL SVCS ATTN DAVID ZINK 714 S HARRISON RD EAST LANSING MI 48823

Market Code: DIGIPRO4 Model: A BillCode: 5933| Pool ID: 000000000
Contract Period: 10/01/07 to 09/30/08
Price Plan: Maintenance Plan - No Supplies PO#: 551N7200143

Serial #	Description	Qty	Unit Issue	Unit Price	Amount
RDF930858	DIGIPATH 4.0	12	Mo	$270.00	$3,240.00
Accessories:					
EF6146990				$0.00	$0.00
PRODSCAN				$0.00	$0.00

Allowance: 0

Estimated Excess Meters:
Meter 1 Excess Prints of 0, bill at $0.0000

Total Estimated Excess Prints Per Period $0.00
Total Estimated Excess Prints Per Year $0.00

TOTAL ANNUAL ESTIMATE $3,240.00

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
PURCHASING OPERATIONS
P.O. BOX 30026, LANSING, MI 48909
OR
530 W. ALLEGAN, LANSING, MI 48933

October 1, 2007

NOTICE
TO
CONTRACT NO. 071B8200022
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR **Xerox Corporation** **4650 South Hagadorn Road** **East Lansing, MI 48823** **michael.curley@xerox.com**	TELEPHONE (517) 333-5593 **Michael Curley** BUYER/CA (517) 241-3768 **Lance Kingsbury**
Contract Compliance Inspector: Vern Thelen **Printer/Copier Equipment Maintenance – DMB – Consolidated Print Center**	
CONTRACT PERIOD: From: **October 1, 2007**	To: **September 30, 2010**
TERMS **Net 30 Days**	SHIPMENT **N/A**
F.O.B. **N/A**	SHIPPED FROM **N/A**
MINIMUM DELIVERY REQUIREMENTS **As Needed per CCI**	

The terms and conditions of this Contract are those of ITB #071I7200247, this Contract Agreement and the vendor's quote dated 8/7/07. 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.

Not to Exceed Contract Value: $1,873,963.53

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
PURCHASING OPERATIONS
P.O. BOX 30026, LANSING, MI 48909
OR
530 W. ALLEGAN, LANSING, MI 48933

CONTRACT NO. 071B8200022
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR **Xerox Corporation** **4650 South Hagadorn Road** **East Lansing, MI 48823** **michael.curley@xerox.com**	TELEPHONE (517) 333-5593 **Michael Curley** BUYER/CA (517) 241-3768 **Lance Kingsbury**
Contract Compliance Inspector: Vern Thelen **Printer/Copier Equipment Maintenance – DMB – Consolidated Print Center**	
CONTRACT PERIOD: From: **October 1, 2007**	To: **September 30, 2010**
TERMS **Net 30 Days**	SHIPMENT **N/A**
F.O.B. **N/A**	SHIPPED FROM **N/A**
MINIMUM DELIVERY REQUIREMENTS **As Needed per CCI**	
MISCELLANEOUS INFORMATION: **The terms and conditions of this Contract are those of ITB #071I7200247, this Contract Agreement and the vendor's quote dated 8/7/07. 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.** **Not to Exceed Contract Value: $1,873,963.53**	

THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the ITB No. 071I7200247. Orders for delivery will be issued directly by the Department of Transportation 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	**William C. Walsh, CPPB, Buyer Manager** Name/Title
Authorized Agent (Print or Type)	**Services Division, Purchasing Operations** Division
Date	Date

STATE OF MICHIGAN
DEPARTMENT OF MANAGEMENT AND BUDGET—PURCHASING OPERATIONS
Contract No. 071B8200022

PRINTER/COPIER EQUIPMENT MAINTENANCE

CONTRACT LOCATION:

CONSOLIDATED PRINT CENTER – DMB

Copier/Printer Equipment Maintenance Services

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Article1 – Statement of Work (SOW)

1.00 Introduction

1.001 Project Request

This Contract is for copier/printer equipment maintenance for the Department of Management and Budget (DMB) Printing Services located in Lansing, MI.

1.002 Project Background - Reserved

1.10 Scope of Work and Deliverables

1.101 In-Scope

The Contractor shall provide all personnel, equipment, tools, materials, supervision, and other items and services necessary to perform the services as described in the specifications herein.

1.102 Out-Of-Scope

The following tasks are **considered out-of-scope** for this Contract:

- Performance of personal chores for anyone (i.e., porter or courier service);
- Providing of transportation for agency staff or visitors (i.e., chauffeur service);

1.103 Environment

The services requested are identified herein and during the hours specified by the Contract Compliance Inspector (CCI).

All work shall be done in accordance with all regulations governing the state agency wherein the work is to be performed and with minimum possible interference with the proper functioning of the activities of that state agency.

1.104 Work and Deliverable

A. The Contractor, through innovation, technology or other means, shall perform and provide the required services and staff to complete the frequencies determined by the State and otherwise do all things necessary for, or incidental, to the performance of work. Compliance will be based on the State's overall evaluation and interpretation in accordance with method of performance, frequencies and method of performance, as set forth in this document.

B. The Contractor shall provide services at the location(s) described herein and/or directed by the CCI.

1.105 Specifications

The Contractor shall provide the requested services as described in Appendix A of this Contract.

1.20 Roles and Responsibilities

1.201 Contractor Roles & Responsibilities

A. PERSONNEL

1. The State reserves the right to approve personnel for this project and to require replacement of personnel found to be unacceptable at any time during the project. (See §2.040).

2. Contractor shall be responsible for repair, replacement or cleanup as necessary due to carelessness or negligence on the part of the Contractor and its personnel.

B. SUPERVISION
Contractor shall provide all supervision as may be necessary to oversee its personnel:

1. Contractor shall exercise all supervisory control and general control over all day-to-day operations of his/her employees, including control over all workers duties. At the conclusion of each service, the Contractor shall inspect the route for completion and performance quality of the required services. The Contractor shall also be responsible for payment of all wages to employees, taxes, and fringe benefits, sick leave, pension benefits, vacations, medical benefits, life insurance or unemployment compensation or the like. The Contractor shall discipline his/her employees, as needed, including firing and hiring.

2. The CCI may require that Contractor immediately remove any Contractual employee(s) from the agency's premises for just cause. The Contractor will assume any and all responsibilities relating to this removal. Any employee so removed may not be placed in another state agency.

3. The CCI shall make final determination of a Contractual employee's suitability for assignment to a specific location. Problems of this nature will be addressed with the Contractor's management.

1.202 State Staff Roles & Responsibilities

CCI or agency / departmental designee shall:

A. Staff members for each State Agency or Department will be clearly identified in this Contract.

B. Shall provide the Contractor the general and specific orders detailing services at each Contracted location. These orders shall be deemed a portion of this Contract and failure to carry out these orders shall be considered a violation of this Contract.

C. Give additional written or oral instructions to clarify the desired performance as is determined by the CCI.

D. Provide necessary, registered and returnable keys for the Contractor's entrance to areas of the buildings necessary for the completion of described work after award of Contract (Contractor must not duplicate any such keys).

1.203 Contract Implementation Period / Transition / Orientation

The CCI will administer this Contract on a day-to-day basis during the term of this Contract. However, administration of this Contract implies no authority to change, modify, clarify, amend, or otherwise alter the terms, conditions, and specification of this Contract. That authority is retained by DMB – Purchasing Operations.

Before commencement of work by a new Contractor, the State CCI will:

A. Schedule a meeting with the Contractor to talk about these Contract specifications and answer any questions the Contractor may have.

B. Exchange emergency telephone numbers where the Contractor can be reached, day or night, and where the CCI can be reached.

C. List of supplies and Material Safety Data Sheets (MSDS) must be obtained, if applicable. You may also request to see the products you are not responsible for.

D. Do LEIN checks if necessary. See Contract for information required for LEIN checks.

E. Once the new Contractor has begun the work, the CCI should:
   1. Provide correspondence and feedback to the Contractor. The Contractor must be informed of any deficiencies and allowed time to correct the deficiencies. If deficiencies continue, a formal Complaint to Vendor or Vendor Performance Report will be filed.
   2. Inform Contractor where to forward invoices for immediate processing and payment.
   3. Be available to answer questions from the Contractor. Feedback (communication) is critical.

1.204 Other Roles & Responsibilities – Reserved

1.30 Project Plan

1.301 Project Plan Management

A. Contractor will carry out this project under the direction and control of the specified CCI for the respective locations where services are to be performed.

B. Contractor shall meet with the CCI and other agency or departmental project-leads, on a basis to be established by CCI and Contractor, but shall meet quarterly at a minimum, for the purpose of reviewing progress and providing necessary guidance to the Contractor in solving problems that arise, as well as continuously communicate with the agency/departmental project-lead.

C. Contractor's Work Plan, which must be approved prior to commencement of work, must include the following:

   1. Name(s) of supervisors – 24-hour contact telephone numbers and best contact times.

   2. Equipment failure **WILL NOT** constitute an acceptable reason for failure to provide service. Adjustments to providing this service, including any weather-related deviations, must be approved by the CCI or designated representative.

   3. Proof of Insurance as defined in the Standard Terms and Conditions of this Contract must be provided to Purchasing Operations **prior** to start of this Contract and every year thereafter.

   4. Any misrepresentation by the Contractor of its ability to perform the work described in this Contract will be grounds for immediate termination. In such case, this Contract will be awarded to the next best-valued Bidder who can demonstrate the ability to perform the work.

D. Annual Service Review and Progress Meeting

   1. The CCI may request an audit of the services provided each year under the specifications, terms, and conditions of this Contract. The audit will be a joint activity of the requesting Agency and Purchasing Operations.

   2. An unsatisfactory audit will result in cancellation of this Contract under the terms of the Cancellation Clause in this Contract. Further, should this Contract be cancelled for cause, the Contractor so cancelled will not be allowed to participate in request(s) for continuation of these services.

   3. The audit will consist of an evaluation of the total service quality, including responsiveness, timeliness of required reporting, and any other specifics as required under the terms of this Contract. The results of the audit along with Contract recommendations will be published by Purchasing Operations and distributed to the respective Agency(s).

   4. Should the Contractor desire, a meeting will be arranged between all concerned parties within 10 calendar days of the date the Contractor received, or could have reasonably been expected to receive, their copy of the audit. This meeting will provide an opportunity for the Contractor to present their reactions to audit recommendations.

