

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

November 8, 2007

CHANGE NOTICE NO. 6
TO
CONTRACT NO. 071B1001713
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR Xerox Corporation 4650 South Hagadorn Road East Lansing, MI 48823 Greg.Mohr@usa.xerox.com	TELEPHONE Greg Mohr (517) 333-5569
	VENDOR NUMBER/MAIL CODE
	BUYER/CA (517) 373-7374 Joan Bosheff
Contract Compliance Inspector: Kim Sperry Lease/Purchase of Xerox 6180 & Digipath Scanner - DMB	
CONTRACT PERIOD: From: August 15, 2001 To: December 31, 2008	
TERMS Net 30 Days	SHIPMENT As Required
F.O.B. Delivered & Installed	SHIPPED FROM N/A
MINIMUM DELIVERY REQUIREMENTS N/A	

NATURE OF CHANGE (S):

Effective immediately this Contract is hereby EXTENDED until December 31, 2008.

In addition, Contract Compliance Inspector is changed to Kim Sperry.

All other terms, conditions and prices remain the same.

AUTHORITY/REASON:

Per DMB/Purchasing Operations AND State Administrative Board Approval of November 6, 2007.

NET INCREASE: \$70,000.00

TOTAL REVISED ESTIMATED CONTRACT VALUE: \$1,035,295.74

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

August 1, 2007

CHANGE NOTICE NO. 5
TO
CONTRACT NO. 071B1001713
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR Xerox Corporation 4650 South Hagadorn Road East Lansing, MI 48823 Greg.Mohr@usa.xerox.com	TELEPHONE Greg Mohr (517) 333-5569
	VENDOR NUMBER/MAIL CODE
	BUYER/CA (517) 373-7374 Joan Bosheff
Contract Compliance Inspector: Hal Graber Lease/Purchase of Xerox 6180 & Digipath Scanner - DMB	
CONTRACT PERIOD: From: August 15, 2001 To: September 30, 2008	
TERMS Net 30 Days	SHIPMENT As Required
F.O.B. Delivered & Installed	SHIPPED FROM N/A
MINIMUM DELIVERY REQUIREMENTS N/A	

NATURE OF CHANGE (S):

Effective immediately this Contract is hereby EXTENDED until
September 30, 2008.

All other terms, conditions and prices remain the same.

AUTHORITY/REASON:

Per DMB/Purchasing Operations.

TOTAL ESTIMATED CONTRACT VALUE REMAINS: \$935,295.74

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

August 30, 2006

CHANGE NOTICE NO. 4
TO
CONTRACT NO. 071B1001713
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR Xerox Corporation 4650 South Hagadorn Road East Lansing, MI 48823 Greg.Mohr@usa.xerox.com	TELEPHONE Greg Mohr (517) 333-5569
	VENDOR NUMBER/MAIL CODE
	BUYER/CA (517) 373-7374 Joan Bosheff
Contract Compliance Inspector: Hal Graber Lease/Purchase of Xerox 6180 & Digipath Scanner - DMB	
CONTRACT PERIOD: From: August 15, 2001 To: September 30, 2007	
TERMS Net 30 Days	SHIPMENT As Required
F.O.B. Delivered & Installed	SHIPPED FROM N/A
MINIMUM DELIVERY REQUIREMENTS N/A	

NATURE OF CHANGE (S):

Effective immediately this Contract is hereby **EXTENDED** until **September 30, 2007**. All other terms, conditions and prices remain the same.

AUTHORITY/REASON:

Per DMB/Purchasing Operations.

