

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. 2
TO
CONTRACT NO. 071B3001321
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 (517) 333-5569 Greg Mohr |
| | VENDOR NUMBER/MAIL CODE |
| | BUYER/CA (517) 373-7374 Joan Bosheff |
| Contract Compliance Inspector: Hal Graber Lease/Purchase of Xerox 6180 Copier – DMB | |
| CONTRACT PERIOD: From: August 15, 2003 To: August 15, 2009 | |
| TERMS Net 30 Days | SHIPMENT 30 Days ARO |
| F.O.B. Delivered and 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 \$1,277.20. In addition, meter charge for all copied 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.

TOTAL ESTIMATED CONTRACT VALUE REMAINS: \$1,065,707.96

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

October 2, 2003

CHANGE NOTICE NO. 1
TO
CONTRACT NO. 071B3001321
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 (517) 333-5569 Greg Mohr |
| | VENDOR NUMBER/MAIL CODE |
| | BUYER (517) 373-7374 Joan Bosheff |
| Contract Administrator: Hal Graber Lease/Purchase of Xerox 6180 Copier – DMB | |
| CONTRACT PERIOD: From: August 15, 2003 To: August 15, 2009 | |
| TERMS Net 30 Days | SHIPMENT 30 Days ARO |
| F.O.B. Delivered and Installed | SHIPPED FROM N/A |
| MINIMUM DELIVERY REQUIREMENTS N/A | |

NATURE OF CHANGE (S):

Per the attached, payment is changed to \$9,382.34 per month. Monthly lease payment includes Xsis-LCDS software and filter and Lytrod software.

In addition, monthly maintenance charge does not include toner, developer and fuser oil. Also, attached is an updated amortization schedule based upon the new monthly lease payment.

All other terms, conditions and prices remain the same.

TOTAL ESTIMATED CONTRACT VALUE REMAINS: \$1,065,707.96

ITEM LISTING

| Item | Commodity Number | Unit | Description | Unit Cost | | | | | | | | | | | | | | | | |
|------------------------------------|-------------------------|-------------|---|----------------------|------------|---------|--------|-------------------|--------|-----------|-------|------------------------------------|-----------------|-------------------------------|-------------------|----------|-----------------|---------------------------|-------------------|-------------------|
| 001 | 600-38 | MO | <p>Seventy-two (72) month Lease with Option to Purchase of one (1) Xerox 6180PM. Attached amortization schedule covers seventy-two (72) months.</p> <p>Includes addition of 256MEMUP memory kit to controllers, X/SIS-LCDS software and filter and Lytrod software Also, includes six (6) month warranty and training for a minimum of three (3) employees.</p> <p>Unit price reflects a trade-in of one (1) Xerox 6180, Serial #8VE-050405 for \$31,070; one (1) Xerox 5090S, Serial #G2T-100436 for \$10,000; one (1) Xerox Xpress 36", Serial #L9E-894550 for \$7,775; and two (2) Xerox DCCS50S Serial #FU2045162 for \$16,206; and Serial #FU2044858 for \$16,205.</p> <p>Buy-out option of \$10,000.00.</p> | <u>\$9,382.34</u> | | | | | | | | | | | | | | | | |
| 002 | 939-27 | MO | <p>Full service maintenance agreement to commence after six (6) month warranty period. Agreement to be reviewed annually for cost-of-living adjustments not to exceed five (5) percent. Estimated monthly copy volume of 836,700. All copies charged at \$0.005/each. Pricing breakdown as follows:</p> <table border="0"> <tr> <td>Base charges: 6180PM</td> <td>\$1,340.00</td> </tr> <tr> <td>DPCNTRL</td> <td>180.00</td> </tr> <tr> <td>DIGIPRO3 DIGIPATH</td> <td>270.00</td> </tr> <tr> <td>OPTICAL-B</td> <td>30.00</td> </tr> <tr> <td>Copy charges billed @ \$0.005/copy</td> <td><u>4,183.50</u></td> </tr> <tr> <td>Total Base with Copies</td> <td>\$6,003.50</td> </tr> <tr> <td>Less 15%</td> <td><u>(900.53)</u></td> </tr> <tr> <td>Estimated Net Cost</td> <td>\$5,102.97</td> </tr> </table> | Base charges: 6180PM | \$1,340.00 | DPCNTRL | 180.00 | DIGIPRO3 DIGIPATH | 270.00 | OPTICAL-B | 30.00 | Copy charges billed @ \$0.005/copy | <u>4,183.50</u> | Total Base with Copies | \$6,003.50 | Less 15% | <u>(900.53)</u> | Estimated Net Cost | \$5,102.97 | <u>\$5,102.97</u> |
| Base charges: 6180PM | \$1,340.00 | | | | | | | | | | | | | | | | | | | |
| DPCNTRL | 180.00 | | | | | | | | | | | | | | | | | | | |
| DIGIPRO3 DIGIPATH | 270.00 | | | | | | | | | | | | | | | | | | | |
| OPTICAL-B | 30.00 | | | | | | | | | | | | | | | | | | | |
| Copy charges billed @ \$0.005/copy | <u>4,183.50</u> | | | | | | | | | | | | | | | | | | | |
| Total Base with Copies | \$6,003.50 | | | | | | | | | | | | | | | | | | | |
| Less 15% | <u>(900.53)</u> | | | | | | | | | | | | | | | | | | | |
| Estimated Net Cost | \$5,102.97 | | | | | | | | | | | | | | | | | | | |