1.40 Project Management

1.401 Issue Management, Inspection and Correction of Deficiencies

A. The CCI will conduct inspections for all specifications identified in this Contract and will provide performance evaluations to the Contractor noting deficiencies in these Contract specifications. The CCI (or his/her appointed representative) shall make the final determination as to whether any task has been satisfactorily performed.

B. CCI will also maintain a record comprised of complaints from agency or departmental staff and provide record of this to the Contractor at the beginning of each service; this record will identify the areas requiring special attention on that day, which must to be completed by Contractor within eight (8) hours of its receipt.

C. Contractor must remain responsible to make any necessary changes if the CCI determines that any task has not been performed adequately or satisfactorily. Contractor must correct the deficiency within 24 hours from notice of the deficiency, or sooner depending on the severity of the task.

D. Should the Contractor fail to correct specification deficiencies, a Complaint to Vendor (Vender Performance form) will be filed by the CCI. Repeated failure to correct specification deficiencies resulting in issuance of subsequent Complaint to Vendor (Vendor Performance Form) may result in cancellation of this Contract and/or the assessment of liquidated damages as defined in Section 2.073 by Purchasing Operations.

1.402 Risk Management - Reserved

1.403 Change Management

A. If a proposed Contract change is requested by the CCI and approved by the agency purchasing/procurement office, then the request for change will be submitted to the Department of Management and Budget, Purchasing Operations Buyer, who will then make recommendations to the Director of Purchasing Operations regarding ultimate approval/disapproval of change request.

B. If the DMB Purchasing Operations Director agrees with the proposed modification, and all required approvals are obtained (including State Administrative Board), the assigned Buyer will issue an addendum to this Contract, via a Contract Change Notice.

C. Contractors who provide products or services prior to the issuance of a Contract Change Notice by the DMB Purchasing Operations, risk non-payment for the out-of-scope/pricing products and/or services**.**

1.404 Proposal Pricing - Reserved

1.50 Compensation and Payment

1.501 Compensation and Payment

A. Payment / Reimbursement Method:
Contractor agrees that –

1. CONTRACT AGREEMENT shall be a FIXED, not to exceed, maximum amount.
2. Payment will be issued as a rate per unit of service, as described in the price-model in Appendix A.
3. The Contractor shall maintain a record system that documents the total number of units of service as defined in the Agreement and delivered during the term of this Contract. These records shall also document the specific units billed to the State under this Contract.
4. A monthly “Statement of Expenditures” shall accurately represent the units of service delivered, the reimbursement rate by type of service, and the total amount being claimed, must be submitted to the State, within 30 days from the end of the monthly billing period.

5. For the month of September, billings shall be submitted as reasonable directed by the CCI or the State's Contract Administrator to meet fiscal year-end closing deadlines.
6. If the billing is not received as set forth above, no payment shall be made by the State for that billing period unless as exception is specifically authorized by the Department director or his/her delegated representative.
7. In no event, shall the State make payment to the Contractor for billings submitted more than 90 days after the end of the billing period, without and approval from the State Department Director or his/her representative.

B. Quick / Prompt Payment Terms - Reserved

1.502 Price Term

Maintenance prices quoted are firm and will not be subject to annual escalation.

The unit rate(s) quoted and established shall remain FIXED for the entire period of the Agreement, except as follows:

a. Rate/prices are subject to change at the end of each 365-day period.
b. Such changes shall be based on changes in actual costs for delivery of services.
c. Documentation of such changes must be provided with the request for price change in order to substantiate any requested change.
d. Purchasing Operations reserves the right to consider various pertinent information sources to evaluate price increase requests (such as CPI, PPI, and US City Average, as published by the US Department of Labor, Bureau of Labor Statistics).
e. Purchasing Operations also reserves the right to consider other information related to special economic and/or industry market circumstances, when evaluating a price change request.
f. Purchasing Operations reserves the right to deny a Contractor's request for a rate-change, and have the original, quoted rates remain in effect for the life of this Contract.
g. Changes may be either increase or decreases, and may be requested by either party.
h. Approved changes shall be firm for the remainder of this Contract period unless further revised at the end of the next 365-day period.
i. Requests for price changes shall be RECEIVED IN WRITING AT LEAST 60 days PRIOR TO THEIR EFFECTIVE DATE, and are subject to written acceptance and approval by the State before becoming effective.
j. In the event new prices are not acceptable, this Contract may be cancelled.
k. 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.

Article 2 – General Terms and Conditions

2.00 Contract Structure and Administration

2.001 Definitions

Capitalized terms used in this Contract (including its Attachments and Exhibits) shall have the meanings given below, unless the context requires otherwise:

(a) "Days" means calendar days unless otherwise specified.

(b) "24x7x365" means 24 hours a day, seven (7) days a week, and 365 days a year (including the 366th day in a leap year).

(c) "Additional Service" means any Services/Deliverables within the scope of this Contract, but not specifically provided under any Statement of Work, that once added will result in the need to provide the Contractor with additional consideration.

(d) "Business Day," whether capitalized or not, shall mean any day other than a Saturday, Sunday, or State-recognized legal holiday (as identified in the Collective Bargaining Agreement for State employees) from 8:00am EST through 5:00pm EST unless otherwise stated.

(e) "Deliverable" means physical goods and/or commodities as required or identified by a Statement of Work

(f) "Key Personnel" means any Personnel designated in Article 1, Section 1.201 as Key Personnel.

(g) "State Location" means any physical location where the State performs work. State Location may include state-owned, leased, or rented space.

(h) "Subcontractor" means a company Contractor delegate's performance of a portion of the services to, but does not include independent contractors engaged by Contractor solely in a staff augmentation role.

(i) "State" means the State of Michigan.

(j) "Department" means the Department of Management and Budget of the State of Michigan.

(k) "Director" means the State Purchasing Director.

(l) "Agency" means the unit of State government covered by this Contract.

(m) "Representative" means the person designated by the agency to coordinate and supervise the service.

(n) "Contractor" means a person, firm, or corporation agreeing to provide service(s).

2.002 Issuing Office

This Contract is issued by the Department of Management and Budget, Purchasing Operations. Where actions are a combination of those of Purchasing Operations and the State agencies, the authority will be known as the State. Information listed on the LSS(s) will be included as Appendix's within this Contract.

Purchasing Operations 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. **DMB-PO is the only State office authorized to change, modify, amend, alter, or clarify the prices, specifications, terms, and conditions of a Contract**. The Contract Administrator for this Contract is:

Lance Kingsbury
Department of Management and Budget - Purchasing Operations
Mason Building—2nd Floor
P.O. Box 30026
Lansing, Michigan 48909
(517) 241-3768
kingsburyl@michigan.gov

2.003 Contract Compliance Inspector (CCI)

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

Vern Thelen – DMB: 517.322.5968

2.004 Project Manager

The individual(s) who will oversee the work to be performed on this Contract will be the CCI.

2.01 Reserved

2.02 Contract Objectives/Scope/Background

2.021 Background – Reserved

2.022 Purpose – Reserved

2.023 Objectives and Scope – Reserved

2.024 Interpretation – Reserved

2.025 Form, Function and Utility

If this Contract is for use of more than one (1) State agency and if the Deliverable/Service does not the meet the form, function, and utility required by that State agency, that agency may, subject to State purchasing policies, procure the Deliverable/Service from another source.

2.03 Legal Effect and Term

2.031 Legal Effect

Except as otherwise agreed in writing by the parties, the State assumes no liability for costs incurred by Contractor or payment under this Contract, until Contractor is notified in writing that this Contract (or Change Order) has been approved by the State Administrative Board (if required), approved, and signed by all the parties, and a Purchase Order against this Contract has been issued.

2.032 Contract Term

The term of this Contract will be for 36 months and will commence with the start date on this Contract. This will be October 1, 2007 through September 30, 2010.

All outstanding Purchase Orders shall also expire upon the termination (cancellation for any of the reasons listed in 2.210) of this Contract, unless otherwise extended pursuant to this Contract. Absent an early termination for any reason, Purchase Orders issued but not expired, by the end of this Contract's stated term, will remain in effect for the balance of the fiscal year for which they were issued.

2.033 Renewal(s)

This Contract may be renewed in writing by mutual agreement of the parties not less than 30 days before its expiration. No options have been included for this Contract term.

2.04 Contractor Personnel

2.041 Contractor Personnel

Personnel Qualifications. All persons assigned by Contractor to the performance of Services under this Contract shall be employees of Contractor or its majority-owned (directly or indirectly, at any tier) subsidiaries (or a State-approved Subcontractor) and shall be fully qualified to perform the work assigned to them. Contractor shall include a similar provision in any subcontract entered into with a Subcontractor. For the purposes of this Contract, independent Contractors engaged by Contractor solely in a staff augmentation role shall be treated by the State as if they were employees of Contractor for this Contract only; however, the State understands that the relationship between Contractor and Subcontractor is an independent Contractor relationship.

2.042 Contractor Identification

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

2.043 Cooperation with Third Parties

Contractor agrees to cause its personnel and the personnel of any Subcontractors to cooperate with the State and its agents and other Contractors including the State's Quality Assurance personnel, and, as reasonably requested by the State, to provide to the State's agents and other Contractors with reasonable access to Contractor's Project personnel, systems, and facilities to the extent they relate to activities specifically associated with this Contract and will not interfere or jeopardize the safety or operation of the systems or facilities and provided Contractor receives reasonable prior written notice of such request. The State acknowledges that Contractor's time schedule for this Contract is very specific and agrees not to unnecessarily or unreasonably interfere with, delay, or otherwise impeded Contractor's performance under this Contract with such requests for access.

2.044 Subcontracting by Contractor

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

(b) Contractor shall not delegate any duties under this Contract to a Subcontractor unless the Department of Management and Budget, Purchasing Operations has given written consent to such delegation. The State shall have the right of prior written approval of all Subcontractors and to require Contractor to replace any Subcontractors found, in the reasonable judgment of the State, to be unacceptable. The State's request shall be written with reasonable detail outlining the reasons for the removal request. Additionally, the State's request shall be based on legitimate, good faith reasons. Replacement Subcontractor(s) for the removed Subcontractor shall be fully qualified for the position. If the State exercises this right, and the Contractor cannot immediately replace the removed Subcontractor, the State will agree to an equitable adjustment in schedule or other terms that may be affected by the State's required removal. If any such incident with a removed Subcontractor results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Work will not be counted in Section 2.076 for a time agreed upon by the parties.