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

January 14, 2005

**CHANGE NOTICE NO. 3
 TO
 CONTRACT NO. 071B1001713
 between
 THE STATE OF MICHIGAN
 and**

NAME & ADDRESS OF VENDOR Xerox Corporation 4650 South Hagadorn Road East Lansing, MI 48823 Greg.Mohr@usa.xerox.com	TELEPHONE Greg Mohr (517) 333-5569
	VENDOR NUMBER/MAIL CODE
	BUYER/CA (517) 373-7374 Joan Bosheff
Contract Compliance Inspector: Hal Graber Lease/Purchase of Xerox 6180 & Digipath Scanner - DMB	
CONTRACT PERIOD: From: August 15, 2001 To: August 15, 2007	
TERMS Net 30 Days	SHIPMENT As Required
F.O.B. Delivered & Installed	SHIPPED FROM N/A
MINIMUM DELIVERY REQUIREMENTS N/A	

NATURE OF CHANGE (S):

Effective February 1, 2005, the base rate for monthly maintenance is reduced to \$1,055.75. In addition, meter charge for all copies is \$0.0038/copy, and all consumable supplies are included in the click charge. These maintenance costs will remain firm until September 30, 2007.

All other terms, conditions and prices remain the same.

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

September 19, 2003

**CHANGE NOTICE NO. 2
 TO
 CONTRACT NO. 071B1001713
 between
 THE STATE OF MICHIGAN
 and**

NAME & ADDRESS OF VENDOR		TELEPHONE Greg Mohr (517) 333-5569
Xerox Corporation 4650 South Hagadorn Road East Lansing, MI 48823 Greg.Mohr@usa.xerox.com		VENDOR NUMBER/MAIL CODE
		BUYER (517) 373-7374 Joan Bosheff
Contract Administrator: Hal Graber Lease/Purchase of Xerox 6180 & Digipath Scanner - DMB		
CONTRACT PERIOD: From: August 15, 2001 To: August 15, 2007		
TERMS	Net 30 Days	SHIPMENT As Required
F.O.B.	Delivered & Installed	SHIPPED FROM N/A
MINIMUM DELIVERY REQUIREMENTS N/A		

NATURE OF CHANGE (S):

Effective May 1, 2003, monthly lease payment is \$7,032.54. Contract is also EXTENDED for one (1) year with a new expiration date of August 15, 2007. (Contract extension effective after payment 19 for 65 months.) Equipment buy-out cost at the end of lease period will be \$0.00.

All other terms, conditions, and prices remain the same.

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

September 8, 2003

**CHANGE NOTICE NO. 1
 TO
 CONTRACT NO. 071B1001713
 between
 THE STATE OF MICHIGAN
 and**

NAME & ADDRESS OF VENDOR Xerox Corporation 4650 South Hagadorn Road East Lansing, MI 48823 Greg.Mohr@usa.xerox.com	TELEPHONE Greg Mohr (517) 333-5569
	VENDOR NUMBER/MAIL CODE
	BUYER (517) 373-7374 Joan Bosheff
Contract Administrator: Hal Graber Lease/Purchase of Xerox 6180 & Digipath Scanner - DMB	
CONTRACT PERIOD: From: August 15, 2001 To: August 15, 2006	
TERMS Net 30 Days	SHIPMENT As Required
F.O.B. Delivered & Installed	SHIPPED FROM N/A
MINIMUM DELIVERY REQUIREMENTS N/A	

NATURE OF CHANGE (S):

Effective May 1, 2003, full service monthly maintenance, which includes 6155 PM, DIGIPATH2, DIGIPCB, and CNTRL60, is DECREASED to \$1,770.00/month with all copies to be billed at \$.005/each. All other terms and conditions remain the same.

Estimated Contract Value: \$935,295.74

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

August 14, 2001

NOTICE
OF
CONTRACT NO. 071B1001713
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR Xerox Corporation 4650 South Hagadorn Road East Lansing, MI 48823 Greg.Mohr@usa.xerox.com	TELEPHONE Greg Mohr (517) 333-5569
	VENDOR NUMBER/MAIL CODE
	BUYER (517) 373-7374 Joan Bosheff
Contract Administrator: Mark Armbrustmacher Lease/Purchase of Xerox 6180 & Digipath Scanner - DMB	
CONTRACT PERIOD: From: August 15, 2001 To: August 15, 2006	
TERMS <p style="text-align: center;">Net 30 Days</p>	SHIPMENT <p style="text-align: center;">As Required</p>
F.O.B. <p style="text-align: center;">Delivered & Installed</p>	SHIPPED FROM <p style="text-align: center;">N/A</p>
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;">N/A</p>	

The terms and conditions of this Contract are those of [REQ #071R1002810](#), this Contract Agreement and the vendor's quote. In the event of any conflicts between the specifications, terms and conditions indicated by the State and those indicated by the vendor, those of the State take precedence.

