

Agreement
Between
Midwestern Higher Education Commission
And
Xerox Corporation
Effective July 1, 2008

**Revision # 1 / Adds Articles IV & V
Effective August 11, 2008**



AGREEMENT

This Agreement ("Agreement") sets forth the terms and conditions upon which Midwestern Higher Education Commission (MHEC), on behalf of the member states of the Midwestern Higher Education Compact (Compact) and WICHE member states, and their respective state government agencies and instrumentalities of the state governments, the public and private institutions of higher education, K-12 schools, and other not-for-profit entities having affiliated interests with education located in the member states of the Compact or WICHE ("individually referred to as "Customer" or collectively as "Customers") and Xerox Corporation ("Xerox") have agreed to conduct business for Customer's acquisition from Xerox of Products for use and delivery in the United States. Throughout the Agreement, Xerox and MHEC may collectively be referred to as the "Parties" or individually as "Party".

The 12 member states of the Compact are Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota and Wisconsin (Collectively referred to as "Member States" or individually as "Member state"). Customers that are located in a Member State that terminates its association with the Compact will no longer be eligible under this Agreement to acquire Xerox products and services pursuant to this Agreement. Termination by any Member State shall not prohibit or restrict Xerox from negotiating or contracting with such Member State or entity within such Member State outside the Compact. MHEC shall promptly notify Xerox in writing of the termination of any Member State's membership in the Compact. If any Member State so terminates its membership in the Compact, such termination shall not effect the validity or enforceability of or constitute a default under any IA then in effect with any Customer. Similarly, MHEC shall promptly notify Xerox if other states join the Compact after which such state shall be deemed to be a Member State for the purposes of this Agreement.

WICHE member state refers to any state that is a member, or an affiliate member, of the Western Interstate Commission on Higher Education. For purpose of this Agreement, the current member states are Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming. MHEC shall promptly notify Xerox if any other states join WICHE and thereby become a WICHE member state for purposes of this Master Agreement.

GENERAL TERMS AND CONDITIONS

1. **SCOPE.** The acquisition of Products by Customer shall be subject to the terms and conditions set forth in this Agreement and the prices set forth on the pricing exhibit(s) ("Pricing Exhibit(s)") referenced herein. "Products" shall refer collectively to all Xerox-brand equipment (the "Equipment"), software, supplies and maintenance ordered under this Agreement. This Agreement, including its exhibits and attachments, and all related materials referenced hereunder, is considered confidential and proprietary and may not be shared with a third party, except as otherwise required by law or pursuant to an assignment in accordance with the Section of this Agreement titled "ASSIGNMENT". Notwithstanding the foregoing, this Agreement, including its exhibits and attachments, and all related materials referenced hereunder may be shared with potential customers.
2. **TERM.** This Agreement shall commence on July 1, 2008 and expire on June 30, 2011. In addition this agreement may be extended for up to four (4) one (1) year extension option upon the consent of both parties.

Either party may terminate this Agreement upon not less than thirty (30) days prior written notice to the other party. In the event either party elects to terminate this Agreement, each IA as defined in Section 3.a. below entered hereunder shall remain in full force and effect until the end of its term and shall at all times be governed by, and be subject to, the terms and conditions of this Agreement as if the Agreement were still in effect.
3. **ORDER DOCUMENTS.**
 - a. Customer shall issue Order Documents (i.e., documents Customer or Xerox require for acquisitions hereunder), including, but not limited to, purchase orders and individual standard form Xerox agreements to Xerox for order entry purposes only, specifying Customer's requested shipment date, installation site, quantities, bill-to address, and product description, including any applicable Trade-In Equipment. Such Order Document shall be an individual agreement ("IA") hereunder, and irrespective of the form thereof, must reference the applicable contract ("Negotiated Contract") number, set forth in the applicable Pricing Exhibit, and shall incorporate and be subject solely to this Agreement's terms and conditions, notwithstanding anything contained in any such Order Document which is at variance with or additional to this Agreement. An IA for a "Standard Lease" or a "Fixed Lease" may be referred to herein as a "Lease".

- b. If an Order Document is a Customer-generated form, it shall include a line stating "Subject to contract #XXXXXX", with "XXXXXX" being replaced by the Negotiated Contract number from the applicable Pricing Exhibit; provided that, if such Customer-generated form is for a Maintenance IA, it shall include a line stating "Subject to Negotiated Agreement executed on behalf of Customer on _____ (Enter Customer signature date).
- c. Order Documents may be submitted via hard copy or electronic means and those submitted electronically by Customer shall be considered for all purposes to (i) be a "writing" or "in writing"; (ii) be "signed"; (iii) constitute an "original" when printed from electronic records established and maintained in the ordinary course of business, and (iv) be valid and enforceable.
- d. Customer may also choose other available options ('Additional Terms') in an Order Document, including but not limited to, 'Replacement/Modification of Prior Xerox Agreement', 'Refinance of Prior Agreement', 'Adjustment Period', 'Financed Software Total', 'Financed Supplies Total' or 'Xerox As Financial Intermediary' and said options will be governed by the applicable terms and conditions in the then-current individual standard form Xerox agreement for the subject transaction.
- e. Customer may acquire any quantity of Products listed in the Pricing Exhibit at the prices set forth in the Pricing Exhibit. For large orders, Xerox and Customer may negotiate quantity discounts below the Pricing Exhibit price(s) for a given purchase order. Each individual Customer will be responsible for the obligations under this Agreement only with respect to the IA Customer has entered into. Customer will not be responsible for the obligations under this Agreement resulting from IAs entered into by other Customers.
- f. This Agreement is not a purchase order, nor does it guarantee any purchase to be made to any Customer. This Agreement is not an exclusive agreement. MHEC and Customers may obtain printers, multifunction machines and related services from other sources during the agreement term.

4. PRODUCT AND SERVICE SCHEDULE. Xerox shall maintain with MHEC, and forward to MHEC the most current product and service schedule offered under this Agreement within thirty days after new products are introduced or substituted under this Agreement. The product and service schedule shall incorporate the most up-to-date pricing for the products and services; said pricing reflecting the discounts schedule agreed to under this Agreement. Failure to provide these schedules as agreed will be grounds for action to be taken against Xerox, which may include immediate suspension of the Agreement or termination of the Agreement after three or more such infractions, if this non-compliance is not cured within thirty days after receipt of written notice. Termination or suspension under this provision shall not apply to orders placed prior to the effective date of termination or suspension of this Master Agreement.

5. DISCOUNT STRUCTURE. The discount structure agreed to under this Agreement for equipment and maintenance services offered by Xerox shall remain unchanged during the term of this Agreement unless changes to the discount structure are agreed upon by MHEC and Xerox. Prices shall be firm for the initial year of the contract. Each July 1, beginning July 1, 2009 Xerox may increase prices by as much as 6% over the previous year's prices or the actual amount of increase offered to the general trade, whichever is less.

If Xerox reduces its **GENERAL SERVICES AGREEMENT** price lists and the reduced prices are lower than those offered to MHEC, those lower prices will be extended to MHEC. These reduced prices shall apply to order received by Xerox after the effective date of the price reduction.

6. PRODUCT AND MODEL CHANGES. Xerox may make product model changes, add new products, product upgrades or services under this Agreement at any time and the pricing for the same shall incorporate, to the extent possible, similar or comparable prices provided in this Agreement, as agreed by MHEC and Xerox.

7. PRODUCTS. Customer represents that Products are being ordered for Customer's own business use (rather than resale) and that they will not be used for personal, household or family purposes. Products that become no longer generally commercially available may be withdrawn from future order-taking by Xerox. Xerox may add Products to this Agreement for order-taking.

8. EQUIPMENT STATUS. Unless Customer is acquiring Previously Installed Equipment, Equipment will be either (a) "Newly Manufactured", which may contain some recycled components that are reconditioned; (b) "Factory Produced New Model", which is manufactured and newly serialized at a Xerox factory, adds functions and features to a product previously disassembled to a Xerox predetermined standard, and contains both new components and recycled components that are reconditioned; or (c) "Remanufactured", which has been factory produced following disassembly to a Xerox predetermined standard and contains both new components and recycled components that are reconditioned.

- 9. EQUIPMENT COMMENCEMENT AND INSTALLATION DATES.** The commencement date of an IA that includes Equipment written hereunder shall be the Equipment installation date. The installation date ("Installation Date") is defined as follows: (a) for Equipment installed by Xerox, the Installation Date is the date Xerox determines the Equipment to be operating satisfactorily as demonstrated by successful completion of diagnostic routines and is available for Customer's use, and (b) for Equipment designated as "Customer Installable," the Installation Date will be the Equipment delivery date. Any express warranty period provided under a Cash Purchase or Installment Purchase IA commences on the Installation Date of the Equipment.
- 10. TOTAL SATISFACTION GUARANTEE.** Xerox will offer Customer a total guarantee policy as noted below:
- A. Outright Purchase Equipment:** Xerox will keep equipment in good working order for the initial 36 months after installation in accordance with the specifications contained in the solicitation or Xerox will replace the equipment with a like model at Xerox' expense, providing Xerox is maintaining the equipment under a maintenance agreement.
- B. Leased Equipment:** Xerox will keep Equipment in good working order for the full term of the individual lease agreement in accordance with the specifications contained in the solicitation or Xerox will replace the equipment with a like model at Xerox' expense.
- 11. MAINTENANCE SERVICES.** As a mandatory part of a Lease, or pursuant to a Maintenance IA, entered into under this Agreement, Xerox or a designated servicer will provide the following Maintenance Services (unless Customer is acquiring Equipment for which Xerox does not offer Maintenance Services; such Equipment to be designated as "No Svc.")
- a. **REPAIRS & PARTS.** Xerox will make repairs and adjustments necessary to keep Equipment in good working order (including such repairs or adjustments required during initial installation). Parts required for repair may be new, reprocessed, or recovered.
- b. **HOURS & EXCLUSIONS.** Unless otherwise stated, Maintenance Services will be provided during Xerox's standard working hours (excluding Xerox-recognized holidays) in areas within the United States, its territories, and possessions open for repair service for the Equipment at issue. Customer agrees to give Xerox reasonable access to the Equipment. Maintenance Services shall cover repairs and adjustments required as a result of normal wear and tear or defects in materials or workmanship (and shall exclude operator maintenance, and repairs or adjustments Xerox determines relate to or are affected by options, accessories, or other connected products not serviced by Xerox, as well as any non-Xerox alterations, relocation, service, supplies, or consumables). Customer agrees to use Equipment in accordance with, and to perform all operator maintenance procedures for Equipment set forth in, the applicable manuals provided by Xerox.
- c. **INSTALLATION SITE & METER READINGS.** The Equipment installation site must conform to Xerox's published requirements throughout the term of an IA. If applicable, Customer agrees to provide meter readings in the manner prescribed by Xerox. If Customer does not provide Xerox with meter readings as required, Xerox may estimate them and bill Customer accordingly.
- d. **EQUIPMENT REPLACEMENT.** If Xerox is unable to maintain the Equipment as described above, Xerox will, as Customer's exclusive remedy for Xerox's failure to provide Maintenance Services, replace the Equipment with an identical product or, at Xerox's option, another product of equal or greater capabilities. If a replacement Product is provided pursuant to this Section, there shall be no additional charge for its provision by Xerox and it shall be subject to the terms and conditions of this Agreement; provided however, if the replacement Product is not identical to the Product it replaces, there may be an additional charge for Maintenance Services for it during any renewal term of the applicable IA.
- e. **CARTRIDGES.** If Xerox is providing Maintenance Services for Equipment utilizing cartridges designated by Xerox as customer-replaceable units, including copy/print cartridges and xerographic modules or fuser modules ("Cartridges"), Customer agrees to use only unmodified Cartridges purchased directly from Xerox or its authorized resellers in the United States and the failure to use such Cartridges shall void any warranty applicable to such Equipment. Cartridges packed with Equipment and replacement Cartridges may be new, remanufactured or reprocessed. Remanufactured and reprocessed Cartridges meet Xerox's new Cartridge performance standards and contain new and/or reprocessed components. To enhance print quality, the Cartridge(s) for many models of Equipment have been designed to cease functioning at a predetermined point. In addition, many Equipment models are designed to function only with Cartridges that are newly manufactured original Xerox Cartridges or with Cartridges intended for use in the U.S. Equipment configuration that permits use of non-newly manufactured original Xerox Cartridges may be available from Xerox at an additional charge.