(c) In any subcontracts entered into by Contractor for the performance of the Services, Contractor shall require the Subcontractor, to the extent of the Services to be performed by the Subcontractor, to be bound to Contractor by the terms of this Contract and to assume toward Contractor all of the obligations and responsibilities that Contractor, by this Contract, assumes toward the State. The State reserves the right to receive copies of and review all subcontracts, although Contractor may delete or mask any proprietary information, including pricing, contained in such Contracts before providing them to the State.

The management of any Subcontractor will be the responsibility of Contractor, and Contractor shall remain responsible for the performance of its Subcontractors to the same extent as if Contractor had not subcontracted such performance. Contractor shall make all payments to Subcontractors or suppliers of Contractor. Except as otherwise agreed in writing by the State and Contractor, the State will not be obligated to direct payments for the services other than to Contractor. The State's written approval of any Subcontractor engaged by Contractor to perform any obligation under this Contract shall not relieve Contractor of any obligations or performance required under this Contract.

(d) Except where specifically approved in writing by the State on a case-by-case basis, Contractor shall flow down the obligations in Sections 2.040, 2.110, 2.150, 2.160, 2.171(c), 2.172(b), 2.180, 2.260, 2.276, 2.297 in all of its agreements with any Subcontractors.

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

2.045 Contractor Responsibility for Personnel

Contractor shall be responsible for all acts and omissions of its employees, as well as the acts and omissions of any other personnel furnished by Contractor to perform the Services.

2.05 State Standards

2.051 Existing Technology Standards – Reserved

2.052 PM Methodology Standards – Reserved

2.053 Adherence to Portal Technology Tools – Reserved

2.054 Acceptable Use Policy – Reserved

2.06 Deliverables

2.061 Ordering

Any Services/Deliverables to be furnished under this Contract shall be ordered by issuance of written Purchase Orders/Blanket Purchase Order by the State after approval by the Contract Administrator or his/her designee. All orders are subject to the terms and conditions of this Contract. In the event of conflict between an order and this Contract, this Contract shall take precedence as stated in Section 2.293. In no event shall any additional terms and conditions contained on a Purchase Order/Blanket Purchase Order be applicable, unless specifically contained in that Purchase Order/Blanket Purchase Order's accompanying Statement of Work.

2.062 Software - Reserved

2.063 Hardware - Reserved

2.064 Equipment to be New and Prohibited Products - Reserved

2.07 Performance

2.071 Performance, In General

The State engages Contractor to execute this Contract and perform the Services/provide the Deliverables, and Contractor undertakes to execute and complete this Contract in its entirety in accordance with the terms and conditions of this Contract and with the participation of State representatives as specified in this Contract.

2.072 Time of Performance

(a) Contractor shall use commercially reasonable efforts to provide the resources necessary to complete all Services and Deliverables in accordance with the time schedules contained in the Statements of Work and other Exhibits governing the work, and with professional quality.

(b) Without limiting the generality of Section 2.072(a), Contractor shall notify the State in a timely manner upon becoming aware of any circumstances that may reasonably be expected to jeopardize the timely and successful completion of any Deliverables/Services on the scheduled due dates in the latest State-approved delivery schedule and, in such event, shall inform the State of the projected actual delivery date.

(c) If Contractor believes that a delay in performance by the State has caused or will cause Contractor to be unable to perform its obligations in accordance with specified Contract time periods, Contractor shall notify the State in a timely manner and shall use commercially reasonable efforts to perform its obligations in accordance with such Contract time periods notwithstanding the State's failure. Contractor will not be in default for a delay in performance to the extent such delay is caused by the State.

2.073 Liquidated Damages - Reserved

2.074 Bankruptcy

If Contractor shall file for protection under the bankruptcy laws, or if an involuntary petition shall be filed against Contractor and not removed within 30 days, or if the Contractor becomes insolvent, be adjudicated bankrupt, or if it should make a general assignment for the benefit of creditors, or if a receiver shall be appointed due to its insolvency, and Contractor and/or its affiliates are unable to provide reasonable assurances that Contractor and/or its affiliates can deliver the services provided herein, the State may, without prejudice to any other right or remedy, terminate this Contract, in whole or in part, and, at its option, may take possession of the "Work in Process" and finish such Works in Process by whatever appropriate method the State may deem expedient. Contractor will fix appropriate notices or labels on the Work in Process to indicate ownership by the State. To the extent reasonably possible, materials and Work in Process shall be stored separately from other stock and marked conspicuously with labels indicating ownership by the State.

To secure the State's progress payments before the delivery of any services or materials required for the execution of Contractor's obligations hereunder, and any work which Contractor may subcontract in the support of the performance of its obligations hereunder, title shall vest in the State to the extent the State has made progress payments hereunder.

2.075 Time is of the Essence

The Contractor agrees that time is of the essence in the performance of the Contractor's obligations under this Contract.

2.076 Service Level Agreements (SLAs) - Reserved

2.08 Delivery and Acceptance of Deliverables

2.081 Delivery Responsibilities - Reserved

2.082 Delivery of Deliverables - Reserved

2.083 Testing - Reserved

2.084 Approval of Deliverables, In General - Reserved

2.085 Process For Approval of Written Deliverables - Reserved

2.086 Process for Approval of Services - Reserved

2.087 Process for Approval of Physical Deliverables - Reserved

2.088 Final Acceptance - Reserved

2.09 Financial

2.091 Pricing

(a) Fixed Prices for Services:
To the extent the parties agree that certain specific services will be provided, such services shall be provided at the rates noted in Appendix A.

(b) Services/Deliverables Covered:
For all Services/Deliverables to be provided by Contractor (and its Subcontractors, if any) under this Contract, the State shall not be obligated to pay any amounts in addition to the charges specified in this Contract.

2.092 Invoicing and Payment Procedures and Terms

(a) Invoicing and Payment – In General
(i) Each Contractor invoice will show details as to charges by service component and location at a level of detail reasonably necessary to satisfy the State's accounting and charge-back requirements.
(ii) Correct invoices will be due and payable by the State, in accordance with the State's standard payment procedure as specified in 1984 Public Act No. 279, MCL 17.51 et seq., within 45 days after receipt, provided the State determines that the invoice was properly rendered.

(b) Taxes (also see Section 2.305)
The State is exempt from Federal Excise Tax, State and Local Sales Taxes, and Use Tax with respect to the sale to and use by it of tangible personal property. Such taxes shall not be included in Contract prices as long as the State maintains such exemptions. Copies of all tax exemption certificates shall be supplied to Contractor, if requested.

(c) Out-of-Pocket Expenses - Reserved

(d) Pro-ration - Reserved

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

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

2.093 State Funding Obligation

The State's obligation under this Contract is payable only and solely from funds appropriated for the purpose of this Contract. Contractor acknowledges and agrees that all funds for payments after the end of the current fiscal year are subject to the availability of a legislative appropriation for the purpose of this Contract. Events of non-appropriation are addressed further in Section 2.210 of this Contract.

2.094 Holdback - Reserved

2.095 Electronic Payment Availability

Public Act 533 of 2004 **requires** that payments under this Contract be processed by electronic funds transfer (EFT). Contractor is required to register to receive payments by EFT at the Contract & Payment Express website (www.cpexpress.state.mi.us).

2.10 Contract Management

2.101 Contract Management Responsibility

(a) Contractor shall have overall responsibility for managing and successfully performing and completing the Services/Deliverables, subject to the overall direction and supervision of the State and with the participation and support of the State as specified in this Contract. Contractor's duties will include monitoring and reporting the State's performance of its participation and support responsibilities (as well as Contractor's own responsibilities) and providing timely notice to the State in Contractor's reasonable opinion if the State's failure to perform its responsibilities in accordance with Article 1 (Project Plan) is likely to delay the timely achievement of any Contract tasks.

(b) The Services/Deliverables will be provided by the Contractor either directly or through its affiliates, subsidiaries, subcontractors, or resellers. Regardless of the entity providing the Service/Deliverable, the Contractor will act as a single point of contact coordinating these entities to meet the State's need for Services/Deliverables. Nothing in this Contract, however, shall be construed to authorize or require any party to violate any applicable law or regulation in its performance of this Contract.

2.102 Problem and Contract Management Procedures

This Contract and the applicable Statements of Work will govern problem Management and Contract Management procedures.

2.103 Reports and Meetings - Reserved

2.104 System Changes - Reserved

2.105 Reserved

2.106 Change Requests

The State reserves the right to request, from time to time, any changes to the requirements and specifications of this Contract and the work to be performed by the Contractor under this Contract. During the course of ordinary business, it may become necessary for the State to discontinue certain business practices or create Additional Services/Deliverables. At a minimum, to the extent applicable, the State would like the Contractor to provide a detailed outline of all work to be done, including tasks necessary to accomplish the services/deliverables, timeframes, listing of key personnel assigned, estimated hours for each individual per task, and a complete and detailed cost justification.
If the State requests or directs the Contractor to perform any Services/Deliverables that are outside the scope of the Contractor's responsibilities under this Contract ("New Work"), the Contractor must notify the State promptly, and before commencing performance of the requested activities, that it believes the requested activities are New Work. If the Contractor fails to notify the State before commencing performance of the requested activities, any such activities performed before the Contractor gives notice shall be conclusively considered to be in-scope Services/Deliverables, not New Work. If the State requests or directs the Contractor to perform any services or provide deliverables that are consistent with and similar to the Services/Deliverables being provided by the Contractor under this Contract, but which the Contractor reasonably and in good faith believes are not included within the Statements of Work, then before performing such services or providing such deliverables, the Contractor shall notify the State in writing that it considers the services or deliverables to be an Additional Service/Deliverable for which the Contractor should receive additional compensation.

If the Contractor does not so notify the State, the Contractor shall have no right to claim thereafter that it is entitled to additional compensation for performing that service or providing that deliverable. If the Contractor does so notify the State, then such a service or deliverable shall be governed by the Change Request procedure in this Section.

In the event prices or service levels are not acceptable to the State, the Additional Services or New Work shall be subject to competitive bidding based upon the specifications.

(a) State Requests:
If the State should require Contractor to perform New Work, Additional Services or make changes to the Services that would affect this Contract completion schedule or the amount of compensation due Contractor (a "Change"), the State shall submit a written request for Contractor to furnish a proposal for carrying out the requested Change (a "Change Request").