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

August 22, 2003

NOTICE
 OF
 CONTRACT NO. 071B3001321
 between
 THE STATE OF MICHIGAN
 and

| | |
|--|--|
| NAME & ADDRESS OF VENDOR Xerox Corporation 4650 South Hagadorn Road East Lansing, MI 48823 | TELEPHONE (517) 333-5569 Greg Mohr |
| | VENDOR NUMBER/MAIL CODE |
| | BUYER (517) 373-7374 Joan Bosheff |
| Contract Administrator: Hal Graber Lease/Purchase of Xerox 6180 Copier – DMB | |
| CONTRACT PERIOD: From: August 15, 2003 To: August 15, 2009 | |
| TERMS Net 30 Days | SHIPMENT 30 Days ARO |
| F.O.B. Delivered and Installed | SHIPPED FROM N/A |
| MINIMUM DELIVERY REQUIREMENTS N/A | |

The terms and conditions of this Contract are those of REQ. #071R3000784, this Contract Agreement and the vendor's quote dated April 22, 2003. 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: \$1,065,707.96

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

CONTRACT NO. 071B3001321
between
THE STATE OF MICHIGAN
and

| | | |
|--|---|--|
| NAME & ADDRESS OF VENDOR <p style="text-align: center;">Xerox Corporation 4650 South Hagadorn Road East Lansing, MI 48823</p> | | TELEPHONE (517) 333-5569 Greg Mohr VENDOR NUMBER/MAIL CODE BUYER (517) 373-7374 Joan Bosheff |
| Contract Administrator: Hal Graber <p style="text-align: center;">Lease/Purchase of Xerox 6180 Copier – DMB</p> | | |
| CONTRACT PERIOD: From: August 15, 2003 To: August 15, 2009 | | |
| TERMS <p style="text-align: center;">Net 30 Days</p> | SHIPMENT <p style="text-align: center;">30 Days ARO</p> | |
| F.O.B. <p style="text-align: center;">Delivered and 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: <p>The terms and conditions of this Contract are those of REQ. #071R3000784, this Contract Agreement and the vendor's quote dated April 22, 2003. 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.</p> <p>Estimated Contract Value: \$1,065,707.96</p> | | |

THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the REQ. No. 071R3000784. Orders for delivery of equipment will be issued directly by the Department of Management and Budget through the issuance of a Purchase Order Form.

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

| | |
|--|---|
| <p>FOR THE VENDOR:</p> <p style="text-align: center;">Xerox Corporation</p> <hr/> <p style="text-align: center;">Firm Name</p> <hr/> <p style="text-align: center;">Authorized Agent Signature</p> <hr/> <p style="text-align: center;">Authorized Agent (Print or Type)</p> <hr/> <p style="text-align: center;">Date</p> | <p>FOR THE STATE:</p> <hr/> <p style="text-align: center;">Signature</p> <p style="text-align: center;">James S. Konrad, Division Director</p> <hr/> <p style="text-align: center;">Name</p> <p style="text-align: center;">Tactical Purchasing, Acquisition Services</p> <hr/> <p style="text-align: center;">Title</p> <hr/> <p style="text-align: center;">Date</p> |
|--|---|

**MICHIGAN LEASE WITH OPTION TO PURCHASE CONTRACT
TERMS**

FOR

CONTRACT #071B3001321

STATE OF MICHIGAN

DEPARTMENT OF MANAGEMENT AND BUDGET

AUGUST, 2003

**MICHIGAN LEASE WITH OPTION TO PURCHASE CONTRACT TERMS
FOR
DEPARTMENT OF MANAGEMENT AND BUDGET
CONTRACT #071B3001321**

The following is the Contract to be used to acquire the systems described in Contract #071B3001321 for the State of Michigan, Department of Management and Budget (Lessee).