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

12. DELIVERY AND REMOVAL. Xerox will be responsible for all standard delivery and removal charges. Customer will be responsible for any non-standard delivery and removal charges. If charges apply for non-standard delivery or removal of equipment, Xerox will provide a quote for those charges prior to delivery or removal of the equipment. Xerox agrees to deliver products to Customer within thirty (30) days after receipt of a valid purchase order.

13. PAYMENT, TAXES AND CREDIT HISTORY.

Equipment shall be considered accepted upon installation of the equipment by the technician and the technician has successfully run all required diagnostic routines and turned it over to Customer for use.

- a. Invoices are payable upon receipt and acceptance of the Equipment by Customer, and Customer agrees to pay Xerox all payments and all other sums due hereunder as follows:
 - (i) if the invoice displays a due date, payment is due and must be received by Xerox on or before said due date, but in no event shall the due date be less than thirty (30) days unless Customer has provided Xerox with prior written approval of the shorter due date ; or
 - (ii) if the invoice does not display a due date, payment is due and must be received by Xerox no later than thirty (30) days after the invoice date.
- b. Restrictive covenants on instruments or documents submitted for or with payments Customer sends to Xerox will not reduce Customer's obligations. Customer authorizes Xerox (or its agent) to obtain credit reports from commercial credit reporting agencies. Xerox reserves the right to review and approve Customer's credit prior to acceptance of each IA
- c. Customer shall be responsible for any and all applicable Taxes, which will be included in Xerox's invoice unless Customer provides proof of its tax-exempt status. "Taxes" shall mean any tax, assessment or charge imposed or collected by any governmental entity or any political subdivision thereof, however designated or levied, imposed on this Agreement, any IA hereunder or the amounts payable to Xerox by Customer for the billing of Products, services and maintenance of any kind. Taxes include, but are not limited to, sales and use, rental, excise, gross receipts and occupational or privilege taxes, plus any interest and/or penalty thereon, but excluding any taxes on Xerox's net income. Additionally, personal property taxes are excluded from "Taxes" for Lease IAs written hereunder. If a taxing authority determines that Xerox did not collect all applicable Taxes, Customer shall remain liable to Xerox for such additional Taxes.

14. LATE CHARGES AND DEFAULT.

- a. For any payment not received by Xerox within ten (10) days of the due date as set forth herein, Xerox may charge, and Customer agrees to pay, an interest charge equal to the amount permitted by law.
- b. Customer will be in default under an IA if Xerox does not receive any payment within fifteen (15) days after the date it is due or if Customer breaches any other obligation hereunder.
- c. Xerox's decision to waive or forgive a particular default shall not prevent Xerox from declaring any other default. In addition, if Customer defaults under this Agreement or an IA written hereunder, Customer agrees to pay all reasonable costs as determined by a court of competent jurisdiction.

15. NON-CANCELABLE AGREEMENT. ANY LEASE OR INSTALLMENT PURCHASE IA WRITTEN HEREUNDER CANNOT BE CANCELED OR TERMINATED EXCEPT AS EXPRESSLY PROVIDED HEREIN. CUSTOMER'S OBLIGATION TO MAKE ALL PAYMENTS DUE OR TO BECOME DUE ON ANY SUCH IA SHALL BE ABSOLUTE AND UNCONDITIONAL AND SHALL NOT BE SUBJECT TO ANY DELAY, REDUCTION, SET-OFF, DEFENSE, COUNTERCLAIM OR RECOUPMENT FOR ANY REASON WHATSOEVER, IRRESPECTIVE OF XEROX'S PERFORMANCE OF ITS OBLIGATIONS HEREUNDER. ANY CUSTOMER CLAIM AGAINST XEROX MAY BE ASSERTED SOLELY AGAINST XEROX IN A SEPARATE ACTION.

16. WARRANTY DISCLAIMER & WAIVERS. XEROX DISCLAIMS, AND CUSTOMER WAIVES, THE IMPLIED WARRANTIES OF NON-INFRINGEMENT.

- 17. PROTECTION OF XEROX'S RIGHTS.** Customer hereby authorizes Xerox or its agents to file, by any permissible means, financing statements necessary to protect Xerox's rights as lessor of the Equipment for leased Equipment or Xerox's purchase money security interest in purchased Equipment. Xerox, on Customer's behalf and at Customer's expense, may take any action required to be taken by Customer to protect Xerox' rights in equipment that Customer fails to take under an IA that includes Equipment.
- 18. LEASE OPTIONS.** The following options are available for Equipment subject to a Lease IA
- a. **PURCHASE OPTIONS.** If not in default hereunder, Customer may purchase the Equipment "AS IS, WHERE-IS" and WITHOUT ANY WARRANTY AS TO CONDITION OR VALUE: (i) at the end of the Lease IA term for the purchase option ("Purchase Option") indicated in such IA (i.e., either a set dollar amount or the Fair Market Value ["FMV"] of the Equipment at the Lease IA term's conclusion), plus all applicable Taxes, or (ii) any time during the term of the Lease IA by paying (1) all amounts then due; (2) the remaining Minimum Lease Payments in the Lease IA's term, as may be more fully set forth herein, less any unearned finance, maintenance, and supply charges (as reflected on the lessor's books and records); (3) a reasonable disengagement fee calculated by Xerox that will not exceed fifteen percent (15%) of the amount in (2) above (said amount is available from Xerox upon request); (4) the applicable Purchase Option; and, (5) all applicable Taxes.
 - b. **LEASE RENEWAL.** Unless either party provides notice at least thirty (30) days before the end of the term of a Lease IA hereunder of its intention not to renew, said Lease IA will renew automatically on a month-to-month basis at the same price, terms and conditions and billing frequency as the original Lease IA. During this renewal period, either party may terminate the Lease IA upon at least thirty (30) days notice.
 - c. **LEASE TERMINATION.** Upon termination pursuant to b. above, and if Customer has not purchased the Equipment, Customer shall make the Equipment available for removal by Xerox when requested to do so by Xerox and, at the time of removal, the Equipment shall be in the same condition as when delivered, reasonable wear and tear excepted, together with any related software.
- 19. INTELLECTUAL PROPERTY INDEMNITY** Xerox will indemnify, defend and hold MHEC and Customer harmless from a claim that Xerox's Product infringes on another person's or company's patent, copyright, trade secret or any other proprietary right of a third party. Xerox will have no obligation under this section with respect to any claim of infringement resulting from an unauthorized modification of a Product by MHEC or Customer or from any combination, operation, or use of the Products with systems other than those provided by Xerox to the extent that such a claim is caused by such modification, combination, operation, or use of the Products. Following notice of a claim or threat of actual suit, Xerox will, at its own expense and option, (1) resolve the claim in a way that permits continued ownership and use of the affected Product; (2) provide a comparable replacement at no cost; or (3) accept return of the Product, freight collect, and provide a reasonable depreciated refund.
- 20. INDEMNIFICATION.** Xerox will indemnify, protect, save and hold harmless MHEC and Customers, as well as the representatives, agents and employees of MHEC and Customers, from any and all claims or causes of action related to a claim of personal injury or damage to property, including all attorneys' fees incurred by MHEC and/or Customers, arising from the performance of this Agreement by Xerox, Xerox's agents, employees, or subcontractors. MHEC and/or Customer shall give Xerox written notice, by registered mail, promptly after it becomes aware of any claim to be indemnified hereunder, and, subject to any legally required approval, including approval of a state's attorney general, or consistent with applicable law, permits Xerox to control the defense of any such claim or action at Xerox's own defense. MHEC and/or Customer agree that Xerox may employ attorneys of its own choice to appear and defend the claim or action and that MHEC and/or Customer shall do nothing to compromise the defense of such claim or action or any settlement thereof and shall provide Xerox with all reasonable assistance which Xerox may require.
- 21. LIMITATION OF LIABILITY.** Xerox shall not be liable to Customer for any direct damages in excess of the sum of the amounts paid and to be paid during the initial term of the applicable IA and neither Xerox, MHEC nor Customer shall be liable to the other for any special, indirect, incidental, consequential or punitive damages arising out of or relating to this Agreement or any IA written hereunder, whether the claim alleges tortious conduct (including negligence) or any other legal theory. The above-stated limitation of liability shall not be applicable to any specific indemnification obligations set forth in this Agreement.
- 22. ASSIGNMENT.** Neither Xerox nor MHEC nor the Customer shall sell, transfer, assign, or otherwise dispose of this Agreement or any portion hereof (including an IA) or any right, title, or interest herein without the prior written consent of the other party. Such consent shall not be unreasonably withheld. This consent requirement includes reassignment of this Agreement due to a change in ownership, merger or acquisition of a party.

23. NOTICES.

- a. Except as provided elsewhere in this Agreement, all notices issued hereunder must be in writing and will be deemed given five (5) days after mailing, or two (2) days after sending by nationally recognized overnight courier. Invoices are not considered notices under this Agreement and are governed by provisions relating specifically thereto.
- b. Except as set forth in c. below, notices shall be sent to Customer's or Xerox's business address, or to such other address designated by either party to the other by written notice given pursuant to this sentence. The term "business address" shall mean, for Customer, the "Bill to" address set forth in an IA and, for Xerox, the inquiry address set forth on the most recent invoice to Customer for the subject IA.
- c. As between Xerox and MHEC, notices shall be sent to a party at the address specified, in a particular Section of this Agreement or, if there is no such address specified, to the following address for such party.

To Customer:

**Midwestern Higher Education Commission
Mr. R. Grant Crawford
1300 South Second Street
Minneapolis,
Minnesota 55454**

To Xerox:

**Office of General Counsel
Xerox Corporation
45 Glover Avenue
P. O. Box 4505
Norwalk, CT 06865-4505**

- 24. FORCE MAJEURE.** No party (Xerox, MHEC, nor Customer) shall be liable to another party during any period in which its performance is delayed or prevented, in whole or in part, by a circumstance beyond its reasonable control, which circumstances include, but are not limited to, the following: act of God (e.g., flood, earthquake, wind); fire; war; act of a public enemy or terrorist; act of sabotage; strike or other labor dispute; riot; misadventure of the sea; inability to secure materials and / or transportation; or, a restriction imposed by legislation, or by an order, rule or regulation of any governmental entity. If such a circumstance occurs, the applicable party shall undertake reasonable action to notify the other party of same.

Note: The Customer may cancel a maintenance IA, without penalty, if the condition of Force Majeure is not resolved within thirty (30) days. Additionally, in the event of a condition of Force Majeure where Xerox is unable to perform for 30 or more calendar days, the Customer shall have the option of either: (1) suspending payments for the period of the Force Majeure and then extending the original term of the IA for provision of both payment and services for a period of time equal to that of the Force Majeure; or (2) Customer shall have the option of continuing to make payments rather than electing to suspend them, however, the original IA date shall be extended for provision of services for a time equal to the Force Majeure without additional charges.