Estimated Contract Value: **\$935,295.74**

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

CONTRACT NO. 071B1001713
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR Xerox Corporation 4650 South Hagadorn Road East Lansing, MI 48823	TELEPHONE Greg Mohr (517) 333-5569 VENDOR NUMBER/MAIL CODE BUYER (517) 373-7374 Joan Bosheff
Contract Administrator: Mark Armbrustmacher Lease/Purchase of Xerox 6180 & Digipath Scanner - DMB	
CONTRACT PERIOD: From: August 15, 2001 To: August 15, 2006	
TERMS <p style="text-align: center;">Net 30 Days</p>	SHIPMENT <p style="text-align: center;">As Required</p>
F.O.B. <p style="text-align: center;">Delivered & Installed</p>	SHIPPED FROM <p style="text-align: center;">N/A</p>
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;">N/A</p>	
MISCELLANEOUS INFORMATION: The terms and conditions of this Contract are those of REQ #071R1002810, this Contract Agreement and the vendor's quote. In the event of any conflicts between the specifications, terms and conditions indicated by the State and those indicated by the vendor, those of the State take precedence. Estimated Contract Value: \$935,295.74	

THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the [REQ No. 071R1002810](#). A Purchase Order Form will be issued only as the requirements of the State Departments are submitted to the Office of Purchasing. Orders for delivery may be issued directly by the State Departments 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:
Firm Name	Signature Joan Bosheff, Buyer Specialist
Authorized Agent Signature	Name Commodities & Services Division
Authorized Agent (Print or Type)	Title
Date	Date



MICHIGAN LEASE/PURCHASE CONTRACT TERMS

FOR

CONTRACT #071B1001713

STATE OF MICHIGAN

DEPARTMENT OF MANAGEMENT AND BUDGET

August, 2001



**MICHIGAN LEASE/PURCHASE CONTRACT TERMS
FOR
DEPARTMENT OF MANAGEMENT AND BUDGET
CONTRACT #071B1001713**

The following is the Contract to be used to acquire the systems described in Contract #071B1001713 for the State of Michigan, Department of Management and Budget.

The following are mandatory:

Mandatory Terms: -- Those terms which the Contractor SHALL agree to without word modification.

1. Definition of Terms
2. Term of Contract
3. Installation and Delivery Dates
4. Liquidated Damages
5. Performance and Reliability Evaluation (PARE)
6. Terms of Use
7. Maintenance of Equipment
8. Patent and Copyright Protection
9. Training
10. Site Preparation
11. Transportation, Installation, Relocation, and Return of Equipment
12. Risk of Loss or Damage
13. Indemnification
14. Supplies
15. Taxes - Federal, State and Local
16. Title
17. Assignment
18. Cancellation
19. State's Obligation
20. Contractor's Obligation
21. General
22. Unfair Labor Practices
23. Contractor's Liability Insurance

ATTACHMENT A – Specifications



**MICHIGAN LEASE/PURCHASE CONTRACT TERMS
FOR
DEPARTMENT OF MANAGEMENT AND BUDGET
CONTRACT #071B1001713**

Contractor agrees to furnish and install equipment at sites designated by the State and to let to the State, and the State hereby hires from the Contractor all equipment, listed on attached Contract.

Terms and Conditions Applicable to Lease/Purchase



TERMS AND CONDITIONS

Terms and Conditions Applicable to Lease/Purchase of Equipment.