The following are mandatory:

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

1. Definition of Terms
2. Term of Lease with Option to Purchase
3. Installation and Delivery Dates
4. Liquidated Damages
5. Performance and Reliability Evaluation (PARE); Acceptance
6. Terms of Use
7. Maintenance of Equipment
8. Training
9. Site Preparation
10. Transportation, Installation, Relocation and Return of Equipment
11. Risk of Loss or Damage
12. Indemnification
13. Supplies
14. Taxes – Federal, Lessee and Local
15. Title
16. Cancellation
17. Purchase Option
18. Lessee Default
19. Contractor's Remedies on Default by Lessee
20. Non-Discrimination Clause
21. Contractor's Obligation
22. Issuing Office
23. No Waiver of Default
24. Revisions, Consents and Approvals
25. Severability
26. Survivor
27. Governing Law
28. Unfair Labor Practices
29. Contractor's Liability Insurance
30. Workplace Safety and Discriminatory Harassment
31. Tax Covenant
32. IRS Reporting
33. Lease Payments
34. Assignment
35. No Remedy Exclusive
36. Notices
37. Miscellaneous Provisions
38. Statutory Obligations
39. Warranty

ATTACHMENT A – Item Listing

ATTACHMENT B – System Specifications

ATTACHMENT C – Amortization Schedule

ATTACHMENT D – Certificate of Acceptance

ATTACHMENT E – Affidavit of Mailing

TERMS AND CONDITIONS

Terms and Conditions Applicable to Lease with Option to Purchase of Equipment.

1. DEFINITION OF TERMS

- a. Acceptance Date – The day that Performance and Reliability Evaluation (PARE) is successfully completed and equipment is accepted by the Lessee.
- 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 Lessee
- f. Lessee -- The State of Michigan by its Department of Management and Budget.
- g. Lessor -- The Contractor.
- h. Liquidated Damages - A settlement due the Lessee from the Contractor if the Contractor fails to install and make ready for use by the Lessee the equipment designated in the contract on or before the installation date specified in contract.
- i. Machine - An individual unit, including special features installed thereon, separately identified by a type and/or model number.
- j. Mechanical Replacement - Replacement of one machine for another occasioned by the mechanical condition of the machine being replaced.
- k. Preventative Maintenance - Maintenance performed by the Contractor which is designated to keep the equipment in proper operating condition. It is performed on a scheduled basis.
- l. Principle Period of Maintenance (PPM) - Will be the same hours as the Lessee '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).
- m. 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 LEASE WITH OPTION TO PURCHASE (LEASE)

- a. The "Commencement Date" for this Lease is the date on which the Equipment is accepted by Lessee in the manner described in Section 5.
- 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 with option to purchase price of equipment shall not increase for the life of the Lease.
- d. Should the Lessee elect to exercise any Lease extension or purchase option, the Contractor shall offer continued maintenance support for a term negotiated by the parties.
- e. The Lessee 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 purchase offer, 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 #071B3001321.
 - (2) Installation dates may be advanced by mutual consent of the Contractor and the Lessee by amendment to Contract. On advance of any installation date, the Contractor shall receive written notice from the Lessee at least 30 days prior to the advance installation date.
 - (3) The Lessee reserves the unilateral right to delay any installation. The Contractor shall receive written notice from the Lessee 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 Lessee, 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 Lessee's programs. If any of the units of equipment are not installed within the time specified in Contract, the delay will interfere with the proper implementation of the Lessee's programs utilizing the equipment leased with option to purchase pursuant

to this contract, to the loss and damage of the Lessee. From the nature of the case, it would be impracticable and extremely difficult to fix the actual damage sustained in the event of any such delay. The Lessee and the Contractor, therefore, presume that in the event of any such delay, the amount of damage which will be sustained from a delay will be the amount set forth below, and they agree that in the event of any such delay, the Contractor shall pay such amount as liquidated damages and not as a penalty. The Lessee, at its option, for amounts due the Lessee as liquidated damages, may deduct such from any money payable to the Contractor or may bill the Contractor as a separate item.

a. Equipment

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

b. Exception

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

negligence of any of them, the Contractor shall not be liable for liquidated damages for delays unless the supplies or services to be furnished by the subcontractors were obtainable from other sources in sufficient time to permit the Contractor to meet the required performance schedule.