- 25. CONSUMABLE SUPPLIES INCLUDED IN BASE / PRINT CHARGES.** For IAs that include Consumable Supplies in Base / Print Charges, as more fully set forth in the applicable Article herein, Xerox (or a designated servicer) will provide Customer with black toner (excluding highlight color toner), black developer, copy Cartridges, and, if applicable, fuser agent ("Consumable Supplies") throughout the term of such IA. For full-color Equipment IAs that include Consumable Supplies in Base / Print Charges, Consumable Supplies shall also include, as applicable, color toner and developer. For Products identified as "Phaser", Consumable Supplies may also include, if applicable, black solid ink, color solid ink, imaging units, waste cartridges, transfer rolls, transfer belts, transfer units, belt cleaner, maintenance kits, print Cartridges, drum Cartridges, waste trays and cleaning kits. Customer agrees that the Consumable Supplies are Xerox's property until used by Customer, that Customer will use them only with the Equipment under the applicable IA, that Customer will return all Cartridges to Xerox for remanufacturing once they have been run to their cease-function point, (at Xerox's expense when using Xerox-supplied shipping labels), and that at the end of the term of the applicable IA, Customer will either return any unused Consumable Supplies to Xerox, (at Xerox's expense when using Xerox-supplied shipping labels), or destroy them in a manner permitted by applicable law. Should Customer's use of Consumable Supplies exceed Xerox's published Consumable Supplies yields for these items by more than ten percent (10%), Customer agrees that Xerox shall have the right to charge Customer for any such excess usage. When requested by Xerox, Customer shall provide an inventory of Consumable Supplies in its possession and meter readings in the manner prescribed by Xerox.

- 26. RELOCATION.** Until Customer has paid for the Equipment in full for an Installment Purchase IA, or exercised its purchase option for the Equipment subject to a Lease or Rental IA and has paid Xerox the full amount due therefore and has received title thereto, Customer agrees that: (a) Equipment shall remain personal property; (b) Customer will not attach any of the Equipment as a fixture to any real estate; (c) Customer will not pledge, sub-lease or part with possession of the Equipment or file or permit to be filed any lien against the Equipment; and, (d) Customer will not make any permanent alterations to the Equipment.

Until Customer has paid in full for a Cash Purchase or Installment Purchase IA, Customer must provide Xerox prior written notice of all Equipment relocations and, upon Customer's request, Xerox may arrange to relocate the Equipment at Customer's expense. While subject to a Lease or Rental IA, all Equipment relocations must be arranged (or approved in advance) by Xerox and shall be at Customer's expense. While Equipment is being relocated, Customer remains responsible to make all payments required under the applicable IA to Xerox. Xerox will make its best efforts to expedite the relocation if the Equipment relocation is being arranged by Xerox. Notwithstanding the foregoing, if Xerox arranges relocation of the Equipment and the relocation takes more than thirty (30) days to complete, Customer shall not be required to make maintenance payments required under the applicable IA to Xerox until the relocation is completed. For Products subject to an IA, Customer must comply with all applicable laws and regulations regarding the export of any commodity, technology and/or software. All parts/materials replaced, including as part of an upgrade will become Xerox's property. Equipment cannot be relocated outside of the United States, its territories or possessions until Customer has paid in full for the Equipment and has received title thereto.

27. SOFTWARE

- a. **SOFTWARE LICENSE.** The following terms apply to copyrighted software and the accompanying documentation, including, but not limited to, operating system software, provided with or within the Xerox-brand Equipment acquired hereunder ("Base Software"). This license does not apply to any Diagnostic Software or to any software documentation accompanied by a clickwrap or shrinkwrap license agreement or otherwise made subject to a separate license agreement.
 - (i) Xerox grants Customer a non-exclusive, non-transferable license to use the Base Software within the United States, its territories, and possessions (the "United States") only on or with the Equipment with which (or within which) it was delivered. Customer has no other rights to the Base Software and, in particular, may not: (1) distribute, copy, modify, create derivatives of, decompile, or reverse engineer this software; (2) activate any software delivered with or within the Equipment in an unactivated state; or, (3) allow others to engage in same. Title to the Base Software and all copyrights and other intellectual property rights in it shall at all times reside solely with Xerox and/or its licensors (who shall be considered third-party beneficiaries of this Agreement's software and limitation of liability provisions). Base Software may contain, or be modified to contain, computer code capable of automatically disabling proper operation or functioning of the Equipment. Such disabling code may be activated if: (a) Xerox is denied reasonable access to the Base Software to periodically reset such code; (b) Customer has defaulted under an IA hereunder; or, (c) such license is terminated or expires. Notwithstanding the foregoing, customer by purchasing the equipment has the right to utilize the software but Xerox has no obligation to maintain the software if the customer does not purchase a maintenance agreement.
 - (ii) Xerox may terminate Customer's license for any Base Software (1) immediately if Customer no longer uses or possesses the Equipment or are a lessor of the Equipment and Customer's first lessee no longer uses or possesses it, or (2) upon the termination of any IA under which Customer has installment-purchased or leased the Equipment.
 - (iii) If Customer transfers possession of the Equipment after Customer obtains title to it, Xerox will offer the transferee a license to use the Base Software within the United States on or with it, subject to Xerox's then-applicable terms and license fees, if any, and provided the transfer is not in violation of Xerox's rights.
 - (iv) Xerox warrants that the Base Software will perform in material conformity with its user documentation for a ninety (90) day period from the date it is delivered or, for software installed by Xerox, the date of software installation. Neither Xerox nor its licensors warrant that the Base Software will be free from errors or that its operation will be uninterrupted.
 - (v) Notwithstanding anything to the contrary set forth in this Agreement, if Customer enters a Maintenance IA for Equipment, such Maintenance IA does not include a license for Base Software. If Customer does not have a license for Base Software for Equipment, Customer may enter a separate license agreement with Xerox for such Base Software.
- b. **SOFTWARE SUPPORT.** During the period that Xerox (or a designated servicer) provides Maintenance Services for the Equipment but in no event less than five (5) years after Xerox stops taking orders from customers for the subject model of Equipment, Xerox (or a designated servicer) will also provide software support for the Base Software under the following terms.
 - (i) Xerox will assure that Base Software performs in material conformity with its user documentation and will maintain a toll-free hotline during Xerox's standard working hours to answer related questions.

- (ii) Xerox may make available new releases of the Base Software that primarily incorporate coding error fixes and are designated as "Maintenance Releases". Maintenance Releases are provided at no charge and must be implemented within six (6) months after being made available to Customer. Each new Maintenance Release shall be considered Base Software governed by the Software License and Software Support provisions of this Agreement. New releases of the Base Software that are not Maintenance Releases, if any, may be subject to additional license fees at Xerox's then-current pricing and shall be considered Base Software governed by the Software License and Software Support provisions of this Agreement (unless otherwise noted). Xerox will not be in breach of its software support obligations hereunder if, in order to implement, in whole or in part, a new release of Base Software provided or made available by Xerox, Customer must procure, at its expense, additional hardware and/or software from Xerox or any other entity. Customer agrees to return or destroy all prior releases insofar as is practicable.
 - (iii) Xerox will use reasonable efforts, either directly and/or with its vendors, to resolve coding errors or provide workarounds or patches, provided Customer reports problems as specified by Xerox.
 - (iv) Xerox shall not be obligated (1) to support any Base Software that is two or more releases older than Xerox's most current release, or (2) to remedy coding errors if Customer has modified the Base Software.
- c. **DIAGNOSTIC SOFTWARE.** Software used to maintain the Equipment and/or diagnose its failures or substandard performance (collectively "Diagnostic Software") is embedded in, resides on, or may be loaded onto the Equipment. The Diagnostic Software and method of entry or access to it constitute valuable trade secrets of Xerox. Title to the Diagnostic Software shall at all times remain solely with Xerox and/or Xerox's licensors. Customer agrees that (1) Customer's acquisition of the Equipment does not grant Customer a license or right to use the Diagnostic Software in any manner, and, (2) that unless separately licensed by Xerox to do so, Customer will not use, reproduce, distribute, or disclose the Diagnostic Software for any purpose (or allow third parties to do so). Customer agrees at all times (including subsequent to the termination or expiration of this Agreement or an IA hereunder) to allow Xerox to access, monitor, and otherwise take steps to prevent unauthorized use or reproduction of the Diagnostic Software.

28. REMOTE DATA COLLECTION. Xerox may automatically collect from the Equipment, via electronic transmission to a secure off-site location, certain data used by Xerox or a designated servicer to support and service the Equipment, or for Xerox billing, supplies replenishment or product improvement purposes. Automatically transmitted data may include, but is not limited to, product registration, meter read, supply level, Equipment configuration and settings, software version, and problem/fault code data. All such data shall be transmitted in a secure manner specified by Xerox.

29. TRADE-IN EQUIPMENT. If Customer is providing equipment ("Trade-In Equipment") to Xerox under an IA, the following shall apply:

- a. **TITLE TRANSFER.** Customer warrants that Customer has the right to transfer title to the Trade-In Equipment and that it has been installed and performing its intended function. Title and risk of loss to the Trade-In Equipment shall pass to Xerox when Xerox removes it from Customer's premises.
- b. **CONDITION.** Customer warrants that the Trade-In Equipment is in good working order, has not been modified from its original configuration (other than by Xerox), and has a UL label attached. Customer agrees to maintain the Trade-In Equipment at its present site and in substantially its present condition until removed by Xerox.
- c. **ACCRUED CHARGES.** Customer agrees to pay all accrued charges for the Trade-In Equipment (up to and including payment of the final principal payment number) and to pay all maintenance, administrative, supply and finance charges for this equipment through the date title passes to Xerox.

30. GOVERNMENT CUSTOMER TERMS: *The following additional terms apply only to Standard Lease, Fixed Lease and Installment Purchase transactions with State and Local Government Customers, which includes State Agencies and Institutions, Government-Owned Colleges and Universities, Cities and Counties, and Public K-12. Private not for profit organizations are not eligible for these "Government Customer Terms":*

- a. REPRESENTATIONS & WARRANTIES, FUNDING, TAX TREATMENT & PAYMENTS:
- (i) REPRESENTATIONS & WARRANTIES. Customer hereby represents and warrants, as of the date of this Agreement, that: (1) Customer is a State or a fully constituted political subdivision or agency of the State in which Customer is located and are authorized to enter into, and carry out, Customer's obligations under this Agreement or an IA hereunder and any other documents required to be delivered in connection with the Agreement or an IA hereunder (collectively, the "Documents"); (2) the Documents have been duly authorized, executed and delivered by Customer in accordance with all applicable laws, rules, ordinances and regulations (including, but not limited to, all applicable laws governing open meetings, public bidding and appropriations required in connection with this Agreement or an IA hereunder and the acquisition of the Products) and are valid, legal, binding agreements, enforceable in accordance with their terms and the person(s) signing the Documents have the authority to do so, are acting with the full authorization of Customer's governing body and hold the offices indicated below their signatures, each of which are genuine; (3) the Products are essential to the immediate performance of a governmental or proprietary function by Customer within the scope of Customer's authority and shall be used during the lease term only by Customer and only to perform such function; and, (4) Customer's obligations to remit payments under this Agreement or an IA hereunder constitute a current expense and not a debt under applicable state law and no provision of this Agreement constitutes a pledge of Customer's tax or general revenues and any provision that is so construed by a court of competent jurisdiction is void from the inception of this Agreement or an IA hereunder.
 - (ii) FUNDING. Customer represents and warrants that all payments due and to become due during Customer's current fiscal year are within the fiscal budget of such year and are included within an unrestricted and unencumbered appropriation currently available for the lease/purchase of the Product, and that it is Customer's intent to use the Products for the entire lease term and to make all payments required under this Agreement or an IA hereunder. In the event that (1) through no action initiated by Customer, Customer's legislative body does not appropriate funds for the continuation of this Agreement or an IA hereunder for any fiscal year after the first fiscal year and has no funds to do so from other sources, and (2) Customer has made a reasonable but unsuccessful effort to find a creditworthy assignee acceptable to Xerox in its sole discretion within Customer's general organization who can continue this Agreement or an IA hereunder, this Agreement or an IA hereunder may be terminated. To effect this termination, Customer shall, thirty (30) days prior to the beginning of the fiscal year for which Customer's legislative body does not appropriate funds for such upcoming fiscal year, send Xerox written notice stating that Customer's legislative body failed to appropriate funds and that Customer has made the required effort to find an assignee. Customer's notice must be accompanied by payment of all sums then owed through the current year to Xerox under this Agreement or an IA hereunder and must certify that canceled Equipment is not being replaced by equipment performing similar functions during the ensuing fiscal year. In addition, Customer agrees at Customer's expense to return the Equipment in good condition to a location designated by Xerox and that, when returned, the Equipment will be free of all liens and encumbrances. Customer will then be released from Customer's obligations to make any further payments to Xerox beyond those due for the current fiscal year (with Xerox retaining all sums paid to date).
 - (iii) TAX TREATMENT (Applicable to Installment Purchase and Bargain Purchase Leases. Does not apply to Fair Market Value leases). This agreement or an IA hereunder has been accepted on the basis of Customer's representation that Xerox may claim any interest paid by Customer as exempt from federal income tax under Section 103(c) of the Code. Customer agrees to comply with the information reporting requirements of Section 149(e) of the Code. Such compliance shall include, but not be limited to, the execution of 8038-G or 8038-GC Information Returns. Customer hereby appoints Xerox as Customer's agent to maintain, and Xerox agrees to maintain, or cause to be maintained, a complete and accurate record of all assignments of this Agreement or an IA hereunder in form sufficient to comply with the book entry requirements of Section 149(a) of the Code and the regulations prescribed thereunder from time to time. Should Xerox lose the benefit of this exemption as a result of Customer's failure to comply with or be covered by Section 103(c) or its regulations, then, subject to the availability of funds and upon demand by Xerox, Customer shall pay Xerox an amount equal to its loss in this regard. At the time of execution of this agreement, Customer shall provide Xerox with a properly prepared and executed copy of US Treasury Form 8038 or 8038-GC.
 - (iv) PAYMENTS. Customer's payment is due within thirty (30) days of the invoice date.