1. Definition of Terms

- a. Acceptance Date - The first day of the successful Performance and Reliability Evaluation (PARE) period. It is the date from which payments accrue.
- b. Equipment - An all-inclusive term which refers either to individual machines or components, individually or collectively.
- c. Equipment Failure - A malfunction in the equipment, which prevents or impedes the accomplishment of a job.
- d. Hourly Equipment Rate - The monthly payment including maintenance per unit divided by 160.
- e. Installation Date - The date specified in the contract by which the Contractor must have the ordered equipment ready (certified) for use by the State.
- f. Liquidated Damages - A settlement due the State from the Contractor if the Contractor fails to install and make ready for use by the State the equipment designated in the contract on or before the installation date specified in contract.
- g. Machine - An individual unit, including special features installed thereon, separately identified by a type and/or model number.
- h. Mechanical Replacement - The replacement of one machine for another occasioned by the mechanical condition of the machine being replaced.
- i. Preventative Maintenance - That maintenance performed by the Contractor which is designated to keep the equipment in proper operating condition. It is performed on a scheduled basis.
- j. Principle Period of Maintenance (PPM) - Will be the same hours as the State's normal working hours (currently Monday through Friday, 8:00 AM to 5:00 PM, excluding a one-hour lunch period, excepting State observed holidays).
- k. Remedial Maintenance - The maintenance performed by the Contractor which results from equipment failure and which is performed as required, and, therefore, on an unscheduled basis.

2. Term of Contract

- a. This contract is effective from the date hereof for 60 months.
- b. Contract shall designate the installation date, and, if applicable, removal dates of each machine to be leased under this agreement.



- c. The purchase and lease/purchase price of equipment shall not increase for the life of the contract.
- d. Should the State elect to exercise any lease extension, or purchase option, the Contractor shall offer continued maintenance support for the term of the contract as provided under the terms of this contract.
- e. The State may at any time following acceptance of the equipment, purchase any or all of the machines at the Contractor's price (including any discount) stated in the bid at the time the bid is awarded, or at the prices prevailing at the time of such purchase, whichever is the lesser, less the accrued purchase option allowance associated with the price of that machine.

3. Installation and Delivery Dates

a. Equipment

- (1) The Contractor shall supply equipment ready for use as specified in Contract #071B1001713.
- (2) Installation dates may be advanced by mutual consent of the Contractor and the State by amendment to Contract. On advance of any installation date, the Contractor shall receive written notice from the State at least 30 days prior to the advance installation date.
- (3) The State reserves the unilateral right to delay any installation. The Contractor shall receive written notice from the State at least 30 days prior to the scheduled installation date.
- (4) If the equipment is certified to be ready for use prior to the installation date, the State, at its option, may elect to use the equipment and change the installation date accordingly. In this event, the Contract shall be amended accordingly.

4. Liquidated Damages

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

a. Equipment

- (1) If the Contractor does not install or delivery the system and/or machines (designated by the Contractor's type and model number), and special features and accessories included in Contract with the system and/or machines, ready for use, on or before the installation date, the Contractor shall pay to the State, as fixed and agreed, liquidated



damages, for each calendar day between the delivery date specified in Contract and the date of the certification for such equipment, but not more than 180 calendar days in lieu of all other damages due to such non-installation, an amount of 1/30th of the monthly payment (including contracted maintenance) for the system.

- (2) If some, but not all, of the machines on Contract are installed or delivered ready for use, by the installation date, and the State makes operational use of any such installed machines, liquidated damages shall not accrue against the machines used. The use of machines for scheduled program development shall be included as operational use.
- (3) If the delay is more than thirty (30) calendar days, then by written notice to the Contractor, the State may terminate the right of the Contractor to install, and may obtain substitute equipment. In this event, the Contractor shall be liable for liquidated damages in the amounts specified above until acceptable substitute equipment is installed, ready for use, or for 180 days from the installation date, whichever occurs first. The Contractor shall also be liable for outbound preparation and shipping costs for contracted items returned under this clause.

b. Exception

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

5. Performance and Reliability Evaluation (PARE)

A performance and reliability evaluation (PARE) will be required to be performed. The standard of performance for the PARE will be closely monitored during the acceptance period.