5. PERFORMANCE AND RELIABILITY EVALUATION (PARE); ACCEPTANCE

The parties agree and acknowledge that the obligations under this Lease are conditioned, in part, upon the successful completion of a Performance and Reliability Evaluation (PARE), described in the Contract between the parties. Upon successful completion of the PARE, Lessee shall confirm to Lessor its written acceptance of the Equipment by executing a "Certificate of Acceptance." A blank, unexecuted copy of a Certificate of Acceptance is attached hereto as Attachment C. The PARE shall commence when the Equipment has been delivered and installed as provided in Section 5.

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

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

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

a. Determination of System Readiness

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

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 Lessee and no charges will be paid by the Lessee 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 Lessee may terminate the Contract, or by mutual agreement of the Lessee and Contractor, performance tests may

continue. The Lessee's option to terminate the Contract shall remain in effect until such time as a successful completion of the performance period is attained.

- (6) Following the successful completion of the PARE period, the Lessee and Contractor agree to use the first day of the PARE period as the equipment installation date.

6. TERMS OF USE

a. Invoices and Payments

- (1) The Contractor shall certify in writing to the Lessee on the installation date that the equipment is installed and ready to use.
- (2) The Contractor will render invoices for monthly charges. The Lessee shall pay all such invoices in accordance with the Lessee'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. A warranty period of six (6) months for parts and labor is included in this contract.
- b. Contractor shall be responsible for any required preventative maintenance. Preventative maintenance must be performed at no additional cost, between the hours of 8:00 AM to 5:00 PM, at a time agreeable to the Lessee.
- c. The Contractor must supply, upon request, a monthly service report to the designated representative of Lessee for service performed. The monthly report shall commence only at the specific written request of the contract administrator.

The following information is required on the Contractor Service Report:

*Serial/Model number of equipment being repaired

*Service performed

*Date/Time equipment repaired

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

- d. Principle Period of Maintenance (PPM) will be the same hours as the Lessee's normal working hours (currently Monday through Friday, 8:00 AM to 5:00 PM, excluding a one (1) hour lunch period, excepting State observed holidays).
- e. The PPM hours may be changed upon 30 days written notice by mutual agreement, except that the Contractor shall make every reasonable effort to change his schedule in a shorter period of time.
- f. After the initial 12 months of the Maintenance Contract, provided the Contractor has given thirty (30) days prior written notice and furnished documentation, the Lessee may agree to change the maintenance charges paid to the Contractor not to exceed five (5) percent a year.
- g. All repairs performed must be guaranteed for 30 days.
- h. The Lessee has the option to 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 Lessee that the equipment is inoperative. The equipment shall be repaired within four (4) PPM hours of arrival at the site. If the Contractor fails to repair the equipment within the above period, the Contractor shall allow credit, for each work day the equipment is inoperative, in an amount of 1/30 of the monthly minimum maintenance charge for equipment furnished by the Contractor that is not operable as a result of the inoperative equipment (not be exceed one month charge in any calendar month). Equipment which experiences repeated failures may be deemed unreliable equipment under 7.j. below.

i. Malfunction Reports

The Contractor shall furnish a malfunction incident report to the Lessee 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 Lessee 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 Lessee 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 Lessee reserves the option to require the Contractor to replace the equipment, in whole or in part, or provide suitable substitute equipment acceptable to the Lessee as a loan without additional charge to the Lessee. At the end of the five working day period, and upon written notice to the Contractor, the Lessee 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.

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

8. TRAINING

- a. The Contractor shall provide training for personnel to achieve the level of proficiency necessary for Contract #071B30001321.

- b. Charges, if any, shall be listed.
- c. Technical Services. A vendor technical representative must be available to Lessee's 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 shall be listed.

9. SITE PREPARATION

- a. Site preparation specifications for equipment listed in Contract shall be furnished by the Contractor promptly upon request by the Lessee. These specifications shall be in such detail to ensure that equipment to be installed shall operate efficiently from the point of view of environment.
- b. The Lessee 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 Lessee, 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 Lessee in writing as to the adequacy of the Lessee's planned layout of the equipment within ten (10) days after receipt of the Lessee's plan.

10. TRANSPORTATION, INSTALLATION, RELOCATION AND RETURN OF EQUIPMENT

- a. Transportation
 - (1) Shipments to site(s) specified by the Lessee 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 Lessee 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 Lessee's 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 Lessee.