- 31. LEASE AGREEMENTS.** Lease agreement terms and conditions may be negotiated by individual Customers as may be required in a separate contract in accordance with the Customer's procurement laws, rules, regulations, policies and guidelines. In the event of any conflict between a separate lease agreement negotiated between Customer and Xerox and this Agreement, the terms and conditions of the negotiated lease agreement shall apply.
- 32. ORDER OF PRECEDENCE.** Where the terms and conditions of this Agreement are in conflict with a Customer's state and/or institutional laws or regulations, the Customer and Xerox may enter into an addendum to amend the terms and conditions of this Agreement to conform to the Customer's state and/or institutional laws or regulations. The terms and conditions of the addendum shall only be applicable between the Customer that entered into the addendum and Xerox.
- In the event of any conflict among these documents, the following order of precedence shall apply:
- A. executed addendum between Customer and Xerox
 - B. the terms and conditions of this Agreement
 - C. Articles to this Agreement
 - D. exhibits to this Agreement
 - E. the list of products and services contained in the purchase order
- 33. AMENDMENT.** Except as otherwise provided in this Agreement, all changes to this Agreement must be made in writing and signed by both parties. The amendment, cancellation, or termination of this Agreement shall not affect the obligations of either Xerox or Customer under any then-existing IA(s) issued under this Agreement, which shall continue in effect.
- 34. REPRESENTATIONS, WARRANTIES & COVENANTS.** Each party represents that, as of the date of this Agreement, it has the lawful power and authority to enter into this Agreement, the individuals signing this Agreement are duly authorized to do so on its behalf and by entering this Agreement hereunder, it will not violate any law or other agreement to which it is a party. Customer is not aware of anything that will have a material negative effect on its ability to satisfy Customer's payment obligations under this Agreement and all financial information Customer has provided, or will provide, to Xerox is true and accurate and provides a good representation of Customer's financial condition. Each party agrees that it will promptly notify the other party in writing of a change in ownership, or if it relocates its principal place of business or changes the name of its business.
- 35. MHEC NOT-LIABLE FOR CUSTOMERS.** MHEC is not liable to Xerox for any representation made or not made by any Customer, or for the failure of any Customer to make any payment or to otherwise fully perform pursuant to the terms and conditions of an IA and/or this Agreement.
- 36. ANNOUNCEMENTS AND PUBLICITY.** Any announcements and publicity given to MHEC resulting from this Agreement must receive the prior approval of MHEC. Xerox will not make any representations of MHEC's opinion or position as to the quality of effectiveness of the products, supplies and/or services that are the subject of this Agreement without the prior written consent of MHEC.
- 37. MARKETING.** Xerox will assist MHEC in developing and implementing appropriate marketing strategies including seminars, printed materials and full service, on-line MHEC web site to receive information on products, supplies, services and prices and to place orders.
- 38. RECORDS.** Xerox agrees to maintain detailed records pertaining to the price of services rendered and products delivered for a period of three (3) years from the date of acceptance of each purchase order or the time required by law, whichever is later. These records shall be subject to inspection by the Customer and appropriate governmental authorities with Customer's state. The Customer shall have the right to audit billings either before or after payment. Payment under this Agreement shall not foreclose the right of Customer to recover excessive or illegal payments.
- 39. INDEPENDENT CONTRACTORS.** Xerox and its agents and employees are independent contractors and are not employees of MHEC or any Customer. Xerox has no authorization, express or implied to bind MHEC or any Customer to any agreements, settlements, liability or understanding whatsoever, and agrees not to perform any acts as agent of MHEC or any Customer, except as expressly set forth herein. Nothing in this Agreement is intended, or shall be deemed, or construed to constitute a partnership or a joint venture between the parties.

40. EQUAL OPPORTUNITY AND NONDISCRIMINATION. In connection with the furnishing of products or services under this Agreement, Xerox and all subcontractors shall agree not to discriminate against any recipient of products, services, or employees or applicants for employment on the basis of race, color, religion, national origin, sex, age, disability or veteran status. Xerox shall comply with federal laws, rules and regulations applicable to subcontractors of government contracts including those relating to equal employment of minorities, women, persons with disabilities, and certain veterans. Contract clauses required by the United States Government in such circumstances are incorporated herein by reference.

41. SOVEREIGN IMMUNITY. Notwithstanding anything to the contrary in this Agreement or IA under this Agreement, this Agreement shall not be construed to deprive a Customer of its sovereign immunity, or of any legal requirements, prohibitions, protections, exclusions or limitations of liability applying to this Agreement or afforded by Customer's State law to the Customer.

42. MANAGED SERVICES AGREEMENTS. Xerox Corporation's Managed Services Agreement and Document Services Agreement are incorporated into this Agreement as Articles IV and V. In the event any of the terms and conditions contained within those documents are in conflict with the terms and conditions of this Agreement the terms of this Agreement shall control. **(Not active and to be finalized)**

43. ADMINISTRATIVE REPORTING AND FEES.

a. On a quarterly basis, Xerox will make available to MHEC reports and information generated by this Agreement, including institution-by-institution information on sales volume and volume savings. The quarters shall commence in July, October, January and April. These quarterly reports shall be submitted to MHEC within 30 days of the end of the quarter.

b. Fees in the amount of 1% of the equipment purchase price, as listed in the column titled Product on the Purchase Pricing Exhibit shall be calculated as the total of .01 x the mainframe qualified purchase price. This Fee is added to that price to create the final Contract price on the Purchase Pricing Exhibit I. The Fee value will be the same whether equipment mainframe is purchased or leased.

c. Fees shall be remitted to MHEC on a quarterly basis. The quarters for such earned fees shall commence in July, October, January and April of each calendar year. Fees will be remitted to MHEC within 30 days of the end of the quarter and will be paid after the successful installation of the equipment.

44. MISCELLANEOUS.

a. As between Customer and Xerox this Agreement and any IA hereunder shall be construed under the laws of the state in which the Customer resides (without regard to conflict-of-law principles). Customer and Xerox agree to the jurisdiction and venue in a federal or state courts with competent jurisdiction located in the state in which the Customer resides. If a court finds any term of this Agreement or any IA hereunder to be unenforceable, the remaining terms of this Agreement or such IA, as the case may be, shall remain in effect

As between MHEC and Xerox, this Agreement will be construed in accordance with, and its performance governed by the laws of the State of Minnesota. MHEC and Xerox agree to the jurisdiction and venue in a federal or state court with competent jurisdiction located in the State of Minnesota.

b. Xerox, MHEC and Customer may retain a hardcopy, electronic image, photocopy or facsimile of this Agreement and each IA hereunder, which shall be considered an original and shall be admissible in any action to enforce said Agreement or IA. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall be deemed to be one and the same instruction. In addition, all parties may retain a reproduction of each IA hereunder which shall be admissible in any action to enforce said IA, but only the IA held by Xerox shall be considered an original.

c. Xerox may accept this Agreement or any IA hereunder either by its signature or by commencing performance (e.g., Equipment delivery, initiating Document Services, etc.).

d. The following four sentences control over every other part of this Agreement and any IA entered hereunder and over all other documents now or later pertaining to this Agreement or such IA. Customer and Xerox both intend to comply with applicable laws. In no event will Xerox charge or collect any amounts in excess of those allowed by applicable law. Any part of this Agreement or any IA that would, but for this Section, be read under any circumstances to allow for a charge higher than that allowed under any applicable legal limit, is limited and modified by this Section to limit the amounts chargeable under this Agreement or any IA to the maximum amount allowed under the legal limit. If in any circumstances, any amount in excess of that allowed by law is charged or received, any such charge will be deemed limited by the amount legally allowed and any amount received by Xerox in excess of that legally allowed will be applied by us to the payment of amounts legally owed under this Agreement or any IA entered hereunder, or refunded to Customer.

45. ENTIRE AGREEMENT. The following Articles or Attachments are attached hereto and made part hereof:

ARTICLE I - PURCHASE AND STANDARD LEASE TERMS AND CONDITIONS

ARTICLE II - MAINTENANCE TERMS AND CONDITIONS

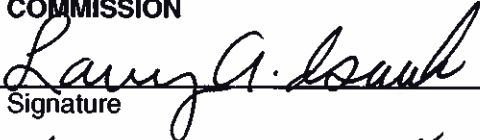
ARTICLE III – FIXED LEASE TERMS AND CONDITIONS

ARTICLE IV – XEROX CORPORATION MANAGED SERVICES AGREEMENT.

ARTICLE V – XEROX CORPORATION DOCUMENT SERVICES AGREEMENT.

This Agreement constitutes the entire agreement between the parties as to its subject matter and Equipment listed in the Attached Pricing Exhibits, and supersedes all prior and contemporaneous oral and written agreements. This Agreement does not supersede the MHEC/Xerox North American Reseller Sales Master Agreement (contract number WV240208) between MHEC and Xerox dated July 1, 2008 nor the subject matter and equipment related to that agreement. Subject to Section 32 of this Agreement, Order of Precedence, the parties agree that in the event of any conflict between the terms and conditions in this Agreement and those contained in any of the documents referenced herein, the terms and conditions of this Agreement shall prevail.

**MIDWESTERN HIGHER EDUCATION
COMMISSION**



Signature



Larry Isaak

President

Title

1300 S. 2nd Street

Suite 130

Minneapolis, Minnesota 55454

Address

July 1, 2008

Date

XEROX CORPORATION



Signature

Tom Mandell

Major Account Contract Manager

Title

8700 Freeport Parkway

Irving TX 75063

Address

July 1, 2008

Date

ARTICLE I
PURCHASE AND STANDARD LEASE TERMS AND CONDITIONS

Customer's acquisition of Equipment via cash purchase, installment purchase or Standard Lease hereunder shall be governed by the terms and conditions contained in the Agreement, this Article and the prices set forth on the attached Purchase Pricing Exhibit.