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

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

a. Determination of System Readiness

- (1) The PARE will begin on the installation dates when the Contractor certifies that the equipment is ready for use by the State.

b. During the PARE:

- (1) The PARE shall cover a period of 30 consecutive calendar days.



- (2) All equipment shall operate in conformance with the Contractor's published specifications, applicable to such items.
- (3) Equipment shall not be accepted by the State and no charges will be paid by the State until the standard of performance is met.
- (4) The PARE will not be complete until the equipment has met the required effectiveness level for the prescribed time period.
- (5) If successful completion of the PARE is not attained within 30 days of the installation date, the State may terminate the Agreement, or by mutual agreement of the State and Contractor, performance tests may continue. The State's option to terminate the Agreement shall remain in effect until such time as a successful completion of the performance period is attained.

6. Terms of Use

a. Invoices and Payments

- (1) The Contractor shall certify in writing to the State on the installation date that the equipment is installed and ready to use.
- (2) The Contractor will render invoices for monthly charges. The State shall pay all such invoices in accordance with the State's standard payment procedure as specified in Public Act #279 of 1984.
- (3) Payment for fractions of a calendar month shall be computed at the rate of 1/30 of the applicable monthly charge for each day the equipment was installed, except that the 31st day of any month will not be included in the computation of partial month billing for discontinued equipment. This partial month billing can only occur for the first month of operation. Subsequent bills are to be monthly costs only.

7. Maintenance of Equipment

- a. The Contractor must be responsible for maintenance (labor and parts) at the prices shown in the Contract for each piece of equipment and shall keep quoted equipment in good operating condition for the length of the contract. All maintenance performed must be identified by equipment serial number.
- b. Contractor must be responsible for any contractor required preventative maintenance. Preventative maintenance must be performed at no additional cost, between the hours of 8:00 AM to 5:00 PM, at a time agreeable to the State.
- c. The Contractor must supply, upon request, a monthly service report to the designated State office for service performed. The monthly report shall commence only at the specific written request of the contract administrator.

The following information is required on the Contractor Service Report:

- *Serial/Model number of equipment being repaired
- *Service performed



- *Date/Time equipment repaired
- *Date/Time service request received
- *Location of service
- *Cause of breakdown or need of service
- *Service field engineer's name performing service
- *Service report control number
- *Replacement part description

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

(1) Monthly

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

i. Malfunction Reports

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

- (1) Date and time (hours, minutes, and a.m. or p.m.) notified (to be supplied by user and verified by Contractor).



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

j. Unreliable Equipment

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

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

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

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

8. Patent and Copyright Protection

Contractor, at its sole expense, will defend all suits brought against the State, its agencies and employees, for the infringement of United States patents or copyrights by the contract items furnished hereunder, and will satisfy any monetary judgment rendered against the State, its agencies and employees for such infringement. The State shall give Contractor prompt written notice of all such suits and shall reasonably cooperate with Contractor in the defense of such suits, at no cost or expense to the State, its agencies and employees. If the items furnished hereunder do become the subject of a lawsuit or claim of infringement of a United States copyright or patent, or the Contractor becomes aware that such items are likely to become the subject of a lawsuit or claim of infringement, Contractor will immediately notify the State in writing, and, without diminishing Contractor's obligation to defend the State against such claim and to satisfy any monetary judgment rendered against the State, its agencies and employees, Contractor may exercise one of the following three options in order to provide the State with continued uninterrupted use of equipment for the purposes of and contemplated by this contract:

- a. Obtain for the State the right to continue the use of the infringing item at no cost to the State.



- b. Substitute for the alleged infringing items other equivalent or better items deemed satisfactory to the State, at no additional cost to the State.
- c. An alternative acceptable to both the Contractor and the State.

In the event the use of the items furnished hereunder is prevented by preliminary and/or permanent injunction, or in any other manner, Contractor must, immediately upon notice to it of the action preventing the State's use of the item, exercise one of the three options provided for above so as to provide the State with continued, uninterrupted use of equipment as contemplated by this contract, at no additional cost to the State.