- b. Installation
 - (1) The Lessee 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 Lessee.
 - (3) Supervision of placement of equipment shall be furnished by the Contractor without charge to the Lessee.
- 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 Lessee's convenience shall be at the Lessee '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 Lessee with required shipping instructions.
 - b. Within 30 days, the Lessee shall ship the equipment in accordance with instructions (d1.a).
 - (2) All shipping costs will be borne by the Contractor.

11. RISK OF LOSS OR DAMAGE

a. For Leased Equipment

Leased Property: The Contractor shall specify the care and maintenance to be provided by the Contractor while the Leased property is in the custody and control of the 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 Contractor'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 Contractor in connection with the Leased property, however, the Contractor may include relevant insurance expenses along with other factors considered in the Lease rate(s).

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

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

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

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

12. INDEMNIFICATION**A. General Indemnification**

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

1. Any claim, demand, action, citation or legal proceeding against the State, its employees and agents arising out of or resulting from (1) the product provided or (2) performance of the work, duties, responsibilities, actions or omissions of the Contractor or any of its subcontractors under this Contract.
2. Any claim, demand, action, citation or legal proceeding against the State, its employees and agents arising out of or resulting from a breach by the Contractor of any representation or warranty made by the Contractor in the Contract;
3. Any claim, demand, action, citation or legal proceeding against the State, its employees and agents arising out of or related to occurrences that the Contractor is required to insure against as provided for in this Contract;
4. Any claim, demand, action, citation or legal proceeding against the State, its employees and agents arising out of or resulting from the death or bodily injury of any person, or the damage, loss or destruction of any real or tangible personal property, in connection with the performance of services by the Contractor, by any of its subcontractors, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable; provided, however, that this indemnification obligation shall not apply to the extent, if any, that such death, bodily injury or property damage is caused solely by the reckless or intentional wrongful conduct of the State
5. Any claim, demand, action, citation or legal proceeding against the State, its employees and agents which results from an act or omission of the Contractor or any of its subcontractors in its or their capacity as an employer of a person.

B. Patent/Copyright Infringement Indemnification

To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold harmless the State, its employees and agents from and against all losses, liabilities, damages (including taxes), and all related costs and expenses (including reasonable attorneys' fees and disbursements and costs of investigation, litigation, settlement, judgments, interest and penalties)

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

C. **Indemnification Obligation Not Limited**

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

D. **Continuation of Indemnification Obligation**

The duty to indemnify will continue in full force and affect notwithstanding the expiration or early termination of the Contract with respect to any claims based on facts or conditions, which occurred prior to termination.

13. SUPPLIES

Charges do include the following supplies: toner, developer, and fuser oil. Supplies used by the Lessee shall conform to the Contractor's specifications or equivalent as set forth in Contractor's Manuals.

14. TAXES – FEDERAL, STATE AND LOCAL

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

- B. Federal Excise Tax: The State of Michigan may be exempt for Federal Excise Tax, or such taxes may be reimbursable, if articles purchased under this Contract are used for the State's exclusive use. Certificates exclusive use for the purposes of substantiating a tax-free, or tax-reimbursable sale will be sent to the Contractor upon request. If a sale is tax exempt or tax reimbursable under the Internal Revenue Code, prices shall not include the Federal Excise Tax.
- C. Contractors are expected to collect and pay all applicable federal, state, and local employment taxes for all persons involved in the resulting Contract. Also, bidders shall maintain appropriate payroll information on a system that can produce any reports that may be needed by Acquisition Services.

15. TITLE

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

16. CANCELLATION

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

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

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

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

- In the event this Contract is cancelled for cause pursuant to this section, and it is therefore determined, for any reason, that the Contractor was not in breach of contract pursuant to the provisions of this section, that cancellation for cause shall be deemed to have been a cancellation for convenience, effective as of the same date, and the rights and obligations of the parties shall be limited to that otherwise provided in the Contract for a cancellation for convenience.
2. Non-Appropriation. The Lessee is obligated only to pay such Lease Payments under this Lease as may be appropriated for the Lease of the Equipment. Should the State Legislature fail to appropriate funds to pay Lease Payments, or should an appropriation be adopted which specifically prohibits the use of funds for this Lease, The Lessee agrees to deliver notice to Contractor of such non-appropriation within thirty (30) business days of a final legislative action terminating funding for this Lease. Failure to give Contractor such notice shall not create any obligation on the part of the Lessee to make Lease payments beyond the period for which funds have been appropriated. If this Lease is terminated in accordance with this paragraph, Lessee agrees to peaceably deliver the Equipment to Contractor at the location(s) specified by Contractor or to allow Contractor to peaceably obtain possession of the Equipment.
 3. Criminal Conviction. In the event the Contractor, an officer of the Contractor, or an owner of a 25% or greater share of the Contractor, is convicted of a criminal offense incident to the application for or performance of a State, public or private Contract or subcontract; or convicted of a criminal offense including but not limited to any of the following: embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, attempting to influence a public employee to breach the ethical conduct standards for State of Michigan employees; convicted under State or federal antitrust statutes; or convicted of any other criminal offense which in the sole discretion of the State, reflects upon the Contractor's business integrity.
 4. Approvals Rescinded. In the event any final administrative or judicial decision or adjudication disapproves a previously approved request for purchase of personal services pursuant to Article 11, Section 5 of the Michigan Constitution of 1963, and Chapter 7 of the Civil Service Rules. Notwithstanding any other provision of this Contract to the contrary, the State Personnel Director is authorized to disapprove contractual disbursements for personal services if the Director determines that the Contract of the disbursements under the Contract violate Article 11, Section 5 of the Constitution or violate applicable Civil Service rules or regulations. Cancellation may be in whole or in part and may be immediate as of the date of the written notice to the Contractor or may be effective as of the date stated in such written notice.