(b) Contractor Recommendations:
Contractor shall be entitled to propose a Change to the State, on its own initiative, should it be of the opinion that this would benefit this Contract.

(c) Upon receipt of a Change Request or on its own initiative, Contractor shall examine the implications of the requested Change on the technical specifications, Contract schedule and price of the Deliverables and Services and shall submit to the State without undue delay a written proposal for carrying out the Change. Contractor's proposal will include any associated changes in the technical specifications, Contract schedule and price and method of pricing of the Services. If the Change is to be performed on a time and materials basis, the Amendment Labor Rates shall apply to the provision of such Services. If Contractor provides a written proposal and should Contractor be of the opinion that a requested Change is not to be recommended, it shall communicate its opinion to the State but shall nevertheless carry out the Change as specified in the written proposal if the State directs it to do so.

(d) By giving Contractor written notice within a reasonable time, the State shall be entitled to accept a Contractor proposal for Change, to reject it, or to reach another agreement with Contractor. Should the parties agree on carrying out a Change, a written Contract Change Notice shall be prepared and issued under this Contract, describing the Change and its effects on the Services and any affected components of the Contract (a "Contract Change Notice").

(e) No proposed Change shall be performed until the proposed Change has been specified in a duly executed Contract Change Notice issued by the Department of Management and Budget, Purchasing Operations.

(f) If the State requests or directs Contractor to perform any activities that Contractor believes constitute a change, Contractor must notify the State that it believes the requested activities are a change prior to commencing the performance of the requested activities. If Contractor fails to so notify the State prior to commencing performance of the requested activities, such activities shall be considered to be performed gratuitously by Contractor, and Contractor shall not have any right thereafter to assert any claim for additional compensation or time for the performance of such activities. If Contractor commences performance of gratuitous services outside the scope of the Contract and subsequently elects to stop performing such out-of-scope services, Contractor must, at the request of the State, back out or reverse any changes resulting from such performance that would adversely affect the Contract.

(g) The State may cancel individual maintenance agreements without penalty if a machine is taken out of service and the equipment or service is not being replaced by a competitor.

2.107 Management Tools - Reserved

2.111 Records and Inspections

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

2.112 Errors

(a) If the audit demonstrates any errors in the statements provided to the State, then the amount in error shall be reflected as a credit or debit on the next invoice and in subsequent invoices until the amount is paid or refunded in full. However, a credit or debit may not be carried for more than four (4) quarterly statements. If a balance remains after four (4) quarterly statements, then the remaining amount will be due as a payment or refund within 45 days of the last quarterly statement that the balance appeared on or termination of this contract, whichever is earlier.

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

2.12 State Responsibilities

2.121 State Performance Obligations

(a) Equipment and Other Resources. To facilitate Contractor's performance of the Services/Deliverables, the State shall provide to Contractor such equipment and resources as identified in the Statements of Work or other Contract Exhibits as items to be provided by the State.

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

(c) Return. Contractor shall be responsible for returning to the State any State-furnished equipment, facilities and other resources when no longer required for this Contract in the same condition as when provided by the State, reasonable wear and tear excepted.

(d) Except as otherwise provided in Section 2.220, the State's failure to perform its responsibilities, as set forth in this Contract shall not be deemed to be grounds for termination by Contractor. However, Contractor will not be liable for any default or delay in the performance of its obligations under this Contract to the extent such default or delay is caused by nonperformance of the State's obligations under this Contract, provided Contractor provides the State with reasonable written notice of such nonperformance and Contractor uses commercially reasonable efforts to perform notwithstanding the State's failure to perform. In addition, if the State's nonperformance of its responsibilities under this Contract materially increases the time required for Contractor's performance or Contractor's cost of performance, Contractor shall be entitled to seek an equitable extension via the Change Request process described in Section 2.106.

2.13 Security

2.131 Background Checks

The Contractor shall authorize the investigation of its personnel proposed to have access to State facilities and systems on a case-by-case basis.

The scope of the background check is at the discretion of the State and the results will be used to determine Contractor personnel eligibility for working within State facilities and systems. Such investigations will include Michigan State Police Background checks (ICHAT) and may include the National Crime Information Center (NCIC) Finger Prints.

Proposed Contractor personnel may be required to complete and submit an RI-8 Fingerprint Card for the NCIC Finger Print Check. Any request for background checks will be initiated by the State and will be reasonably related to the type of work requested.

All Contractor personnel will also be expected to comply with the State's security and acceptable use policies for State IT equipment and resources. See http://www.michigan.gov/ditservice/0,1607,7-179-25781-73760--,00.html. Furthermore, Contractor personnel will be expected to agree to the State's security and acceptable use policies before the Contractor personnel will be accepted as a resource to perform work for the State.

It is expected the Contractor will present these documents to the prospective employee before the Contractor presents the individual to the State as a proposed resource. Contractor staff will be expected to comply with all Physical Security procedures in place within the facilities where they are working.

2.140 Reserved

2.15 Confidentiality

2.151 Freedom of Information

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

2.152 Confidentiality

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

2.153 Protection of Confidential Information

The State and Contractor will each use at least the same degree of care to prevent disclosing to third parties the Confidential Information of the other as it employs to avoid unauthorized disclosure, publication or dissemination of its own confidential information of like character, but in no event less than reasonable care. Neither Contractor nor the State will (i) make any use of the Confidential Information of the other except as contemplated by this Contract, (ii) acquire any right in or assert any lien against the Confidential Information of the other, or (iii) if requested to do so, refuse for any reason to promptly return the other party's Confidential Information to the other party. Each party will limit disclosure of the other party's Confidential Information to employees and Subcontractors who must have access in order to fulfill the purposes of this Contract. Disclosure to, and use by, a Subcontractor is permissible where (A) use of a Subcontractor is authorized under this Contract, (B) such disclosure is necessary or otherwise naturally occurs in connection with work that is within such Subcontractor's scope of responsibility, and (C) Contractor obligates the Subcontractor in a written Contract to maintain the State's Confidential Information in confidence. At the State's request, any employee of Contractor and of any Subcontractor having access or continued access to the State's Confidential Information may be required to execute an acknowledgment that the employee has been advised of Contractor's and the Subcontractor's obligations under this Section and of the employee's obligation to Contractor or Subcontractor, as the case may be, to protect such Confidential Information from unauthorized use or disclosure.

2.154 Exclusions

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

2.155 No Implied Rights

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

2.156 Remedies

Each party acknowledges that, if it breaches (or attempts or threatens to breach) its obligations under this Section, the other party may be irreparably harmed. Accordingly, if a court of competent jurisdiction should find that a party has breached (or attempted or threatened to breach) any such obligations, the non-breaching party shall be entitled to seek an injunction preventing such breach (or attempted or threatened breach).

2.157 Security Breach Notification

In the event of a breach of this Section, Contractor shall take (i) prompt corrective action to cure any such deficiencies and (ii) any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations. Contractor and the State will cooperate to mitigate, to the extent practicable, the effects of any breach, intrusion, or unauthorized use or disclosure. Contractor shall report to the State in writing any use or disclosure of Confidential Information, whether suspected or actual, other than as provided for by this Contract within 10 days of becoming aware of such use or disclosure or such shorter time period as is reasonable under the circumstances.

2.158 Survival

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

2.159 Destruction of Confidential Information

Promptly upon termination or cancellation of this Contract for any reason, Contractor shall certify to the State that Contractor has destroyed all State Confidential Information.

2.160 Proprietary Rights - Reserved

2.170 Warranties and Representations

The foregoing express warranties are in lieu of all other warranties and each party expressly disclaims all other warranties, express or implied, by operation of law or otherwise including but not limited to, the implied warranties of merchantability and fitness for a particular purpose.

2.171 Warranties and Representations

The Contractor represents and warrants:

(a) It is capable in all respects of fulfilling and shall fulfill all of its obligations under this Contract. The performance of all obligations under this Contract shall be provided in a timely, professional, and workman-like manner and shall meet the performance and operational standards required under this Contract.

(b) The LSS(s), Attachments, Exhibits and Appendixes identify the services necessary to operate in compliance with this Contract's requirements and other standards of performance.

(c) This Contract signatory has the power and authority, including any necessary corporate authorizations, necessary to enter into this Contract, on behalf of Contractor.

(d) It is qualified and registered to transact business in all locations where required.

(e) The prices proposed by Contractor were arrived at independently, without consultation, communication, or agreement with any other Bidder for the purpose of restricting competition; the prices quoted were not knowingly disclosed by Contractor to any other bidder; and no attempt was made by Contractor to induce any other person to submit or not submit a proposal for the purpose of restricting competition.

(f) All financial statements, reports, and other information furnished by Contractor to the State as part of its response to the RFP or otherwise in connection with the award of this Contract fairly and accurately represent the business, properties, financial condition, and results of operations of Contractor as of the respective dates, or for the respective periods, covered by such financial statements, reports, other information. Since the respective dates or periods covered by such financial statements, reports, or other information, there has been no material adverse change in the business, properties, financial condition, or results of operations of Contractor.

(g) 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.

(h) It is not in material default or breach of any other Contract or agreement that it may have with the State or any of its departments, commissions, boards, or agencies. Contractor further represents and warrants that it has not been a party to any Contract with the State or any of its departments that was terminated by the State or such department within the previous five (5) years for the reason that Contractor failed to perform or otherwise breached an obligation of such Contract.

2.172 Consequences for Breach

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

2.18 Insurance

2.181 Liability Insurance

(a) Liability Insurance

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

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

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

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

The insurers selected by Contractor shall have an A.M. Best rating of A or better, or as otherwise approved in writing by the State, or if such ratings are no longer available, with a comparable rating from a recognized insurance rating agency. Companies that have been approved to do business in the State shall issue all policies of insurance required in this Contract.
See http://www.mi.gov/cis/0,1607,7-154-10555_22535---,00.html.

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

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

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

☑ 1. Commercial General Liability with the following minimum coverage:

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

The Contractor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents as ADDITIONAL 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

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

(c) Certificates of Insurance and Other Requirements
Contractor shall furnish to the Office of Purchasing Operations certificate(s) of insurance verifying insurance coverage or providing satisfactory evidence of self-insurance as required in this Section (the "Certificates"). Before this 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 insured's 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 this 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 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.