9. Training

- a. The Contractor shall provide training for personnel to achieve the level of proficiency necessary for Contract #071B1001713.
- b. Charges, if any, shall be listed.
- c. Technical Services. A vendor technical representative must be available to State personnel by phone to solve minor problems/questions, or on-site visits to solve more complex problems or questions. Charges, if any, for specified ITB requirements be listed.

10. Site Preparation

- a. Site preparation specifications for equipment listed in Contract shall be furnished by the Contractor promptly upon request by the State. These specifications shall be in such detail to ensure that equipment to be installed shall operate efficiently from the point of view of environment.
- b. The State will prepare the sites as specified by the Contractor. Subsequent alterations or modifications in site preparation required by the Contractor, which are attributable to Contractor's requirements and which involve additional expense to the State shall be made at the expense of the Contractor.
- c. If any such site alterations as specified in sub paragraph b. above cause a delay in the installation, the provisions of Paragraph 4 will apply.
- d. The Contractor will notify the State in writing as to the adequacy of the State's planned layout of the equipment within ten (10) days after receipt of the State's plan.

11. Transportation, Installation, Relocation, and Return of Equipment

- a. Transportation
 - (1) Shipments to site(s) specified by the State shall be made at the cost as indicated in the Contract.
 - (2) Transportation charges for the shipment of empty packing cases shall be paid by the Contractor except when equipment is moved from one State location to another.



- (3) Transportation charges, regardless of point of origin or destination of the equipment, shall not exceed the cost of shipment between the State location and the location of the Contractor's nearest plant of manufacture for each component.
- (4) The Contractor shall bear the cost of transportation when the equipment is replaced at the Contractor's request, unless replacement was due to fault or negligence of the State.

b. Installation

- (1) The State shall pay only those rigging and drayage costs as indicated in the Contract.
- (2) When equipment is moved for mechanical replacement purposes, the Contractor shall pay all rigging and drayage costs, unless replacement was due to fault or negligence of the State.
- (3) Supervision of placement of equipment shall be furnished by the Contractor without charge to the State.

c. Relocation

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

d. Return of Equipment

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



12. Risk of Loss or Damage

a. For Leased Equipment

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

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

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

Property leased by the State of Michigan does not exempt the lessor from taxes of any kind applicable to the property.

b. During the lease period, the conditions described above for leased property apply. When the purchase option is exercised without further time payments and ownership transfers to the State, all risks of loss or damage to the property and future responsibility for liabilities in connection with the property transfer to the State.

c. The lessor shall insure the respective interests of the State and the lessor in the property against loss or damage from at least the perils specified hereafter, and the lessor shall include the cost of such insurance in the conditional purchase payments. In the event that the annual premium for the insurance at the time of successive payments should increase or decrease more than \$50.00, the lessor may increase or shall decrease the remaining payments accordingly, provided such insurance has been obtained at a reasonable cost in relation to available sources.

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

- * all physical loss, except for causes or circumstances commonly excluded by authorized insurers.

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



13. Indemnification

1. The Contractor shall indemnify, defend and hold harmless the State, its departments, divisions, agencies, sections, commissions, officers, employees and agents, from and against all losses, liabilities, penalties, fines, damages and claims (including taxes), and all related costs and expenses (including reasonable attorneys' fees and disbursements and costs of investigation, litigation, settlement, judgments, interest and penalties), arising from or in connection with any of the following:
 - (a) Any claim, demand, action, citation or legal proceeding against the State, its employees and agents arising out of or resulting from (1) the product provided or (2) performance of the work, duties, responsibilities, actions or omissions of the Contractor or any of its subcontractors under this Contract.
 - (b) Any claim, demand, action, citation or legal proceeding against the State, its employees and agents arising out of or resulting from a breach by the Contractor of any representation or warranty made by the Contractor in the Contract;
 - (c) Any claim, demand, action, citation or legal proceeding against the State, its employees and agents arising out of or related to occurrences that the Contractor is required to insure against as provided for in this Contract;
 - (d) Any claim, demand, action, citation or legal proceeding against the State, its employees and agents arising out of or resulting from the death or bodily injury of any person, or the damage, loss or destruction of any real or tangible personal property, in connection with the performance of services by the Contractor, by any of its subcontractors, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable; provided, however, that this indemnification obligation shall not apply to the extent, if any, that such death, bodily injury or property damage is caused solely by the negligence or reckless or intentional wrongful conduct of the State;
 - (e) Any claim, demand, action, citation or legal proceeding against the State, its employees and agents which results from an act or omission of the Contractor or any of its subcontractors in its or their capacity as an employer of a person.