17. PURCHASE OPTION

Lessee reserves the unilateral right to exercise a purchase option for the Equipment. Lessee may exercise this right by paying to Lessor a "Concluding Payment", based on the payment terms specified in the Lease Payment Schedule. The Concluding Payment for a given date shall be defined as the sum of the outstanding principal balance as of that date, plus any unpaid accrued interest as of that date, plus ten thousand dollars (\$10,000). Upon receiving payment of the Concluding Payment, Lessor shall transfer any and all of its rights, title, and interest to the Equipment and covenant to Lessee that the Equipment is free of any liens or encumbrances.

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

18. LESSEE DEFAULT

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

19. CONTRACTOR'S REMEDIES ON DEFAULT BY LESSEE

Whenever Lessee defaults and the default is not cured within the period specified in Section 18 above, Contractor shall have the right, at its sole option without any further demand, to take one of the following remedial steps: (a) By written notice to Lessee, declare all Lease payments payable to the end of the period for which an appropriation has been made to be immediately due and payable; (b) Take whatever action at law or in equity may appear necessary or desirable to enforce its rights under this Lease or as a secured party in any or all of the equipment including peaceably obtaining possession of the equipment.

20. NON-DISCRIMINATION CLAUSE

In the performance of the Contract, the Contractor agrees not to discriminate against any employee or applicant for employment, with respect to their hire,

tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, ancestry, age, sex, height, weight, marital status, physical or mental handicap or disability. The Contractor further agrees that every subcontract entered into for the performance of the Contract will contain a provision requiring non-discrimination in employment, as herein specified, binding upon each subcontractor. This covenant is required pursuant to the Elliot Larsen Civil Rights Act, 1976 Public Act 453, as amended, MCL 37.2201, et seq, and the Persons with Disabilities Civil Rights Act, 1976 Public Act 220, as amended, MCL 37.1101, et seq, and any breach thereof may be regarded as a material breach of the Contract.

21. CONTRACTOR'S OBLIGATION

In the event the Contractor has provided equipment other than their own manufacture as specified in all Contracts, the Lessee 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 Lessee for all contract obligations contained herein. The prime Contractor may with prior written approval of the Lessee, 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.

22. ISSUING OFFICE

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

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

23. 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 the Contract.

24. REVISIONS, CONSENTS AND APPROVALS

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.

25. SEVERABILITY

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.

26. SURVIVOR

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

27. GOVERNING LAW

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

28. 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.

29. CONTRACTOR'S 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. The Contractor also agrees to provide evidence that all applicable insurance policies contain a waiver of subrogation by the insurance company.

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

The Insurance shall be written for not less than any minimum coverage herein specified or required by law, whichever is greater. All deductible amounts for any of the required policies are subject to approval by the State.

The State reserves the right to reject insurance written by an insurer the State deems unacceptable.

BEFORE THE CONTRACT IS SIGNED BY BOTH PARTIES OR BEFORE THE PURCHASE ORDER IS ISSUED BY THE STATE THE CONTRACTOR MUST FURNISH TO THE DIRECTOR OF ACQUISITION SERVICES, CERTIFICATE (S) OF INSURANCE VERIFYING INSURANCE COVERAGE. THE CERTIFICATE MUST BE ON THE STANDARD "ACCORD" FORM. THE CONTRACT OR PURCHASE ORDER NO. MUST BE SHOWN ON THE CERTIFICATE OF INSURANCE TO ASSURE CORRECT FILING. All such Certificate(s) are to be prepared and submitted by the Insurance Provider and not by the Contractor. All such Certificate(s) shall contain a provision indicating that coverages afforded under the policies WILL NOT BE CANCELLED, MATERIALLY CHANGED, OR NOT RENEWED without THIRTY (30) days prior written notice, except for 10 days for non-payment of premium, having been given to the Director of Acquisition Services, Department of Management and Budget. Such NOTICE must include the CONTRACT NUMBER affected and be mailed to: Director, Acquisition Services, Department of Management and Budget, P.O. Box 30026, Lansing, Michigan 48909.