2.19 Indemnification

2.191 Indemnification

(a) General Indemnification:
To the extent permitted by law, the Contractor shall indemnify, defend and hold harmless the State from liability, including all claims and losses, and all related costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest and penalties), accruing or resulting to any person, firm or corporation that may be injured or damaged by the Contractor in the performance of this Contract and that are attributable to the negligence or tortuous acts of the Contractor or any of its subcontractors, or by anyone else for whose acts any of them may be liable.

(b) Code Indemnification:
To the extent permitted by law, the Contractor shall indemnify, defend and hold harmless the State from any claim, loss, or expense arising from Contractor's breach of the No Surreptitious Code Warranty. Please note that some software provided by Xerox contains a time out code that must be periodically reset. Normally the time out code is reset by the technician during routine maintenance of the equipment.

(c) Employee Indemnification:
In any and all claims against the State of Michigan, its departments, divisions, agencies, sections, commissions, officers, employees and agents, by any employee of the Contractor or any of its subcontractors, the indemnification obligation under this Contract shall not be limited in any way by the amount or type of damages, compensation or benefits payable by or for the Contractor or any of its subcontractors under worker's disability compensation acts, disability benefit acts or other employee benefit acts. This indemnification clause is intended to be comprehensive. Any overlap in provisions, or the fact that greater specificity is provided as to some categories of risk, is not intended to limit the scope of indemnification under any other provisions.

(d) Patent/Copyright Infringement Indemnification:
To the extent permitted by law, the Contractor shall indemnify, defend and hold harmless the State from and against all losses, liabilities, damages (including taxes), and all related costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest and penalties) incurred in connection with any action or proceeding threatened or brought against the State to the extent that such action or proceeding is based on a claim that any piece of equipment, software, commodity or service supplied by the Contractor or its subcontractors, or the operation of such equipment, software, commodity or service, or the use or reproduction of any documentation provided with such equipment, software, commodity or service infringes any United States patent, copyright, trademark or trade secret of any person or entity, which is enforceable under the laws of the United States.

In addition, should the equipment, software, commodity, or service, or its operation, become or in the State's or Contractor's opinion be likely to become, the subject of a claim of infringement, the Contractor shall, at the Contractor's sole expense, (i) procure for the State the right to continue using the equipment, software, commodity or service or, if such option is not reasonably available to the Contractor, (ii) replace or modify to the State's satisfaction the same with equipment, software, commodity or service of equivalent function and performance so that it becomes non-infringing, or, if such option is not reasonably available to Contractor, (iii) accept its return by the State with appropriate credits to the State against the Contractor's charges and reimburse the State for any losses or costs incurred as a consequence of the State ceasing its use and returning it.

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

2.192 Continuation of Indemnification Obligations

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

2.193 Indemnification Procedures

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

(a) After receipt by the State of notice of the action or proceeding involving a claim in respect of which it will seek indemnification, the State shall promptly notify Contractor of such claim in writing and take or assist Contractor in taking, as the case may be, any reasonable action to avoid the imposition of a default judgment against Contractor. No failure to notify Contractor shall relieve Contractor of its indemnification obligations except to the extent that Contractor can demonstrate damages attributable to such failure. Within 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 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.

2.20 Limits of Liability and Excusable Failure

2.201 Limits of Liability

The Contractor's liability for damages to the State shall be limited to two (2) times the value of this Contract or $200,000 which ever is higher. The foregoing limitation of liability shall not apply to claims for infringement of United States patent, copyright, trademarks or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of this Contract calling for liquidated damages; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on this Contract.

The State's liability for damages to the Contractor shall be limited to the value of this Contract.

Neither the Contractor nor the State shall be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages. This limitation of liability shall not apply to claims for infringement of United States patent, copyright, trademark or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of this Contract calling for liquidated damages; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on this Contract.

2.202 Excusable Failure

Neither party will be liable for any default, damage or delay in the performance of its obligations under this Contract to the extent such default, damage or delay is caused by government regulations or requirements (executive, legislative, judicial, military or otherwise), power failure, electrical surges or current fluctuations, lightning, earthquake, war, water or other forces of nature or acts of God, delays or failures of transportation, equipment shortages, suppliers' failures, or acts or omissions of common carriers, fire; riots, civil disorders; strikes or other labor disputes, embargoes; injunctions (provided the injunction was not issued as a result of any fault or negligence of the party seeking to have its default or delay excused); or any other cause beyond the reasonable control of such party; provided the non-performing party and its Subcontractors are without fault in causing such default or delay, and such default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans or other means, including disaster recovery plans. In such event, the non-performing party will be excused from any further performance or observance of the obligation(s) so affected for as long as such circumstances prevail and such party continues to use its commercially reasonable efforts to recommence performance or observance whenever and to whatever extent possible without delay and provided further that such party promptly notifies the other party in writing of the inception of the excusable failure occurrence, and also of its abatement or cessation.

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

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

2.203 Disaster Recovery

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

2.21 Termination/Cancellation by the State

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

2.211 Termination for Cause

(a) In the event that Contractor breaches any of its material duties or obligations under this Contract (including a Chronic Failure to meet any particular SLA as defined in Section 2.076), which are either not capable of or subject to being cured, or are not cured within the time period specified in the written notice of breach provided by the State (such time period not to be less than 30 days), or pose a serious and imminent threat to the health and safety of any person, or the imminent loss, damage or destruction of any real or tangible personal property, the State may, having provided written notice of termination to Contractor, terminate this Contract in whole or in part, for cause, as of the date specified in the notice of termination.

(b) In the event that this Contract is terminated for cause, in addition to any legal remedies otherwise available to the State by law or equity, Contractor shall be responsible for all costs incurred by the State in terminating this Contract, including but not limited to, State administrative costs, reasonable attorneys' fees and court costs, and any reasonable additional costs the State may incur to procure the Services/Deliverables required by this Contract from other sources. Re-procurement costs shall not be considered by the parties to be consequential, indirect or incidental damages, and shall not be excluded by any other terms otherwise included in this Contract, provided such costs are not in excess of 50% more than the prices for such Service/Deliverables provided under this Contract.

(c) In the event the State chooses to partially terminate this Contract for cause, charges payable under this Contract will be equitably adjusted to reflect those Services/Deliverables that are terminated and the State shall pay for all Services/Deliverables for which Final Acceptance has been granted provided up to the termination date. Services and related provisions of this Contract that are terminated for cause shall cease on the effective date of the termination.

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

2.212 Termination for Convenience

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

Termination of individual maintenance agreement without cause, except as noted below, will result in an early termination charge that is equal to six times the monthly base maintenance charges or the sum of the remaining monthly minimum charges, whichever is less.

Termination charges shall not apply to cancellation due to lack of funds or the cancellation of the maintenance agreement if the equipment is taken out of service by the State and the equipment or service is not being replaced by a competitor.

2.213 Non-Appropriation

(a) Contractor acknowledges that, if this Contract extends for several fiscal years, continuation of this Contract is subject to appropriation or availability of funds for this Contract. If funds to enable the State to effect continued payment under this Contract are not appropriated or otherwise made available, the State shall have the right to terminate this Contract and all affected Statements of Work, in whole or in part, at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of termination to Contractor. The State shall give Contractor at least 30 days advance written notice of termination for non-appropriation or unavailability (or such time as is available if the State receives notice of the final decision less than 30 days before the funding cutoff).

(b) If funding for this Contract is reduced by law, or funds to pay Contractor for the agreed-to level of the Services or production of Deliverables to be provided by Contractor are not appropriated or otherwise made available, the State may, upon 30 days written notice to Contractor, reduce the level of the Services or the change the production of Deliverables in such manner and for such periods of time as the State may elect. The charges payable under this Contract will be equitably adjusted to reflect any equipment, services or commodities not provided by reason of such reduction.

(c) In the event the State terminates this Contract, eliminates certain Deliverables, or reduces the level of Services to be provided by Contractor pursuant to this Section, the State shall pay Contractor for all Work-in-Process performed through the effective date of the termination or reduction in level, as the case may be and as determined by the State, to the extent funds are available. For the avoidance of doubt, this Section will not preclude Contractor from reducing or stopping Services/Deliverables and/or raising against the State in a court of competent jurisdiction, any claim for a shortfall in payment for Services performed or Deliverables finally accepted before the effective date of termination.

2.214 Criminal Conviction

The State may terminate this Contract immediately and without further liability or penalty in the event Contractor, an officer of Contractor, or an owner of a 25% or greater share of Contractor is convicted of a criminal offense incident to the application for, or performance of, a State, public or private Contract or subcontract; convicted of a criminal offense, including any of the following: embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, attempting to influence a public employee to breach the ethical conduct standards for State of Michigan employees; convicted under State or federal antitrust statutes; or convicted of any other criminal offense which in the sole discretion of the State reflects upon Contractor's business integrity.

2.215 Approvals Rescinded

The State may terminate this Contract without further liability or penalty in the event any final administrative or judicial decision or adjudication disapproves a previously approved request for purchase of personal services pursuant to Constitution 1963, Article 11, § 5, and Civil Service Rule 7-1. Termination may be in whole or in part and may be immediate as of the date of the written notice to Contractor or may be effective as of the date stated in such written notice.

2.216 Rights and Obligations Upon Termination

(a) If this Contract is terminated by the State for any reason, Contractor shall (a) stop all work as specified in the notice of termination, (b) take any action that may be necessary, or that the State may direct, for preservation and protection of Deliverables or other property derived or resulting from this Contract that may be in Contractor's possession, (c) return all materials and property provided directly or indirectly to Contractor by any entity, agent or employee of the State, (d) in the event that the Contractor maintains title in Deliverables that is intended to be transferred to the State at the termination of this Contract, Contractor will transfer title in, and deliver to, the State, unless otherwise directed, all Deliverables intended to be transferred to the State at the termination of this Contract and which are resulting from this Contract (which shall be provided to the State on an "As-Is" basis except to the extent the amounts paid by the State in respect of such items included compensation to Contractor for the provision of warranty services in respect of such materials),

and (e) take any action to mitigate and limit any potential damages, or requests for Contractor adjustment or termination settlement costs, to the maximum practical extent, including terminating or limiting as otherwise applicable those subcontracts and outstanding orders for material and supplies resulting from this terminated Contract.