1. **CONTRACT NUMBER AND TERM.** Customer agrees to enter the applicable contract number, (listed on the attached Purchase Pricing Exhibit), on all Order Documents written hereunder for cash purchase ('Cash Purchase'), installment purchase ('Installment Purchase') or standard lease ('Standard Lease') IAs.
2. **PRICING.** Purchase prices for the initial twelve (12) month period of this Article are set forth in the attached Purchase Pricing Exhibit. At the end of each twelve (12) month period of this Article's pricing, Xerox reserves the right to increase such purchase prices for which Customer then is eligible.
3. **CASH PURCHASE.** The following additional terms and conditions apply to a Cash Purchase IA:
 - a. **TITLE AND RISK.** Title and risk of loss to Equipment will pass to Customer upon delivery and installation of Equipment to Customer.
 - b. **PAYMENT.** Customer's payment under a Cash Purchase IA shall consist of the Net Price amount for the Equipment purchased there under and all applicable Taxes.
 - c. **REMEDIES.** If Customer defaults under this Agreement or a Cash Purchase IA, Xerox, in addition to its other remedies (including the cessation of Basic Services if applicable), may require immediate payment of all amounts then due (including all applicable Taxes), plus interest on all amounts due from the due date until paid at the rate of one and one-half percent (1.5%) per month (not to exceed the maximum amount permitted by law).
4. **INSTALLMENT PURCHASE.** The following additional terms and conditions apply to IAs for Installment Purchase:
 - a. **TITLE AND RISK.** Title and risk of loss to Equipment will pass to Customer upon delivery and installation of Equipment to Customer.
 - b. **PAYMENT.** Customer's payment under an Installment Purchase IA shall consist of the Installment Sale Payments, along with a separate maintenance charge for the provision of Basic Services if applicable, all additional Print Charges and all applicable Taxes.
 - c. **REMEDIES.** If Customer defaults under this Agreement or an Installment Purchase IA, Xerox, in addition to its other remedies (including the cessation of Basic Services, if applicable), may require immediate payment, as liquidated damages for loss of bargain and not as a penalty, of: (1) all amounts then due, plus interest on all amounts due from the due date until paid at the rate of one and one-half percent (1.5%) per month (not to exceed the maximum amount permitted by law); (2) the remaining Installment Sale Payments in the Installment Purchase IA's term less any unearned finance charges (as reflected on Xerox's books and records) and (3) all applicable Taxes. In addition, if an Installment Purchase includes maintenance, Xerox may require immediate payment, as liquidated damages for loss of bargain and not as a penalty, of: (1) the lesser of the remaining Minimum Periodic Base Payments in the IA's term or six (6) such payments for one-year agreements (and twelve (12) such payments for multi-year agreements); and, (2) all applicable Taxes. If Customer is required to make and actually makes the remaining Installment Sale Payments in the Installment Purchase IA's term pursuant to Section c(2) of this Paragraph 5, Customer shall retain the right to the Equipment as if no default under this Agreement or an Installment Purchase IA had occurred. If Customer is required to make Minimum Periodic Base Payments for maintenance services not yet earned by Xerox pursuant to this Paragraph 5, Xerox shall be required to provide the maintenance services for the payments made as if no default under this Agreement or an Installment Purchase IA had occurred.
 - d. **PREPAYMENT OF BALANCE.** Customer, at any time, may prepay the remaining principal balance on an Installment Purchase IA, thereby eliminating the obligation to pay future finance charges.
5. **STANDARD LEASE.** The following additional terms and conditions apply to Standard Lease IAs:
 - a. **TITLE AND RISK.** Title to the Equipment shall remain with Xerox until Customer exercises the option to purchase the Equipment. The risk of loss due to Customer's fault or negligence, as well as theft, fire or disappearance shall pass to Customer upon delivery of Equipment to Customer. The risk of loss due to all other causes shall remain with Xerox unless and until Customer exercises the option to purchase the Equipment.

- b. PAYMENT. Each Minimum Lease Payment includes a Periodic Base Charge, and may include a Periodic Minimum Number of Prints ("Minimum Prints"). The Minimum Lease Payments, along with any additional Print Charges for prints made in excess of the Minimum Prints and all applicable Taxes, cover Customer's cost for the use of the Equipment and its maintenance (provided as Basic Services) in a Standard Lease IA written hereunder. Minimum Lease Payments may be billed on more than one invoice, and the Minimum Lease Payments may be billed in advance and additional Print Charges are billed in arrears.
- c. WAIVER. THE PARTIES INTEND A STANDARD LEASE IA TO BE A "FINANCE LEASE" UNDER ARTICLE 2A OF THE UNIFORM COMMERCIAL CODE. In the event of a conflict between the provisions of Article 2A of the Uniform Commercial Code and the terms and conditions of this Agreement, the terms and conditions of this Agreement shall apply. Except to the extent expressly provided herein and to the extent permitted by applicable law, Customer waives all rights and remedies conferred upon a lessee in accordance with Sections 527, 528 and 529 of Article 2A of the Uniform Commercial Code. The parties agree that they will not employ any "self-help" methods to enforce the terms of this Agreement.
- d. MAINTENANCE COMPONENT PRICE INCREASES FOR LEASED EQUIPMENT. Except for fixed prices as agreed to by the parties, Xerox may annually increase that amount of the Minimum Lease Payment and Print Charges that Customer is charged in a Standard Lease IA for maintenance of Equipment (the "Maintenance Component"), each such increase not to exceed five percent (5%). For State and Local Government Customers, this adjustment shall take place at the commencement of each of Customer's annual contract cycles.
- e. REMEDIES. If Customer defaults under this Agreement or a Standard Lease IA, Xerox, in addition to its other remedies (including the cessation of Basic Services), may require immediate payment, as liquidated damages for loss of bargain and not as a penalty, of: (1) all amounts then due, plus interest on all amounts due from the due date until paid at the rate of one and one-half percent (1.5%) per month (not to exceed the maximum amount permitted by law); (2) the remaining Minimum Lease Payments in the term of the Standard Lease IA, less any unearned finance, maintenance, and supply charges (as reflected on the lessor's books and records); (3) a reasonable disengagement fee calculated by Xerox, that will not exceed fifteen percent (15%) of the amount in (2) above (said amount is available from Xerox upon request); and (4) all applicable Taxes. Customer also shall either (i) make the Equipment available for removal by Xerox when requested to do so by Xerox and, at the time of removal, the Equipment shall be in the same condition as when delivered, reasonable wear and tear excepted, together with any related software or (ii) purchase the Equipment "AS IS, WHERE IS" and WITHOUT ANY WARRANTY AS TO CONDITION OR VALUE by paying Xerox the Purchase Option and all applicable Taxes. If Customer is required to make and actually makes the remaining minimum Lease Payments in the term of the Standard Lease IA pursuant to Section e (2) of this Paragraph 6, and elects not to purchase the Equipment, Customer shall retain the right to use the Equipment as if no default under this Agreement or a Standard Lease IA had occurred.

END OF ARTICLE

ARTICLE II

MAINTENANCE TERMS AND CONDITIONS

Customer's acquisition of Equipment maintenance in the form of Basic Services hereunder shall be governed by the terms and conditions contained in the Agreement and this Article.

1. **INDIVIDUAL AGREEMENT TERM.** Maintenance IA s will commence at the end of any warranty period and expire on the last day of the 12th, 24th, 36th, 48th or 60th full calendar month thereafter, as applicable.
2. **INDIVIDUAL AGREEMENT PRICING.** Except for fixed prices as agreed to by the parties in a Maintenance IA, Xerox may, annually increase the Periodic Base and Print Charges with thirty (30) days prior written notice, and such increases, including Consumable Supplies, if applicable, shall not exceed five percent (5%).
3. **PAYMENT.** Each Minimum Periodic Base Charge may include a Periodic Minimum Number of Prints ("Minimum Prints"). The Minimum Periodic Base Charge, along with any additional Print Charges for prints made in excess of the Minimum Prints and all applicable Taxes, cover Customer's cost for the Equipment's maintenance (provided as Basic Services) in a Maintenance IA written hereunder. The Minimum Periodic Base Charge may be billed in advance and additional Print Charges are billed in arrears.
4. **REMEDIES.** If Customer defaults under this Agreement or a Maintenance IA, Xerox, in addition to its other remedies (including the cessation of Basic Services), may require immediate payment, as liquidated damages for loss of bargain and not as a penalty, of: (a) all amounts then due, plus interest on all amounts due from the due date until paid at the rate of one and one-half percent (1.5%) per month (not to exceed the maximum amount permitted by law); (b) the lesser of (i) the remaining Minimum Periodic Base Charge in such Maintenance IA's term or (ii) six (6) such payments for one year agreements or twelve (12) such payments for multi-year agreements; and, (c) all applicable Taxes. If Customer is required to make Minimum Periodic Base Charge payments pursuant to Section (b) of this Paragraph 4, Xerox shall be required to provide the maintenance services and Minimum Prints for the Minimum Periodic Base Charge payments made by Customer as if no default under this Agreement or a Maintenance IA had occurred.

END OF ARTICLE

ARTICLE III
FIXED LEASE TERMS AND CONDITIONS

Customer's acquisition of Equipment via Fixed Lease hereunder shall be governed by the terms and conditions contained in the Agreement, this Article and the prices set forth on the attached Fixed Lease Pricing Exhibit.

- 1. CONTRACT NUMBERS AND TERM.** Customer agrees to enter the applicable contract number, (listed on the attached Fixed Lease Pricing Exhibit), on all Order Documents for Fixed Lease IAs. Individual leases may be for terms of either 36, 48, or 60 months, depending upon the term selected by the Customer.
- 2. PRICING.**
 - a. The contract number, term, the amount of each Minimum Lease Payment and the Print Charges applicable to Equipment ordered on a Fixed Lease IA hereunder are set forth on the attached Fixed Lease Pricing Exhibit.
 - b. Except as otherwise set forth herein, the prices listed on the attached Fixed Lease Pricing Exhibit will not increase during the term of this Agreement.
- 3. INDIVIDUAL EQUIPMENT TERM AND PRICE.** The contract number, term, Minimum Lease Payment and Print Charges applicable to individual units of Equipment ordered under the Fixed Lease Pricing Exhibit are listed on such exhibit
- 4. TITLE AND RISK.** Title to the Equipment shall remain with Xerox until Customer exercises the option to purchase the Equipment. The risk of loss due to Customer's fault or negligence, as well as theft, fire or disappearance, shall pass to Customer upon delivery of Equipment to Customer. The risk of loss due to all other causes shall remain with Xerox unless and until Customer exercises the option to purchase the Equipment.
- 5. PAYMENT.** Each Minimum Lease Payment includes a Periodic Base Charge, and may include a Periodic Minimum Number of Prints ("Minimum Prints"). The Minimum Lease Payments, along with any additional Print Charges for prints made in excess of the Minimum Prints and all applicable Taxes, cover Customer's cost for the use of the Equipment, its maintenance (provided as Basic Services) and Consumable Supplies in a Fixed Lease IA written hereunder. Minimum Lease Payments may be billed on more than one invoice, and the Minimum Lease Payment may be billed in advance and additional Print Charges are billed in arrears. Except as otherwise set forth herein, such Minimum Lease Payments and Print Charges will not increase during the term of a Fixed Lease IA.
- 6. REMEDIES.** If Customer defaults under this Agreement or a Fixed Lease IA, Xerox, in addition to its other remedies (including the cessation of Basic Services), may require immediate payment, as liquidated damages for loss of bargain and not as a penalty, of: (a) all amounts then due, plus interest on all amounts due from the due date until paid at the rate of one and one-half percent (1.5%) per month (not to exceed the maximum amount permitted by law); (b) the remaining Minimum Lease Payments in the term of the Fixed Lease IA, less any unearned finance, maintenance, and supply charges (as reflected on the lessor's books and records); (c) a reasonable disengagement fee calculated by Xerox, that will not exceed fifteen percent (15%) of the amount in (b) above (said amount is available from Xerox upon request); and (d) all applicable Taxes. Customer also shall either (1) make the Equipment available for removal by Xerox when requested to do so by Xerox and, at the time of removal, the Equipment shall be in the same condition as when delivered, reasonable wear and tear excepted, together with any related software or (2) purchase the Equipment "AS IS, WHERE IS" and WITHOUT ANY WARRANTY AS TO CONDITION OR VALUE by paying Xerox the Purchase Option and all applicable Taxes. If Customer is required to make and actually makes the remaining Minimum Lease Payments in the term of the Fixed Lease IA pursuant to Section (b) of this Paragraph 7, and elects not to purchase the Equipment, Customer shall retain the right to use the Equipment as if no default under this Agreement or a Fixed Lease IA had occurred.
- 7. WAIVER.** THE PARTIES INTEND A FIXED LEASE IA TO BE A "FINANCE LEASE" UNDER ARTICLE 2A OF THE UNIFORM COMMERCIAL CODE. In the event of a conflict between the provisions of Article 2A of the Uniform Commercial Code and the terms and conditions of this Agreement, the terms and conditions of this Agreement shall apply. Except to the extent expressly provided herein and to the extent permitted by applicable law, Customer waives all rights and remedies conferred upon a lessee in accordance with Sections 527, 528 and 529 of Article 2A of the Uniform Commercial Code. The parties agree that they will not employ any "self-help" methods to enforce the terms of this Agreement.