The Contractor is required to provide the type and amount of insurance checked () below:

- 1. Commercial General Liability with the following minimum coverages:

- \$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 INSURED on the Commercial General Liability policy.

- 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 policy.

- 3. Worker's disability compensation, disability benefit or other similar employee benefit act with minimum statutory limits. NOTE: (1) If coverage is provided by a State fund or if Contractor has qualified as a self-insurer, separate certification must be furnished that coverage is in the State fund or that Contractor has approval to be a self-insurer; (2) Any citing of a policy of insurance must include a listing of the States where that policy's coverage is applicable; and (3) Any policy of insurance must contain a provision or endorsement providing that the insurers' rights of subrogation are waived. 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. For contracts providing temporary staff personnel to the Lessee, the Contractor shall provide an Alternate Employer Endorsement with minimum coverage of \$1,000,000.

5. Employers liability insurance with the following minimum limits:

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

30. WORKPLACE SAFETY AND DISCRIMINATORY HARASSMENT

In performing services for the Lessee pursuant to this Contract, the Contractor shall comply with Department of Civil Service Rules 2-20 regarding Workplace Safety and 1-8.3 regarding Discriminatory Harassment. In addition, the Contractor shall comply with Civil Service Regulations governing workplace safety and discriminatory harassment and any applicable Lessee agency rules on these matters that the agency provides to the Contractor. Department of Civil Service Rules and Regulations can be found on the Department of Civil Service website at www.michigan.gov/mdcs.

31. TAX COVENANT

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

32. IRS REPORTING

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

33. LEASE PAYMENTS

This Contract is a seventy-two (72) month lease with option to purchase. Lease to include option to purchase of \$10,000.00. In addition, equipment has a six (6) month warranty period. For an additional charge, full service maintenance

agreement for sixty-six (66) months will be included which will be reviewed annually for cost of living adjustments not to exceed five (5) percent per year.

Lessee shall promptly pay "Lease Payments" as described in Exhibit A-1 to this Lease, exclusively from funds appropriated for Lease of the Equipment. Pursuant to 1984 PA 279, MCL 17.51-17.57, Lessee shall pay Contractor a charge on any Lease Payment, which remains unpaid on the date such Lease Payment is due. Lease Payments consist of principal and interest portions. *Contractor and Lessee understand and intend that the obligation of Lessee to pay Lease Payments under this Lease shall constitute a current expense of the State of Michigan and shall not in any way be construed to be a debt or general obligation of the State of Michigan in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by Lessee, including, but not limited to, Const 1963, art 9, §§12, 17, nor shall anything contained herein or in a Lease constitute a pledge of the general tax revenues, credit, funds or monies of the State*

34. ASSIGNMENT

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

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

35. NO REMEDY EXCLUSIVE

No remedy herein conferred upon or reserved to Contractor or Lessee is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease now or hereafter existing at law or in equity.

36. NOTICES

All notices or other communications under this Lease shall be sufficiently given and shall be deemed given when delivered or mailed by registered mail, postage

prepaid, to the parties hereto at the addresses listed below (or at such other address as either party hereto shall designate in writing to the other for notices to such party), or to any assignee at its address as it appears on the registration books maintained by Lessee.

37. MISCELLANEOUS PROVISIONS

This Lease constitutes the complete and exclusive agreement and understanding of the parties as it relates to this transaction. This Lease supersedes all proposals, or other prior agreements, and all other communications, oral or written, between the parties relating to this Lease and the Equipment described herein. This Lease shall inure to the benefit of and shall be binding upon Contractor and Lessee and their respective successors and assigns. References herein to "Contractor" shall be deemed to include each of its assignees and subsequent assignees from and after the effective date of each assignment as permitted by Section 23. In the event any provision of this Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision thereof. This Lease may be amended by mutual written consent of Contractor and Lessee. This Lease may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. The captions or headings in this Lease are for convenience only and in no way define, limit or describe the scope or intent of this Lease.