(b) In the event the State terminates this Contract prior to its expiration for its own convenience, the State shall pay Contractor for all charges due for Services provided prior to the date of termination and, if applicable, as a separate item of payment pursuant to this Contract, for Work In Process, on a percentage of completion basis at the level of completion determined by the State. All completed or partially completed Deliverables prepared by Contractor pursuant to this Contract shall, at the option of the State, become the State's property, and Contractor shall be entitled to receive equitable fair compensation for such Deliverables. Regardless of the basis for the termination, the State shall not be obligated to pay, or otherwise compensate, Contractor for any lost expected future profits, costs or expenses incurred with respect to Services not actually performed for the State.

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

2.217 Reservation of Rights

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

2.218 Contractor Transition Responsibilities - Reserved

2.219 State Transition Responsibilities

In the event that this Contract is terminated, dissolved, voided, rescinded, nullified, or otherwise rendered unenforceable, the State agrees to perform the following obligations, and any others upon which the State and the Contractor agree:

(a) Reconciling all accounts between the State and the Contractor;

(b) Completing any pending post-project reviews.

2.22 Termination by Contractor

2.221 Termination by Contractor

If the State materially breaches its obligation to pay Contractor undisputed amounts due and owing under this Contract in accordance with Section 2.090, or if the State breaches its other obligations under this Contract to an extent that makes it impossible or commercially impractical for Contractor to perform the Services, and if the State does not cure the breach within the time period specified in a written notice of breach provided to the State by Contractor (such time period not to be less than 30 days), then Contractor may terminate this Contract, in whole or in part based on Statement of Work for cause, as of the date specified in the notice of termination; provided, however, that Contractor must discharge its obligations under Section 2.250 before any such termination.

2.23 Stop Work

2.231 Stop Work Orders

The State may, at any time, by written stop work order to Contractor, require that Contractor stop all, or any part, of the work called for by this Contract for a period of up to 90 calendar days after the stop work order is delivered to Contractor, and for any further period to which the parties may agree. The stop work order shall be specifically identified as such and shall indicate that it is issued under this **Section 2.230**. Upon receipt of the stop work order, Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the stop work order during the period of work stoppage. Within the period of the stop work order, the State shall either: (a) cancel the stop work order; or (b) terminate the work covered by the stop work order as provided in **Section 2.210**.

2.232 Cancellation or Expiration of Stop Work Order

If a stop work order issued under this **Section 2.230** is canceled or the period of the stop work order or any extension thereof expires, Contractor shall resume work. The parties shall agree upon an equitable adjustment in the delivery schedule, this Contract price, or both, and this Contract shall be modified, in writing, accordingly, if: (a) the stop work order results in an increase in the time required for, or in Contractor's costs properly allocable to, the performance of any part of this Contract; and (b) Contractor asserts its right to an equitable adjustment within 30 calendar days after the end of the period of work stoppage; provided that, if the State decides the facts justify the action, the State may receive and act upon a Contractor proposal submitted at any time before final payment under this Contract. Any adjustment will conform to the requirements of **Section 2.106.**

2.233 Allowance of Contractor Costs

If the stop work order is not canceled and the work covered by the stop work order is terminated for reasons other than material breach, such termination shall be deemed to be a termination for convenience under **Section 2.212**, and the State shall allow reasonable costs resulting from the stop work order in arriving at the termination settlement. For the avoidance of doubt, the State shall not be liable to Contractor for loss of profits because of a stop work order issued under this **Section 2.230**.

2.240 Reserved

2.25 Dispute Resolution

2.251 In General

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

2.252 Informal Dispute Resolution

(a) All operational disputes between the parties shall be resolved under the Contract Management procedures developed pursuant to Section 2.100. If the parties are unable to resolve any disputes after compliance with such processes, the parties shall meet with the Director of Purchasing Operations, DMB, or designee, for the purpose of attempting to resolve such dispute without the need for formal legal proceedings, as follows:

- (i) The representatives of Contractor and the State shall meet as often as the parties reasonably deem necessary in order to gather and furnish to each other all information with respect to the matter in issue which the parties believe to be appropriate and germane in connection with its resolution. The representatives shall discuss the problem and negotiate in good faith in an effort to resolve the dispute without the necessity of any formal proceeding.
- (ii) During the course of negotiations, all reasonable requests made by one party to another for non-privileged information reasonably related to this Contract will be honored in order that each of the parties may be fully advised of the other's position.
- (iii) The specific format for the discussions will be left to the discretion of the designated State and Contractor representatives, but may include the preparation of agreed upon statements of fact or written statements of position.
- (iv) Following the completion of this process within 60 calendar days, the Director of Purchasing Operations, DMB, or designee, shall issue a written opinion regarding the issue(s) in dispute within 30 calendar days. The opinion regarding the dispute shall be considered the State's final action and the exhaustion of administrative remedies.

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

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

2.253 Injunctive Relief

The only circumstance in which disputes between the State and Contractor will not be subject to the provisions of Section 2.252 is where a party makes a good faith determination that a breach of the terms of this Contract by the other party is such that the damages to such party resulting from the breach will be so immediate, so large or severe and so incapable of adequate redress after the fact that a temporary restraining order or other immediate injunctive relief is the only adequate remedy.

2.254 Continued Performance

Each party agrees to continue performing its obligations under this Contract while a dispute is being resolved except to the extent the issue in dispute precludes performance (dispute over payment shall not be deemed to preclude performance) and without limiting either party's right to terminate this Contract as provided in Section 2.210 and 2.220, as the case may be.

2.26 Federal and State Contract Requirements

2.261 Nondiscrimination

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

2.262 Unfair Labor Practices

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

2.263 Workplace Safety and Discriminatory Harassment

In performing Services for the State, the Contractor shall comply with the Department of Civil Services Rule 2-20 regarding Workplace Safety and Rule 1-8.3 regarding Discriminatory Harassment. In addition, the Contractor shall comply with Civil Service regulations and any applicable agency rules provided to the Contractor. For Civil Service Rules, see http://www.mi.gov/mdcs/0,1607,7-147-6877---,00.html.

2.27 Litigation

2.271 Disclosure of Litigation

(a) Disclosure:
Contractor must disclose any material criminal litigation, investigations or proceedings involving the Contractor (and each Subcontractor) or any of its officers or directors or any litigation, investigations or proceedings under the Sarbanes-Oxley Act. In addition, each Contractor (and each Subcontractor) must notify the State of any material civil litigation, arbitration or proceeding which arises during the term of this Contract and extensions thereto, to which Contractor (or, to the extent Contractor is aware, any Subcontractor hereunder) is a party, and which involves: (i) disputes that might reasonably be expected to adversely affect the viability or financial stability of Contractor or any Subcontractor hereunder; or (ii) a claim or written allegation of fraud against Contractor or, to the extent Contractor is aware, any Subcontractor hereunder by a governmental or public entity arising out of their business dealings with governmental or public entities. Any such litigation, investigation, arbitration or other proceeding (collectively, "Proceeding") must be disclosed in a written statement to the Contract Administrator within 30 days of its occurrence. Details of settlements, which are prevented from disclosure by the terms of the settlement, may be annotated as such. Information provided to the State from Contractor's publicly filed documents referencing its material litigation will be deemed to satisfy the requirements of this Section.

(b) Assurances:
In the event that any such Proceeding disclosed to the State pursuant to this Section, or of which the State otherwise becomes aware, during the term of this Contract would cause a reasonable party to be concerned about:

(i) The ability of Contractor (or a Subcontractor hereunder) to continue to perform this Contract in accordance with its terms and conditions, or
(ii) Whether Contractor (or a Subcontractor hereunder) in performing Services for the State is engaged in conduct which is similar in nature to conduct alleged in such Proceeding, which conduct would constitute a breach of this Contract or a violation of Michigan law, regulations or public policy, then Contractor shall be required to provide the State all reasonable assurances requested by the State to demonstrate that:
(A) Contractor and/or its Subcontractors hereunder will be able to continue to perform this Contract and any Statements of Work in accordance with its terms and conditions, and
(B) Contractor and/or its Subcontractors hereunder have not and will not engage in conduct in performing the Services which is similar in nature to the conduct alleged in such proceeding.

(c) Contractor shall make the following notifications in writing:
(i) Within 30 days of Contractor becoming aware that a change in its ownership or officers has occurred, or is certain to occur, or a change that could result in changes in the valuation of its capitalized assets in the accounting records, Contractor shall notify Purchasing Operations.
(ii) Contractor shall also notify Purchasing Operations within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership or officers.
(iii) Contractor shall also notify Purchasing Operations within 30 days whenever changes to company affiliations occur.

2.272 Governing Law

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

2.273 Compliance with Laws

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

2.274 Jurisdiction

Any dispute arising from this Contract shall be resolved in the State of Michigan. With respect to any claim between the parties, Contractor consents to venue in Ingham County, Michigan, and irrevocably waives any objections it may have to such jurisdiction on the grounds of lack of personal jurisdiction of such court or the laying of venue of such court or on the basis of forum non conveniens or otherwise. Contractor agrees to appoint agents in the State of Michigan to receive service of process.

2.28 Environmental Provision

2.281 Environmental Provision - Reserved

2.29 General Contract Information

2.291 Amendments

This Contract may not be modified, amended, extended, or augmented, except by in writing executed by the parties involved.

2.292 Assignment

(a) Neither party shall have the right to assign this Contract, or to assign or delegate any of its duties or obligations under this Contract, to any other party (whether by operation of law or otherwise), without the prior written consent of the other party; provided, however, that the State may assign this Contract to any other State agency, department, division or department without the prior consent of Contractor and Contractor may assign this Contract to an affiliate so long as such affiliate is adequately capitalized and can provide adequate assurances that such affiliate can perform this Contract. Any purported assignment in violation of this Section shall be null and void. It is the policy of the State of Michigan to withhold consent from proposed assignments, subcontracts, or notations when such transfer of responsibility would operate to decrease the State's likelihood of receiving performance on this Contract or the State's ability to recover damages.

(b) Contractor may not, without the prior written approval of the State, assign its right to receive payments due under this Contract. In the event of any such permitted assignment, Contractor shall not be relieved of its responsibility to perform any duty imposed upon it herein, and the requirement under this Contract that all payments shall be made to one (1) entity shall continue.

2.293 Entire Contract; Order of Precedence

(a) This Contract, including any Statements of Work and Exhibits, to the extent not contrary to this Contract, each of which is incorporated for all purposes, constitutes the entire agreement between the parties with respect to the subject matter and supersedes all prior agreements, whether written or oral, with respect to such subject matter and as additional terms and conditions on the purchase order shall apply as limited by Section 2.061.