2. Patent/Copyright Infringement Indemnification

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



commodity or service of equivalent function and performance so that it becomes non-infringing, or, if such option is not reasonably available to Contractor, (iii) accept its return by the State with appropriate credits to the State against the Contractor's charges and reimburse the State for any losses or costs incurred as a consequence of the State ceasing its use and returning it.

In any and all claims against the State of Michigan, or any of its agents or employees, by any employee of the Contractor or any of its subcontractors, the indemnification obligation under the Contract shall not be limited in any way by the amount or type of damages, compensation or benefits payable by or for the Contractor or any of its subcontractors under worker's disability compensation acts, disability benefits acts, or other employee benefits acts. This indemnification clause is intended to be comprehensive. Any overlap in subclauses, 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 subclause.

14. Supplies

Charges do not include supplies. Supplies used by the State shall conform to the Contractor's specifications or equivalent as set forth in Contractor's Manuals.

15. Taxes - Federal, State and Local

The State of Michigan is exempt from Federal Excise Tax, State and Local Sales Taxes, such taxes shall not be included in contract prices as long as the State maintains such exemptions. Federal Excise Tax exemption certificates will be furnished with Contract if requested.

Payment of taxes applicable, as of the date of the opening of sealed bids resulting in award of this contract, will be the responsibility of the party who is to hold the title to the equipment during the period of the contract. Any new tax imposed on the Contractor for equipment installed under this contract, subsequent to the date of this contract, will, upon notification by the Contractor to the State, become the responsibility of the State.

16. Title

Title to equipment, accessories and devices lease/purchased under this contract shall remain with the Contractor until the State makes the final payment. At that time, title will pass to the State.

17. Assignment

The contractor is prohibited from assigning, transferring, conveying, subletting, or otherwise disposing of any contract resulting from this ITB of its rights, title, or interest therein or its power to execute such agreement to any other person, company, corporation, or entity without the previous written approval of the state. While the state may approve payment to be assigned to another party or may approve the issuance of two-party checks, the state assumes no liability for payment other than to the contractor.

18. Cancellation

CANCELLATION OF CONTRACT by the State may be:

- (a) The State may cancel the Contract for default of the Contractor. Default is defined as the failure of the Contractor to fulfill the obligations of the quotation or Contract. In case of default by the Contractor, the State may immediately and/or upon 30 days prior written



notice to the Contractor cancel the Contract without further liability to the State, its departments, divisions, agencies, sections, commissions, officers, agents and employees, and procure the services from other sources, and hold the Contractor responsible for any excess costs occasioned thereby.