8. CUSTOMER EDUCATION TRAINING AND ANALYST CONSULTING SERVICES. The pricing listed on the attached Fixed Lease Pricing Exhibit includes one training session delivered by Customer Education Specialists pursuant to the terms and conditions listed in the then-current Xerox Customer Education price list (#61375). In addition, the pricing set forth on the Fixed Lease Pricing Exhibit includes Analyst Consulting Services support as set forth in the attached Statement of Work and pursuant to the terms and conditions listed in the then-current Xerox Customer Education price list (#65322). Such training and analyst consulting activities will be conducted at a mutually agreed time. Subsequent training and analyst consulting support may be requested and is billable at the then current price and terms and conditions set forth in such price lists.

END OF ARTICLE

ARTICLE IV
MANAGED SERVICES TERMS AND CONDITIONS

Xerox Corporation's Managed Services Agreement and Document Services Agreement are incorporated into this Agreement as Articles IV and V. In the event any of the terms and conditions contained in Xerox Corporation's Managed Services Agreement are in conflict with the terms and conditions of the Agreement between MHEC and Xerox Corporation the terms of the Agreement shall control.

THIS MANAGED SERVICES AGREEMENT ("Agreement Article" or "MSA Article"), which bears MSA No. **7057829**, is entered by and between Customer and Xerox Corporation ("Xerox").

- 1. SCOPE AND DEFINITIONS.** The acquisition of Offerings, as defined below, by Customer hereunder is subject to the prices and terms and conditions set forth herein and each Managed Services Order ("MSO") and Statement of Work ("SOW") that references this MSA.
 - a. "Services" are collectively managed services (e.g. copy center and mailroom services), consultative services and/or Xerox Quoted Offerings. "Xerox Quoted Offerings" may be any combination of professional services provided hereunder, including, but not limited to, assessment, office document, network, integration, implementation, help desk, and asset management services. Services may also include (i) Xerox-brand equipment ("Equipment") and Xerox-brand software ("Software"); (ii) third party hardware ("Third Party Hardware") and/or third party software ("Third Party Software") (collectively, "Third Party Products"); and/or (iii) Maintenance Services, as set forth herein, for Equipment and/or equipment maintenance for Third Party Hardware.
 - b. "Deliverables" include, but are not limited to, Products, Output of Services, Assessments and Documentation. As used herein, (i) "Products" refers collectively to supplies, maintenance, Equipment, Software and Third Party Products hereunder; (ii) "Output of Services" constitute electronic images created by scanning tangible documents containing Customer Content, or the content of any reports and other materials, created by Xerox specific to and for Customer per the applicable Order, but shall not include software; (iii) "Customer Content" consists of documents, materials and data provided in hard copy or electronic format by Customer to Xerox containing information of Customer and/or Customer's clients that must be disclosed to Xerox to enable the performance of Services hereunder; (iv) "Assessments" are assessment and recommendation reports created as a result of Xerox performance of assessment services; and, (v) "Documentation" shall mean all manuals, brochures, specifications, information and software descriptions, in electronic, printed, and/or camera-ready form, and related materials customarily provided by Xerox for use as part of the Offerings.
 - c. "Staffing and Management Services" are the personnel provided hereunder by Xerox to perform and/or manage Services.
 - d. Services, Staffing and Management Services and Products are referred to collectively as "Offerings".
- 2. ORDERS.**
 - a. Services and Deliverables provided by Xerox will be set forth in one or more MSOs or SOWs, as applicable, which will be mutually agreed upon and signed by the Customer and Xerox. Customer may also issue purchase orders to Xerox for order entry purposes only, specifying Customer's requested shipment date, installation site, quantities, bill-to address, Offering description and term, and applicable Trade-In Equipment. Such purchase orders shall incorporate and be subject solely to the Agreement and this MSA Article's terms and conditions, notwithstanding anything contained in any such purchase order at variance with or in addition to this MSA Article or any MSO or SOW hereunder. Any MSO, SOW or Customer-issued purchase order shall be an individual order ("Order") hereunder and, irrespective of its form, must reference this MSA Article's contract number.
 - b. Orders may be submitted via hard copy or electronic means and those submitted electronically by Customer shall be considered for all purposes to (i) be a "writing" or "in writing"; (ii) be "signed"; (iii) constitute an "original" when printed from electronic records established and maintained in the ordinary course of business; and, (iv) be valid and enforceable.

3. TERM.

- a. This MSA Article shall commence on the date it is accepted by Xerox and MHEC and shall end when either MHEC or Xerox exercises its right to terminate the Agreement upon not less than thirty (30) days prior written notice to the other party. In the event either MHEC or Xerox elects to terminate the Agreement, each Order hereunder shall remain in full force and effect until the end of its term (including any renewals or extensions or administrative fees thereto), or it is terminated and shall at all times be governed by the terms and conditions of the Agreement and this MSA Article as if it were still in effect.
- b. The term of each Offering, unless otherwise stated in the applicable Order, shall commence upon the installation date of each Product or commencement of each Service or Staffing and Management Service, as applicable, and shall continue for the term stated. If an Offering is terminated by either party, the term of any remaining Offerings shall continue unaltered.
- c. Except as otherwise set forth in a SOW, unless either party provides notice at least thirty (30) days before the end of the term of an Offering hereunder of its intention not to renew, and subject to the terms of the applicable Order, it will continue on a month-to-month basis at the same price and on the same terms and conditions and, during said continuation period, either party may terminate the continued Offering on at least thirty (30) days notice.

4. PERFORMANCE OF SERVICES, PERSONNEL AND FACILITIES.

- a. Xerox agrees to comply with Customer's internal policies provided to Xerox by Customer in writing with respect to security and safety that are reasonable and customary under the circumstances and which do not conflict with this MSA Article. Customer agrees to provide Xerox with reasonable prior notice of such policies and any changes thereto.
- b. It is agreed that neither Customer nor Xerox shall, directly or indirectly, actively solicit the employment of members of the other party's staff, including Xerox's agents, during the term of an order under this MSA Article and for a period of one (1) year thereafter. Employees and agents of Xerox shall be subject to this clause only if they are providing Services under this MSA Article, or are supervisors of Xerox's employees or agents who are providing such Services. Employment arising from inquiries received via advertisements in newspapers of general circulation, job fairs or unsolicited resumes or applications for employment shall not be considered active solicitation. It is further agreed that in the event of violation of this restriction, the sole remedy of a party shall be to require the defaulting party to make payment, as liquidated damages and not as a penalty, in an amount equal to the individual's then current annual salary (or in the case of an agent, the amount of fees paid for such agent in the past twelve (12) months), which would be payable within thirty (30) days of the start date of the employee or agent.
- c. Xerox will be an independent contractor hereunder and not Customer's employee or agent. Customer agrees its facilities at which the Services are performed will fully comply with all applicable laws and regulations, including, but not limited to, OSHA.

5. CUSTOMER ASSETS, EQUIPMENT AND SOFTWARE.

- a. During the term of an Order, Customer shall permit Xerox and its agents to use or access, and shall grant or transfer sufficient rights to enable Xerox and its agents to use or access, all hardware, software and/or work space owned, leased, rented, licensed and/or controlled by Customer, and any services utilized by Customer (collectively "Customer Assets"), and Customer Content, that Xerox needs to use or access to enable Xerox to perform any of the Services. Customer is solely responsible for backing up its Customer Content and Xerox shall not be responsible for Customer's failure to do so. Customer shall acquire and/or continue, at Customer's sole expense, maintenance and repair service contracts for all Customer Assets that Customer permits Xerox to use or access hereunder. Customer shall inform its service providers of Xerox's authority to request maintenance and repair services and shall direct them to respond to Xerox's requests for the same.
- b. If Customer revises or removes Products and Xerox advises Customer that the remaining Products are not sufficient to enable Xerox to provide Services, Xerox shall have no liability for the failure to provide such Services. Customer agrees to legally dispose of all hazardous wastes generated from the use of Third Party Hardware and supplies.
- c. Title to Equipment and Third Party Hardware acquired through any order shall remain with Xerox until Customer purchases same and, until such Equipment or Third Party Hardware is purchased by Customer, Customer agrees that: (i) it shall remain personal property; (ii) Customer will not attach it as a fixture to any real estate; (iii) Customer will not pledge, sub-lease or part with possession of it or file or permit to be filed any lien against it; (iv) Customer will not make any permanent alterations to it; and, (v) all relocations of it must be arranged (or approved in advance) by Xerox.

Customer is not entitled to purchase any Equipment or Third Party Hardware provided under any SOW except as set forth therein. While Equipment and Third Party Hardware is being relocated, Customer remains responsible to make all payments required under the applicable Order to Xerox. Xerox will make its best efforts to expedite the relocation if the Equipment and Third Party Hardware relocation is being arranged by Xerox. Notwithstanding the foregoing, if Xerox arranged relocation of the Equipment or Third Party Hardware and the relocation takes more than thirty (30) days to complete, Customer shall not be required to make maintenance payments required under the applicable Order until relocation is completed. Neither Equipment nor Third Party Hardware can be relocated outside of the United States, its territories or possessions until Customer has paid in full for it and has received title thereto. If Customer acquires title to Equipment or Third Party Hardware, Customer must comply with all applicable laws and regulations regarding the export of any commodity, technology and/or software. The risk of loss for Equipment and Third Party Hardware shall pass to Customer upon delivery and installation. Unless otherwise agreed to by the parties in a SOW, Customer agrees to use Equipment and Third Party Hardware in accordance with, and to perform all operator maintenance procedures for it set forth in, the applicable product manuals therefor. All Xerox parts/materials replaced, including as part of an upgrade, will become Xerox's property. Products that become no longer generally commercially available may be withdrawn from future order-taking by Xerox. Xerox may add Products to this Agreement for order-taking. Customer represents that Products are being ordered for Customer's own business use (rather than resale) and that they will not be used for personal, household or family purposes.

- d. Customer hereby authorizes Xerox or its agents to file, by any permissible means, financing statements necessary to protect Xerox's rights in the Equipment or Third Party Hardware. Xerox, on Customer's behalf and at Customer's expense, may take any action required to be taken by Customer to protect Xerox' rights in the Equipment or Third Party Hardware that Customer fails to take under an Order for Equipment or Third Party Hardware.