38. STATUTORY OBLIGATIONS

This Lease may be cancelled by Lessee provided Contractor is notified in writing at least thirty (30) business days prior to the effective date of cancellation and any of the following occur: (a) Contractor or any subcontractor, manufacturer, or supplier of Contractor appears in the register compiled by the Michigan Department of Labor pursuant to 1980 PA 278, as amended, MCL 423.321 et seq. (Employers Engaging in Unfair Labor Practices Act); (b) Contractor or any subcontractor, manufacturer, or supplier of Contractor is found liable for discrimination, pursuant to 1976 PA 453, as amended, MCL 37.2101 et seq (Elliott-Larsen Civil Rights Act) or 1976 PA 220, as amended, MCL 37.1101 et seq (Persons With Disabilities Civil Rights Act).

39. WARRANTY

The Contractor shall be responsible for maintenance (parts and labor) 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 shall be identified by equipment serial number.

ITEM LISTING

| Item | Commodity Number | Unit | Description | Unit Cost | | | | | | | | | | | | | | | | |
|------------------------------------|-------------------|------|--|----------------------|------------|---------|--------|-------------------|--------|-----------|-------|------------------------------------|-----------------|-------------------------------|-------------------|----------|-----------------|---------------------------|-------------------|-------------------|
| 001 | 600-38 | MO | <p>Seventy-two (72) month Lease with Option to Purchase of one (1) Xerox 6180PM. Attached amortization schedule covers seventy-two (72) months.</p> <p>Includes addition of 256MEMUP memory kit to controllers. Also, includes six (6) month warranty and training for a minimum of three (3) employees.</p> <p>Unit price reflects a trade-in of one (1) Xerox 6180, Serial #8VE-050405 for \$31,070; one (1) Xerox 5090S, Serial #G2T-100436 for \$10,000; one (1) Xerox Xpress 36", Serial #L9E-894550 for \$7,775; and two (2) Xerox DCCS50S Serial #FU2045162 for \$16,206; and Serial #FU2044858 for \$16,205.</p> <p>Buy-out option of \$10,000.00.</p> | <u>\$9,428.34</u> | | | | | | | | | | | | | | | | |
| 002 | 939-27 | MO | <p>Full service maintenance agreement to commence after six (6) month warranty period. Agreement to be reviewed annually for cost-of-living adjustments not to exceed five (5) percent. Estimated monthly copy volume of 836,700. All copies charged at \$0.005/each. Pricing breakdown as follows:</p> <table> <tr> <td>Base charges: 6180PM</td> <td>\$1,340.00</td> </tr> <tr> <td>DPCNTRL</td> <td>180.00</td> </tr> <tr> <td>DIGIPRO3 DIGIPATH</td> <td>270.00</td> </tr> <tr> <td>OPTICAL-B</td> <td>30.00</td> </tr> <tr> <td>Copy charges billed @ \$0.005/copy</td> <td><u>4,183.50</u></td> </tr> <tr> <td>Total Base with Copies</td> <td>\$6,003.50</td> </tr> <tr> <td>Less 15%</td> <td><u>(900.53)</u></td> </tr> <tr> <td>Estimated Net Cost</td> <td>\$5,102.97</td> </tr> </table> | Base charges: 6180PM | \$1,340.00 | DPCNTRL | 180.00 | DIGIPRO3 DIGIPATH | 270.00 | OPTICAL-B | 30.00 | Copy charges billed @ \$0.005/copy | <u>4,183.50</u> | Total Base with Copies | \$6,003.50 | Less 15% | <u>(900.53)</u> | Estimated Net Cost | \$5,102.97 | <u>\$5,102.97</u> |
| Base charges: 6180PM | \$1,340.00 | | | | | | | | | | | | | | | | | | | |
| DPCNTRL | 180.00 | | | | | | | | | | | | | | | | | | | |
| DIGIPRO3 DIGIPATH | 270.00 | | | | | | | | | | | | | | | | | | | |
| OPTICAL-B | 30.00 | | | | | | | | | | | | | | | | | | | |
| Copy charges billed @ \$0.005/copy | <u>4,183.50</u> | | | | | | | | | | | | | | | | | | | |
| Total Base with Copies | \$6,003.50 | | | | | | | | | | | | | | | | | | | |
| Less 15% | <u>(900.53)</u> | | | | | | | | | | | | | | | | | | | |
| Estimated Net Cost | \$5,102.97 | | | | | | | | | | | | | | | | | | | |

Monthly maintenance agreement charge includes supplies (toner, developer and fuser oil).