- (b) The State may cancel the Contract in the event the State no longer needs the services or products specified in the Contract, or in the event program changes, changes in laws, rules or regulations, relocation of offices occur, or the State determines that statewide implementation of the Contract is not feasible, or if prices for additional services requested by the State are not acceptable to the State. The State may cancel the Contract without further liability to the State, its departments, divisions, agencies, sections, commissions, officers, agents and employees by giving the Contractor written notice of such cancellation 30 days prior to the date of cancellation.
- (c) The State may cancel the Contract for lack of funding. The Contractor acknowledges that, if this Contract extends for several fiscal years, continuation of this Contract is subject to appropriation of funds for this project. 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 without penalty at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of termination to the Contractor. The State shall give the Contractor written notice of such non-appropriation within 30 days after it receives notice of such non-appropriation.
- (d) The State may immediately cancel the Contract without further liability to the State its departments, divisions, agencies, sections, commissions, officers, agents and employees if the Contractor, an officer of the Contractor, or an owner of a 25% or greater share of the Contractor, is convicted of a criminal offense incident to the application for or performance of a State, public or private Contract or subcontract; or convicted of a criminal offense including but not limited to any of the following: embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, attempting to influence a public employee to breach the ethical conduct standards for State of Michigan employees; convicted under state or federal antitrust statutes; or convicted of any other criminal offense which in the sole discretion of the State, reflects on the Contractor's business integrity.
- (e) The State may immediately cancel the Contract in whole or in part by giving notice of termination to the Contractor if any final administrative or judicial decision or adjudication disapproves a previously approved request for purchase of personal services pursuant to Constitution 1963, Article 11, Section 5, and Civil Service Rule 4-6.
- (f) The State may, with 30 days written notice to the Contractor, cancel the Contract in the event prices proposed for Contract modification/extension are unacceptable to the State.

19. State's Obligation

State's obligation is payable only and solely from funds appropriated for the purchase of this agreement. 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 agreement. Payments during subsequent fiscal periods are dependent upon the same action. The State agrees to give the Contractor written notice of such non-appropriation within thirty (30) days after it receives notice of such non-appropriation.



20. Contractor's Obligation

In the event the Contractor has provided equipment other than their own manufacture as specified in all Contracts, the State will allow the Contractor, as prime Contractor, to sub-contract to provide the necessary bid item; however, the prime Contractor will retain sole contract responsibilities to the State for all contract obligations contained herein. The prime Contractor may with prior written approval of the State, assign its rights to receive payments hereunder, provided that such assignments shall not relieve prime Contractor of its responsibility to perform any duty imposed herein, and that all payments shall be made to one entity.

21. General

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 the Contract.

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

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

This Contract shall in all respects be governed by, and construed in accordance with, the laws of the State of Michigan.

22. Unfair Labor Practices

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

23. Contractor's Liability Insurance

The Contractor shall purchase and maintain such insurance as will protect him from claims set forth below which may arise out of or result from the Contractor's operations under the CONTRACT, whether such operations be by himself or by any Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- (1) Claims under workers' compensation, disability benefit and other similar employee benefit act. A non-resident Contractor shall have insurance for benefits payable under Michigan's Workers' Compensation Law for any employee resident of and hired in Michigan; and as respects any other employee protected by workers' compensation laws of any other state the Contractor shall have insurance or participate in a mandatory state fund to cover the benefits payable to any such employee.



- (2) Claims for damages because of bodily injury, occupational sickness or disease, or death of his employees.
- (3) Claims for damages because of bodily injury, sickness or disease, or death of any person other than his employees, subject to limits of liability of not less than \$300,000 each occurrence and, when applicable \$300,000 annual aggregate, for non-automobile hazards and as required by law for automobile hazards.
- (4) Claims for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom, subject to a limit of liability of not less than \$50,000 each occurrence for non-automobile hazards and as required by law for automobile hazards.
- (5) Insurance for Subparagraphs (3) and (4) non-automobile hazards on a combined single limit of liability basis shall not be less than \$300,000 each occurrence and when applicable, \$300,000 annual aggregate.

The insurance shall be written for not less than any limits of liability herein specified or required by law, whichever is greater, and shall include contractual liability insurance as applicable to the Contractor's obligations under the indemnification clause of the CONTRACT/DPO.

BEFORE STARTING WORK THE CONTRACTOR MUST FURNISH TO THE OFFICE OF PURCHASING, CERTIFICATE(S) OF INSURANCE VERIFYING LIABILITY COVERAGE. THE CONTRACT OR DPO ORDER NO. MUST BE SHOWN ON THE CERTIFICATE OF INSURANCE TO ASSURE CORRECT FILING. These Certificates shall contain a provision that coverages afforded under the policies will not be canceled until at least fifteen days prior written notice bearing the CONTRACT No. or DPO No. has been given to the Director of Purchasing.