6. SERVICES AND THIRD PARTY PRODUCT GUARANTEE / WARRANTY / WARRANTY LIMITATIONS, AND WARRANTY DISCLAIMER / WAIVER.

- a. **SERVICES GUARANTEE.** Xerox will provide the Services set forth in each Order and if the Services do not meet the service levels set forth therein during its term, Customer agrees to notify Xerox in writing detailing its concerns in that regard. No later than ten (10) days following Xerox's receipt of said notice, Xerox and Customer agree to meet, clarify the Customer's concern(s) and begin to develop a corrective action plan ("Plan") to remedy such alleged non-compliance. As Customer's exclusive remedy for Xerox's non-compliance, Xerox, within sixty (60) days of finalizing the Plan or a time period as otherwise agreed to in writing by the parties, will then either modify such Services so they are compliant with such Order or re-do the work at no additional charge.
- b. **SERVICES WARRANTY.** Xerox represents and warrants to Customer that the Services will be performed in a skillful, timely and workmanlike manner; provided however, in no event will Xerox be responsible for any failure to perform Services if the failure is caused by: (i) Customer Assets, Customer Content, or services, maintenance, design implementation, supplies or data streams provided by Customer, Customer's agent or service provider to Xerox for use hereunder, (ii) Customer's failure to contract for the minimum types and quantities of Products required by Xerox to perform the Services, or (iii) Customer's failure to provide Xerox access to Customer's personnel and systems or to transfer to Xerox sufficient rights to use, access and/or modify Customer Assets constituting hardware and software, including software owned or licensed by Customer, and/or Customer Content as necessary for the provision of Services.
 - c. **WARRANTY DISCLAIMER AND WAIVER FOR SERVICES.** EXCEPT FOR THE IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE AND THE WARRANTY FOR MERCHANTABILITY, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION FOR SERVICES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, THEREFOR AND XEROX DISCLAIMS, AND CUSTOMER WAIVES, ALL OTHER WARRANTIES FOR SERVICES, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF NON-INFRINGEMENT.
 - d. **XEROX WARRANTS IT HAS ALL RIGHTS NECESSARY TO GRANT CUSTOMER THE RIGHT TO PURCHASE, LEASE OR LICENSE THE THIRD PARTY PRODUCTS AND ALL APPLICABLE MAINTENANCE AND SUPPORT FOR SAID THIRD PARTY PRODUCTS.**

- d. FOR THIRD PARTY PRODUCTS SELECTED SOLELY BY XEROX FOR AN ORDER, XEROX WARRANTS THEY WILL OPERATE SUBSTANTIALLY IN CONFORMANCE WITH APPLICABLE SERVICE LEVELS IN THE ORDER. IF, WITHIN A REASONABLE TIME AFTER PROVISION OF SUCH THIRD PARTY PRODUCTS, SUCH SERVICE LEVELS CANNOT BE BROUGHT INTO SUBSTANTIAL CONFORMANCE WITH THOSE IN THE ORDER AND SUCH NON-CONFORMANCE IS A RESULT OF XEROX'S USE OF SUCH THIRD PARTY PRODUCTS, CUSTOMER'S EXCLUSIVE REMEDY FOR THE FOREGOING WARRANTY IS TO RECEIVE A REFUND OF ANY FEES PAID FOR THE NON-CONFORMING THIRD PARTY PRODUCTS UPON THE RETURN THEREOF TO XEROX. XEROX DISCLAIMS, AND CUSTOMER WAIVES, ALL OTHER WARRANTIES WITH RESPECT TO SUCH THIRD PARTY PRODUCTS, AS WELL AS FOR MAINTENANCE THEREOF, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF NON-INFRINGEMENT, AND MERCHANTABILITY, AS WELL AS ANY OTHER WARRANTY PERTAINING OR RELATING TO DESIGN, PERFORMANCE, FUNCTIONALITY, OR COMPATIBILITY THEREOF WITH CUSTOMER'S SYSTEMS. XEROX WILL PASS THROUGH TO CUSTOMER ANY WARRANTIES PROVIDED TO IT BY THE MANUFACTURER OR LICENSOR OF THIRD PARTY PRODUCTS TO THE EXTENT PERMISSIBLE. OTHER THAN THOSE PROVIDED BY THE MANUFACTURER, XEROX DISCLAIMS, AND CUSTOMER WAIVES, ANY AND ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE AND MERCHANTABILITY, FOR THIRD PARTY PRODUCTS NOT SELECTED SOLELY BY XEROX.
- e. THE WARRANTIES AND GUARANTEES SET FORTH IN THIS SECTION OF THE MSA ARTICLE ARE EXPRESSLY CONDITIONED UPON THE USE OF THE SERVICES AND DELIVERABLES FOR THEIR INTENDED PURPOSE IN THE SYSTEMS ENVIRONMENT FOR WHICH THEY WERE ORIGINALLY DESIGNED AND SHALL NOT APPLY TO SERVICES OR DELIVERABLES WHICH HAVE BEEN SUBJECT TO MISUSE, ACCIDENT, ALTERATION OR MODIFICATION BY CUSTOMER OR ANY THIRD PARTY (EXCEPT AS SPECIFICALLY AUTHORIZED IN WRITING BY XEROX.)

7. PRICING.

- a. Pricing shall be as set forth in an Order. Any pricing exhibit ("Pricing Exhibit") attached hereto or to an Order shall contain the ten (10) digit contract number ("Contract Number"), term, amount of each monthly charge ("Monthly Minimum Charge" or "MMC") and Print Charges applicable to Equipment ordered hereunder. The MMC, along with any additional Print Charges, covers Customer's monthly cost for the Offerings. The MMC may also include, but not be limited to, lease buyout funds or monthly equipment component amounts from previous contracts, amounts being financed or refinanced, analyst services and/or customer training services. One-time items ("One-Time Items") are billed separately from the MMC.
- b. Pricing for fixed Equipment price plans set forth on a Pricing Exhibit will not increase during the order-taking term indicated on said Exhibit and will remain fixed during the initial term of the Product ordered. Fixed pricing for other Offerings, as agreed to in an Order, will not increase during the initial term of the applicable Offering. Except for said fixed Equipment price plans or fixed pricing agreed to in an Order, Xerox may, upon thirty (30) days prior written notice, adjust prices in the twelfth (12th) month of the term of an individual Offering, and no more often than annually thereafter with each price adjustment not exceeding six percent (6%).
- c. Pricing set forth in an Order for Services is based upon shared information believed to be complete and accurate. If such information should prove to be incomplete or inaccurate in any material respect, or Customer requests any changes or additions to an Order, the parties will negotiate in good faith to make appropriate adjustments to the Order (including pricing).
- d. If Xerox provides or installs Offerings partially and/or early, Xerox will bill Customer on a pro-rata basis, based on a thirty (30) day billing month, and the terms and conditions of this Agreement and MSA Article will apply. Services requested outside of Customer's standard working hours will be billed at Xerox's then prevailing overtime rates.
- e. Xerox will be responsible for all standard delivery and removal charges for Equipment and Third Party Hardware. Customer will be responsible for any non-standard delivery and removal charges.

8. PAYMENT, CREDIT AND TAXES.

- a. PAYMENT. Invoices are payable upon receipt and Customer agrees to pay Xerox all sums due hereunder as follows:
 - (i) if the invoice displays a due date, payment is due and must be received by Xerox on or before said due date, but in no event shall the due date be less than thirty (30) days unless Customer has provided Xerox with prior written approval of the shorter due date; or
 - (ii) If the invoice does not display a due date, payment is due and must be received by Xerox no later thirty (30) days after the invoice date.

Restrictive covenants on instruments or documents submitted for or with payments will not reduce Customer's obligations. Customer authorizes Xerox (or its agent) to obtain credit reports from commercial credit reporting agencies. Xerox reserves the right to review and approve Customer's credit prior to acceptance of each Order.

- b. TAXES. Customer shall be responsible for any and all applicable Taxes, which will be included in Xerox's invoice unless Customer provides proof of Customer's tax-exempt status. "Taxes" shall mean any tax, assessment, or charge imposed or collected by any governmental entity or any political subdivision thereof, however designated or levied, imposed on this MSA or any Order hereunder or the amounts payable to Xerox by Customer for the billing of Offerings of any kind. Taxes include, but are not limited to, sales and use, rental, excise, gross receipts and occupational or privilege taxes, plus any interest and/or penalty thereon, but excluding any personal property taxes for Equipment leased hereunder and taxes on Xerox's net income. If a taxing authority determines Xerox did not collect all applicable Taxes, Customer shall remain liable to Xerox for such additional Taxes.

9. TERMINATION AND DEFAULT.

- a. Equipment, Software and / or Third Party Products are excluded from the definition of "Services" for the purposes of subsection b. of this Section titled "TERMINATION AND DEFAULT" and their early termination is governed by the provisions in subsection c.
- b. Except as otherwise set forth in an Order, upon ninety (90) days prior written notice to Xerox, Customer may terminate or reduce any Services or Staffing & Management Services without incurring Early Termination Charges ("ETCs"). Notwithstanding the foregoing sentence, if any Services or Staffing & Management Services are terminated or reduced: (i) by Xerox due to Customer's default; or (ii) by Customer, and Customer acquires Services or Staffing and Management Services from another supplier within six (6) months of the termination of such Services or Staffing & Management Services, then Customer agrees to pay all amounts due Xerox as of the termination date, together with liquidated damages, for loss of bargain and not as a penalty (in the form of ETCs), equal to the then current MMC for said terminated or reduced Services or Staffing & Management Services multiplied by the number of months remaining in their term, not to exceed six (6) months.
- c. Prior to the expiration of the term of Equipment, Software and/or Third Party Products in and as proscribed by the applicable Order, if: (i) Customer terminates Equipment, Software and/or Third Party Products, (ii) Customer requires that a unit of Equipment or Third Party Hardware be replaced (e.g., traded-in), or (iii) Xerox terminates Equipment, Software and/or Third Party Products due to Customer's default, Xerox, in addition to its other remedies (including the cessation of Maintenance Services), may require immediate payment, as liquidated damages for loss of bargain and not as a penalty, of: (A) all amounts then due, plus interest on all amounts due from the due date until paid at the rate of one and one half percent (1.5%) per month (not to exceed the maximum amount permitted by law); (B) the remaining MMCs in the term of the Equipment, Software and/or Third Party Products less any unearned finance, maintenance, value added services, and supply charges; (C) for Equipment and Third Party Hardware, a reasonable disengagement fee calculated by Xerox that will not exceed fifteen percent (15%) of the amount in (B) above (said amount is available from Xerox upon request); and, (D) all applicable Taxes. In addition to paying the amounts required in the preceding sentence if Customer defaults, Customer shall either make the subject Equipment, Software and/or Third Party Products available for removal by Xerox when requested to do so by Xerox and, at the time of removal, such Equipment, Software and/or Third Party Products will be in the same condition as when delivered, reasonable wear and tear excepted, or, for Equipment or Third Party Hardware, purchase the subject Equipment or Third Party Hardware "AS IS, WHERE IS" and WITHOUT ANY WARRANTY AS TO CONDITION OR VALUE by paying Xerox the Fair Market Value ("FMV") of the Equipment or Third Party Hardware at the conclusion of its term and all applicable Taxes. If Customer is required to make and actually makes the remaining MMCs in the term of the Equipment, Software and/or Third Party Products pursuant to section (B) of this Paragraph 9c., and elects not to purchase the Equipment, Software and/or Third Party Products, Customer shall retain the right to use the Equipment, Software and/or Third Party Products as if no default under this Agreement or Managed Services Article had occurred. Payment of such amounts entitles the Customer to possession of the equipment for the remainder of the original term of the Agreement. The Customer would be required to purchase maintenance, consumable supplies, and any value added services for the equipment under a separate agreement.