(b) In the event of any inconsistency between the terms of this Contract and a Statement of Work, the terms of the Statement of Work will take precedence (as to that Statement of Work only); provided, however, that a Statement of Work may not modify or amend the terms of Sections 2.110 through 2.220 of this Contract, which may be modified or amended only by a formal Contract amendment.

2.294 Headings

Captions and headings used in this 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.

2.295 Relationship of the Parties (Independent Contractor Relationship)

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

2.296 Notices

(a) Any notice given to a party under this Contract shall be deemed effective, if addressed to such party as addressed in **Section 2.002**, 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.

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

(b) Binding Commitments
Representatives of Contractor identified in Article 1, shall have the authority to make binding commitments on Contractor's behalf within the bounds set forth in such table. Contractor may change such representatives from time to time upon written notice.

2.297 Media Releases and Contract Distribution

(a) Media Releases:
Neither Contractor nor the State will make any news releases, public announcements or public disclosures, nor will they have any conversations with representatives of the news media, pertaining to this Contract, the Services or this Contract without the prior written approval of the other party, and then only in accordance with explicit written instructions provided by that party. In addition, neither Contractor nor the State will use the name, trademarks or other proprietary identifying symbol of the other party or its affiliates without such party's prior written consent. Prior written consent of the Contractor must be obtained from authorized representatives.

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

2.298 Reformation and Severability

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

2.299 Consents and Approvals

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

2.300 No Waiver of Default

The failure of a party to insist upon strict adherence to any term of this 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 this Contract.

2.301 Survival

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

2.302 Covenant of Good Faith

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

2.303 Permits

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

2.304 Website Incorporation

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

2.305 Taxes

Contractors are expected to collect and pay all applicable federal, state, and local employment taxes, including the taxes defined in Section 3.022 for all persons involved in this Contract.

2.306 Prevailing Wage - Reserved

2.307 Call Center Disclosure

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

2.308 Future Bidding Preclusion

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

2.310 Reserved

2.32 Extended Purchasing

2.321 MiDEAL - Reserved

2.322 State Employee Purchases - Reserved

2.33 Federal Grant Requirements

2.331 Federal Grant Requirements

The following links contain certifications and terms, which may be required for some purchases paid via Federal funds. They are included here to be utilized as required.

Lobbying Certifications are usually for agreements over $100,000. The debarment certification is required for all agreements. The last link is where you can go and search for debarred or suspended contractors.

http://straylight.law.cornell.edu/uscode/html/uscode31/usc_sec_31_00001352----000-.html
http://www.archives.gov/federal_register/codification/executive_order/12549.html
http://www.archives.gov/federal_register/executive_orders/pdf/12869.pdf
http://www.epls.gov/epls/servlet/EPLSSearchMain/1

Appendix A

1. Each machine listed as a separate line item bid with three (3) factors:
    a. Monthly maintenance amount
    b. Per click charge amount
    c. Consumable priced per click (consumables defined as toner, fuser oil, and filters)
2. Full service maintenance to include all parts, labor, and preventive maintenance. Consumable, except paper, to be priced per image.
3. Machine 8VE059712 to include maintenance cost of the roll unwinder.
4. Prices to include costs of all software licenses.
5. Machines still on lease to vendor will not commence until date listed.
6. Cancellation of maintenance on an individual machine basis may occur depending on operational needs. Thirty day notice will be given.
7. Response to trouble call required within 30 minutes.
8. On site response required within two (2) hours.
9. Monday through Friday, 8AM to 5PM coverage required.
10. Vendor to provide an “after-hours” rate for coverage beyond contracted time.
11. Clicks utilized during repair will be credited and stated on invoice.
12. Vendor to perform preventive maintenance at Xerox established standard intervals for each machine. Parts and service for preventive maintenance to be included in monthly maintenance or click charge pricing.
13. Include a copy of your current maintenance agreement.
14. If inspection and certification is needed prior to providing maintenance, provide these costs in your proposal.
15. Two (2), One (1) year extensions are possible.

GENERAL TERMS: The following terms apply to all transactions:

1) BASIC SERVICES. As a mandatory part of a lease, Xerox (or a designated servicer) will provide the following Basic Services under this Agreement (unless you are acquiring Equipment for which Xerox does not offer Basic Services; such Equipment to be designated as “No Svc.”):

A) REPAIRS & PARTS. Xerox will make repairs and adjustments necessary to keep Equipment in good working order (including such repairs or adjustments required during initial installation). Parts required for repair may be new, reprocessed, or recovered.

B) HOURS & EXCLUSIONS. Unless otherwise stated, Basic Services will be provided during Xerox's standard working hours (excluding Xerox-recognized holidays) in areas within the United States, its territories, and possessions open for repair service for the Equipment at issue. You agree to give Xerox reasonable access to the Equipment. Basic Services shall cover repairs and adjustments required as a result of normal wear and tear or defects in materials or workmanship (and shall exclude repairs or adjustments Xerox determines to relate to or be affected by the use of options, accessories, or other connected products not serviced by Xerox, as well as any non-Xerox alterations, relocation, service, supplies, or consumables). You agree to use Equipment in accordance with, and to perform all operator maintenance procedures for Equipment as set forth in, the applicable manuals provided by Xerox.

C) INSTALLATION SITE & METER READINGS. The Equipment installation site must conform to Xerox's published requirements throughout the term of this Agreement. If applicable, you agree to provide meter readings in the manner prescribed by Xerox. If you do not provide Xerox with meter readings as required, Xerox may estimate them and bill you accordingly.

D) EQUIPMENT REPLACEMENT. If Xerox is unable to maintain the Equipment as described above, Xerox will, as your exclusive remedy for Xerox's failure to provide Basic Services, replace the Equipment with an identical product or, at Xerox's option, another product of equal or greater capabilities.

E) PC/WORKSTATION REQUIREMENTS. In order to receive Basic Services and/or Software Support for Equipment requiring connection to a PC or workstation, you must utilize a PC or workstation that either (1) has been provided by Xerox or (2) meets Xerox's published specifications.

F) DELIVERY AND REMOVAL. Xerox will be responsible for all standard delivery and removal charges. You will be responsible for any non-standard delivery or removal charges incurred.

2) SUPPLIES INCLUDED IN BASE/PRINT CHARGES. If this option has been selected, Xerox (or a designated servicer) will provide you with black toner (excluding highlight color toner), black developer, copy Cartridges, and, if applicable, fuser ("Consumable Supplies") throughout the term of this Agreement. For full-color Equipment, Consumable Supplies shall also include, as applicable, color toner and developer. You agree that the Consumable Supplies are Xerox's property until used by you, that you will use them only with the Equipment, that you will return all Cartridges to Xerox for remanufacturing once they have been run to their cease-function point (at Xerox's expense when using Xerox-supplied shipping labels), and that at the end of the term of this Agreement either (a) you will return any unused Consumable Supplies to Xerox (at Xerox's expense when using Xerox-supplied shipping labels)or (b) destroy them in a manner permitted by applicable law. Should your use of Consumable Supplies exceed Xerox's published yields for these items by more than 10%, you agree that Xerox shall have the right to charge you for any such excess usage. When requested by Xerox, you agree to provide meter readings and inventory of Consumable Supplies in your possession.

3) EXTENDED SERVICE HOURS. If this option has been selected, Xerox will provide Basic Services during the hours indicated, with the first number establishing the number of eight-hour shifts covered and the second establishing the days of the week (e.g., 2 x 6 would provide service from 8:00 A.M. to 11:59 P.M., Monday through Saturday). The cost of this enhanced service coverage will be billed separately and, as such, is not included in your Minimum Lease Payment or Print Charges.

SOFTWARE TERMS: The following additional terms apply only to transactions covering Application Software and/or Xerox-brand Equipment:

1) SOFTWARE LICENSE. The following terms apply to copyrighted software and the accompanying documentation, including, but not limited to, operating system software, provided with or within the Xerox-brand Equipment acquired hereunder ("Base Software") as well as software specifically set out as "Application Software" on the face of this Agreement. This license does not apply to any Diagnostic Software or to any software and accompanying documentation made subject to a separate license agreement.

   A) Xerox grants you a non-exclusive, non-transferable license to use the Base Software within the United States, its territories, and possessions (the "United States") only on or with the Equipment with which (or within which) it was delivered. For Application Software, Xerox grants you a non-exclusive, non-transferable license to use this software within the United States on any single unit of equipment for as long as you are current in the payment of any indicated software license fees (including any Annual Renewal Fees). You have no other rights to the Base or Application Software and, in particular, may not: (1) distribute, copy, modify, create derivatives of, decompile, or reverse engineer this software; (2) activate any software delivered with or within the Equipment in an unactivated state; or, (3) allow others to engage in same. Title to the Base and Application Software and all copyrights and other intellectual property rights in it shall at all times reside solely with Xerox and/or its licensors (who shall be considered third-party beneficiaries of this Agreement's software and limitation of liability provisions). Base and Application Software may contain, or be modified to contain, computer code capable of automatically disabling proper operation or functioning of the Equipment. Such disabling code may be activated if: (a) Xerox is denied access to the Base or Application Software to periodically reset such code; (b) you otherwise breach any term of this Agreement; or, (c) your license is terminated or expires.

   B) Xerox may terminate your license for any Base Software (1) immediately if you no longer use or possess the Equipment or are a lessor of the Equipment and your first lessee no longer uses or possesses it, or (2) upon the termination of any agreement under which you have rented or leased the Equipment.

   C) If you transfer possession of the Equipment after you obtain title to it, Xerox will offer the transferee a license to use the Base Software within the United States on or with it, subject to Xerox's then-applicable terms and license fees, if any, and provided the transfer is not in violation of Xerox's rights.

   D) Xerox warrants that the Base and Application Software will perform in material conformity with its user documentation for a ninety (90) day period from the date it is delivered or, for software installed by Xerox, the date of software installation. Neither Xerox nor its licensors warrant that the Base or Application Software will be free from errors or that its operation will be uninterrupted.

2) SOFTWARE SUPPORT. During the period that Xerox (or a designated servicer) provides Basic Services for the Equipment but in no event longer than five (5) years after Xerox stops taking orders from customers for their acquisition of the subject model of Equipment, Xerox (or a designated servicer) will also provide software support for the Base Software under the following terms. For Application Software licensed pursuant to this Agreement, Xerox will provide software support under the following terms provided you are current in the payment of all Initial License and Annual Renewal Fees (or, for programs not requiring Annual Renewal Fees, the payment of the Initial License Fee and the annual "Support Only" Fees).

A) Xerox will assure that Base and Application Software performs in material conformity with its user documentation and will maintain a toll-free hotline during standard business hours to answer related questions.

B) Xerox may make available new releases of the Base or Application Software that primarily incorporate coding error fixes and are designated as “Maintenance Releases”. Maintenance Releases are provided at no charge and must be implemented within six (6) months after being made available to you. Each new Maintenance Release shall be considered Base or Application Software governed by these Software Terms. New releases of the Base or Application Software that are not Maintenance Releases, if any, may be subject to additional license fees at Xerox's then-current pricing and shall be considered Base or Application Software governed by these Software Terms (unless otherwise noted). Xerox will not be in breach of its software support obligations hereunder if, in order to implement, in whole or in part, a new release of Base or Application Software provided or made available to you by Xerox, you must procure, at your expense, additional hardware and/or software from Xerox or any other entity. You agree to return or destroy all prior releases.

C) Xerox will use reasonable efforts, either directly and/or with its vendors, to resolve coding errors or provide workarounds or patches, provided you report problems as specified by Xerox.

D) Xerox shall not be obligated (1) to support any Base or Application Software that is two or more releases older than Xerox's most current release or (2) to remedy coding errors if you have modified the Base or Application Software.

E) For Application Software, Xerox may annually increase the Annual Renewal and Support-Only Fees, each such increase not to exceed 10%. (For state and local-government customers, this adjustment shall take place at the commencement of each of your annual contract cycles.)

3) DIAGNOSTIC SOFTWARE. Software used to maintain the Equipment and/or diagnose its failures or substandard performance (collectively “Diagnostic Software”) is embedded in, resides on, or may be loaded onto the Equipment. The Diagnostic Software and method of entry or access to it constitute valuable trade secrets of Xerox. Title to the Diagnostic Software shall at all times remain solely with Xerox and/or Xerox's licensors. You agree that (a) your acquisition of the Equipment does not grant you a license or right to use the Diagnostic Software in any manner, and (b) that unless separately licensed by Xerox to do so, you will not use, reproduce, distribute, or disclose the Diagnostic Software for any purpose (or allow third parties to do so). You agree at all times (including subsequent to the expiration of this Agreement) to allow Xerox to access, monitor, and otherwise take steps to prevent unauthorized use or reproduction of the Diagnostic Software.

No.	Machine/Location	Ser.#	Start Date	Controller	Print Module	Licenses
1	Central 6135 PM	H2L110939	7/1/2007	CNTRLUL2C (R9H-301363) 512 MB Memory Kit (512MEMUP) 8 GB Tape Drive (H8Y)	6125PM-1 DTFIN1 PHUB 6135INT Interposer 2 Tray (G9V081147) DocuTech Finisher (H8K102934)	Appletalk (AGATE) Novell (NGATE) Server S/W License (0JR) Novell License (4JR) Appletalk License (5JR) SBRIC PWB. (H1H)
2	Central RC T6180	8VE050345	8/1/2008	CNTRL60 (HDD-711314 DT6180 CNTRL Label (DT180PPM)	DT Print Module 6180 Finisher (DTFIN3) 10 BASET Thinet Hub (10B-T/HUB) 6180 Interposer (6180INT) Finisher 60HZ (0VF025827) Feeder MOD - Used (6PC050813)	Software License (2JR) SBRIC PWB. (H1H)
3	Hannah (GOB) 6180	8VE050444	8/1/2008	DTCNTRL-2 CNTRL (LRD-037517) DT 6180 CNTRL Label (DT180PPM)	6180 DT Print Module 6180 Finisher (DTFIN3) 10 BASEET Thinet Hub (10B-T/HUB) 6180 Interposer (6180INT) Finisher 60 HZ (0VF025828) Feeder Mod - Used (6PC052351)	Software License (2JR) SBRIC PWB. (H1H)
4	Hannah ® 6135	H2L110941	8/1/2007	CNTRLUL2C (R9H-301903) 512 MB Memory Kit (512MEMUP) 8 GB Tape Drive (H8Y)	6135PM-1 DT Print Module Docutech Finisher DTFIN1 6135 Interposer (6135INT) Prod Mini Net Kit (PHUB) Interposer 2 Tray (G9V081044) DocuTech Finisher (H8K102837)	Appletalk (AGATE) Novell (NGATE) Server S/W License (0JR) Novell License (4JR) Appletalk License (5JR) SBRIC PWB. (H1H)
5	3Cs #1 6155	8VE050923	10/1/2008	CNTRL 60 (HDD-710066) DT6155 CNTRL Label (DT155PPM) 8 GB Tape Drive	6155PM 6180 Finisher (DTFIN3) 6180 Interposer (6180INT) Prod Mini Net Kit (PHUB) Finisher 60 HZ (0VF025012) Feeder Mod - Used (6PC050271)	Appletalk (AGATE) Novell (NGATE) Novell License (4JR) Appletalk License (5JR) DT6155 Software License (UU3)

6	3Cs #3 6155	8VE059473	6/1/2008	CNTRLUL2C (R9H-302571) 512 MB Memory Kit (512MEMUP) 8 GB Tape Drive (H8Y)	6155PM 6180 Finisher (DTFIN3) 6180 Interposer (6180INT) Prod Mini Net Kit (PHUB) Finisher 60 HZ (0VF026046) Feeder Mod-Used (6PC052081)	Appletalk (AGATE) Novell (NGATE) Novell License (4JR) Appletalk License (5JR) DT6155 Software License (UU3)
7	Central (Roll fed) 6180	8VE059712	9/1/2008	CNTRL60 (HDD-710064) DT6180 CNTRL Label (DT180PPM) Country Kit (6V2) 2ND 450MHZ CPU Kit (GWG) 21" Color Display (W8H) (H8Y7)	6180 DT Print Module 6180 Finisher (DTFIN3) 6180 Interposer (6180INT) Prod Mini Net Kit (PHUB) ByPass Transport (DTBYPAS3) Hi Capacity Stacker (DTSTACK) Hi Capacity Stacker (DTSTACK) DocuJob Converter (XDJC-H5) Finisher 60 HZ (0vF026009) Feeder MOD - USED (6PC050127) Roll Systems Inc. Docusheeter Model # 80015801	Software License (2JR) Novell License (4JR) Appletalk License (5JR) SBRIC PWB (H1H) PROD MINI NET KIT (PHUB) Appletalk License (AGATE) Novell License (NGATE) FF VI Interpreter (VIGROUPB)
8	CPC 6135	H2L110595	10/1/2007	CNTRLUL2C (R9H-300930)512 MB Memory Kit (512MEMUP)8 GB Tape Drive (H8Y)	6135PM-1 DT Print ModuleDocutech Finisher (DTFIN1)Docutech Finisher (H8K102089)Prod Mini Net Kit (PHUB)	Server S/W License (0JR)Novell License (4JR)Appletalk License (5JR)SBRIC PWB. (H1H)Prod Mini Net Kit (PHUB)Appletalk License (AGATE)Novell License (NGATE)
9	3Cs 6135	H2L111223	2/1/2008	CNTRLUL2C (R9H-302560) 512 MB Memory Kit (512MEMUP) 8 GB Tape Drive (H8Y)	6135PM-1 DT Print Module Docutech Finisher (DTFIN1) 6135 Interposer (6135INT) Prod Mini Net Kit (PHUB) Interposer 2 Tray (G9V081347) DocuTech Finisher (H8K103356)	Appletalk (AGATE) Novell (NGATE) Server S/W License (0JR) Novell License (4JR) Appletalk License (5JR)

10	CPC 4635	11W010178	10/1/2007	4635 SYS CNTRL. (Paychecks) (4W2355700)	4635MX MICR Base System CART MOD W/IDRC (CM90-2) ONLINE W-4245 EMUL (ONLIN42) MIDDLE MODULE (ODN-020144) ENH. Feeding Proc (7PU) 651MB Disk Drive (9NK) 2 each	
11	CPC 6180	8VE051163	10/1/2007	DT-CNTL6C 61XX X86 Controller (VNH-000514)	DT Print Module 6180PM 6180 Finisher (DTFIN3) 6180 Interposer (6180INT) Finisher 60 HZ(0VF025732) Feeder Mod - Used (6PC051544)	Software License (2JR) Novell License (4JR) Appletalk License (5JR) SBRIC PWB (H1H) FreeFlow VI SW&LIC (NWR) (NWT0) PROD MINI NET KIT (PHUB) Appletalk License (AGATE) Novell License (NGATE) FF VI Interpreter (VIGROUPB)

Pricing

Machine	Print Module Monthly	Controller Monthly	Average Clicks	Click Allowance	Click Charge	Monthly Avg. Click Charge	Monthly Machine Total	New Contract Months	Total Contract Spend
H2L-110939	$2,208.63	$110.25	665,459	400,000	$0.0038	$1,008.74	$3,327.62	36	$119,794.47
8VE-050345	$4,103.89	$189.01	849,521	400,000	$0.0038	$1,708.18	$6,001.08	26	$156,028.07
8VE-050444	$4,103.89	$189.01	610,156	400,000	$0.0038	$798.59	$5,091.49	26	$132,378.81
H2L-110941	$2,208.69	$110.25	396,150	400,000	$0.0038	$0.00	$2,318.94	36	$83,481.84
8VE-050923	$4,103.89	$204.76	679,554	400,000	$0.0038	$1,062.31	$5,370.96	23	$123,531.97
8VE-059473	$4,103.89	$204.76	578,268	400,000	$0.0038	$677.42	$4,986.07	28	$139,609.92
8VE-059712*	$4,103.89	$204.76	1,012,482	400,000	$0.0038	$2,327.43	$6,636.08	24	$159,265.96
H2L-110595	$1,309.04	$294.35	234,302	200,000	$0.0052	$178.37	$1,781.76	36	$64,143.37
H2L-111223	$2,208.69	$110.25	572,529	400,000	$0.0038	$655.61	$2,974.55	32	$95,185.61
1MV-010178	$2,566.30	$0.00	903,408	0	$0.0065	$5,872.15	$8,438.45	36	$303,784.27
8VE-051163	$2,389.20	$304.51	1,362,075	400,000	$0.0038	$3,655.89	$6,349.60	36	$228,585.42
									$1,605,789.71

*Roll feed (docusheeter, $790) included in Module base.