10. CONFIDENTIAL INFORMATION.

- a. While Xerox is providing Services hereunder, each party will disclose to the other certain business information identified as confidential ("Confidential Information"). Customer Content shall be considered Customer's Confidential Information and, to the extent permitted by applicable law, the terms and conditions of this MSA Article, and any Orders, attachments, exhibits and amendments hereto, as well as Xerox Tools, Developments and Pre-Existing Work, shall be considered Xerox's Confidential Information. As used herein, (i) "Developments" are items created by Xerox and its employees, agents, and/or licensors, including, but not limited to, computer programs, code, reports, operations and procedures manuals, forms, design or other works of authorship or materials, in the course of performing Services, and (ii) "Pre-existing Work" are those items used or incorporated into a Deliverable, including, but not limited to, any computer programs, code, processes, operations and procedures manuals, routines, algorithms, or other materials, that are developed or acquired by Xerox independent of performing the Services and modifications, enhancements, improvements and derivative works thereof (Developments and Pre-Existing Work are, collectively, "Xerox Work"). "Xerox Tools" means certain proprietary tools used by Xerox to provide Services and any modifications, enhancements, improvements and derivative works thereof.
- b. Each party will make reasonable efforts not to disclose the other party's Confidential Information to any third party, except as may be required by law, unless such Confidential Information: (i) was in the public domain prior to, at the time of, or subsequent to the date of disclosure through no fault of the non-disclosing party; (ii) was rightfully in the non-disclosing party's possession or the possession of any third party free of any obligation of confidentiality; or (iii) was developed by the non-disclosing party's employees or agents independently of and without reference to any of the other party's Confidential Information. To the extent permitted by applicable law the parties do not intend for Customer to disclose hereunder confidential technical information, which includes, but is not limited to, computer programs, source code, and algorithms, and Customer will only disclose the same under provisions of a separate agreement. Upon the expiration or termination of this MSA, each party shall return to the other or, if so requested, destroy, all Confidential Information of the other in its possession or control, except such Confidential Information as may be reasonably necessary to exercise rights that survive the termination of this Agreement or MSA Article and the Orders entered hereunder.
- c. Notwithstanding anything to the contrary in this Agreement or MSA Article, both Customer and Xerox agree to comply with the data practices laws of the State in which Customer is located or founded.

11. FERPA (and other Privacy Laws).

Where applicable Xerox agrees to comply with the Family Education Rights and Privacy Act (FERPA), the Health Insurance Portability and Accountability Act (HIPAA), the Gramm-Leach Bliley Act (GLBA) and all other state and Federal privacy laws; and agrees to implement and maintain safeguards to protect the security, confidentiality, and integrity of information it receives from Customer.

12. INTELLECTUAL PROPERTY.

- a. CUSTOMER CONTENT AND CUSTOMER ASSETS. Customer represents and warrants that it owns the Customer Content and Customer Assets or otherwise has the right to authorize Xerox to perform the Services hereunder. Customer represents and warrants the Customer Content does not, and shall not, contain any content that (ii) infringes on or violates any applicable laws, regulations or rights of a third party, including without limitation, export laws, or any proprietary, intellectual property, contract, or privacy right or any other third party right.
- b. XEROX WORK. Xerox, its employees, agents and/or licensors shall at all times retain all rights to the Xerox Work and, except as expressly set forth herein, no rights to Xerox Work are granted to Customer.

Note: Xerox does not anticipate the development of any customized products or programming in connection with the services provided under this Contract. Any products or programming developed while providing services under this Contract shall remain the property of Xerox, unless the Customer specifically contracts with and compensates Xerox to develop products or programs for the exclusive use of the Customer.

Xerox does agree, however, to grant the Customer a non-exclusive, non-transferable, perpetual right to use any programs created by Xerox under this contract strictly for the Customer internal business use and not for resale and/or distribution to third parties. All content and data specific to the Customer shall remain the property of the Customer.

- c. **OUTPUT OF SERVICES.** Output of Services is the sole and exclusive property of Customer and Xerox shall gain no rights therein, except as may be required for Xerox to perform Services pursuant to an Order. Xerox hereby assigns, grants, conveys, and transfers to Customer all rights in and to the Output of Services for the applicable Order. Xerox reserves the right to revoke such rights if Customer fails to pay for such Services, or otherwise defaults under this MSA Article. Notwithstanding the foregoing, Customer shall retain its rights to all Output of Services it has paid for.
- d. **LIMITED USE GRANTS.** Xerox grants Customer a non-exclusive, perpetual (subject to revocation for default under this Agreement or MSA Article), fully paid-up, worldwide right to use, display and reproduce Xerox Work and Documentation only as required for use of the Services and Deliverables for Customer's customary business purposes, and not for resale, except as stated in subsection c of this section, license and/or distribution outside of Customer's organization. Customer agrees not to decompile or reverse engineer any Xerox Work.
- e. **THIRD PARTY SOFTWARE.** Third Party Software constitutes a Deliverable and, if applicable, support therefor, is provided pursuant to the terms of the Third Party's customary end user license agreement and/or support agreement.
- f. **LIMITED SUBLICENSING GRANTS.** Customer may not sublicense any rights granted to it hereunder, but may authorize a third party ("Customer Designee") to use any of the rights granted to Customer under this MSA Article, solely for the benefit of Customer and Customer's internal business purposes. Customer agrees that any Customer Designee operating or maintaining the delivered solution shall be subject to written confidentiality and privacy obligations with respect to Confidential Information that shall be no less restrictive than those set forth in this MSA Article.
- g. **LIMITED LICENSE TO ASSESSMENTS.** Customer may duplicate and distribute Assessments only for Customer's internal business purposes. Any recommendations, assessments and processes described in Assessments may only be implemented by Xerox for Customer and, if implemented, used by Customer only for Customer's internal business purposes.
- h. **NO GRANTS TO CUSTOMER.** Customer agrees that, except as set forth expressly in this MSA Article, no other rights or licenses are granted to Customer. Further, the rights granted to Customer under subsections d. and/or g. in this Section shall immediately terminate if Customer defaults hereunder with respect to any of its obligations related to such grant.
- i. **XEROX TOOLS.** Customer agrees that Customer shall have no rights to use, access or operate Xerox Tools. Xerox Tools will be installed and operated only by Xerox. Customer will have access to data and reports generated by Xerox Tools and stored in a provided database to the extent set forth in the applicable Order, which shall be Output of Services. All Xerox Tools may be removed at Xerox's sole discretion. Customer acknowledges that Xerox does not license Xerox Tools separate and apart from the provision of Services associated with the use of Xerox Tools.

13. INDEMNIFICATION.

- a. Xerox, at its expense, if promptly notified by Customer and given the right to control the defense, will defend Customer (including its directors, officers, employees and agents) from, and pay any settlement agreed to by Xerox or any ultimate judgment for, any claim not identified in i. below that any Services or Deliverables (excluding Third Party Products) infringe a third party's U.S. intellectual property rights. Xerox is not responsible for any non-Xerox litigation expenses or settlements unless Xerox pre-approves them in writing.
- i. Xerox will indemnify, defend and hold MHEC and Customer harmless from a claim that any Services or Deliverables (excluding Third Party Products) infringes a third party's US intellectual property rights. Xerox will have no obligation under this section with respect to any claim of infringement resulting from: (A) Services performed using Customer Assets and/or Customer Content for which Customer failed to provide to Xerox sufficient rights to the extent that such claim is caused by such Customer Assets and/or Customer Content; (B) Services performed, or Deliverables provided, to Customer's specification or design, (C) infringement resulting from or caused by Customer's misuse or unauthorized modification of systems or product; (D) use of Services or Deliverables in combination with other products, services or data streams not provided by Xerox if such combination forms the basis of such claim; (E) Customer's failure to use corrections or enhancements to the Services or Deliverables provided by Xerox, or (F) Customer provision to Xerox of material for duplication in violation of the copyright of a third party if such duplication of third party copyrighted material forms the basis for such claim. It is agreed and understood by the parties that, under this MSA Article or any Order entered hereunder, Xerox is not undertaking, and will not undertake, any obligation or duty of any kind or type to determine or ascertain whether material provided to it for duplication may be duplicated without violating a third party's copyright therein.

- ii. If the use of the Services or Deliverables (excluding Third Party Products) are enjoined as a result of a claim under this Section, or in the reasonable opinion of Xerox are likely to be the subject of such a claim, Xerox will, at its option and its sole expense, exercise any or all of the following remedies: (A) obtain for Customer the right to continue to use such Services or Deliverables; (B) modify such Services or Deliverables so they are non-infringing and in compliance with the applicable Order; (C) replace such Services or Deliverables with non-infringing ones that comply with the applicable Order; or (D) terminate such infringing Services, accept the return of such infringing Deliverables and refund to Customer any amount paid for the infringing item, less net benefits realized.

With respect to any claim that Third Party Products infringe upon another person or entity's patent, copyright, trade secret or other intellectual property rights, Xerox agrees to pass through to MHEC and Customer (to the extent permitted) any rights to indemnification protection for which Xerox currently or subsequently has an agreement in place with the potentially infringing Third Party Product manufacturer/entity.

14. LIMITATION OF LIABILITY. Xerox shall not be liable to Customer, in the aggregate, for any direct damages in excess of the amounts paid by Customer to Xerox pursuant to the Order under which the claim arose or \$50,000, whichever is greater, and neither party shall be liable to the other for any special, indirect, incidental, consequential or punitive damages arising out of or relating to this MSA Article or any Order entered hereunder, whether the claim alleges tortious conduct (including negligence) or any other legal theory. This limitation of liability shall not be applicable to any specific indemnification obligations set forth in this Agreement and MSA Article or to Customer's breach of confidentiality obligations regarding the Xerox Tools.

FOR ANY EQUIPMENT AND/OR SOFTWARE ORDERED BY CUSTOMER, OR SUPPLIED AS PART OF ANY SERVICES HEREUNDER, SECTIONS 15. THROUGH 20. SHALL APPLY IN ADDITION TO SECTIONS 1 THROUGH 14

15. VOLUME REVIEW. At Customer's request, the parties may meet annually to review the volume of prints for Equipment for the previous twelve (12) months under one or more Orders based on reporting provided by Xerox. Based on said review, the parties may mutually agree to revise the Prints Included in Minimum and the associated MMC in said Order(s).

16. TOTAL SATISFACTION GUARANTEE. If Customer is not totally satisfied with any Equipment delivered under this Agreement, Xerox will, at Customer's request, replace it without charge with an identical model or, at the option of Xerox, with a machine with comparable features and capabilities. This guarantee will be effective during the initial term (up to a period of sixty (60) months) of the Equipment specified on an Order and applies only to Equipment which has been continuously maintained by Xerox or its authorized representatives under a Xerox express warranty or Xerox Maintenance plan (i.e., contract for Maintenance Services), and is not applicable to Equipment damaged or destroyed due to an act of God.

17. EARLY TERMINATION.

a. If Equipment has been replaced by Xerox under the "Equipment Replacement" provision of the Section titled "MAINTENANCE SERVICES" herein and Xerox is unable to maintain the replacement Equipment, then Customer may terminate said unit of Equipment and other than payment of the amounts due and owing through the date the terminated Equipment is returned to Xerox, Customer shall have no further financial obligations for said terminated Equipment.

b. If a significant business downturn causes the Customer to close its business and liquidate its assets due to Customer's bankruptcy or an assignment of its business to creditors is made, Customer may terminate one or more units of Equipment and, other than payment of the amounts due and owing through the date the terminated Equipment is returned to Xerox, Customer shall have no further financial obligations for said terminated Equipment if it is returned to Xerox in the same condition as when delivered, reasonable wear and tear excepted.

18. SOFTWARE TERMS:

THIRD PARTY SOFTWARE. Third Party Software is subject to license and support terms provided by the vendor therefor.

19. FUNDS. If Xerox provides funds to retire the debt on your existing equipment lease obligations ("Buyout Funds"), Xerox shall retain or receive unencumbered title to such equipment. Xerox may also provide funds to acquire Third Party Equipment and/or to license Third Party Software hereunder ("3rd Party Funds"). Collectively, Buyout Funds and 3rd Party Funds are "Funds". The Funds amount will be included in the MMC unless the SOW or NCA does not include a MMC, in which case it will be shown as a separate line item on your invoice. Should the SOW or NCA expire or be terminated prior to expiration for any reason or a unit of Third Party Hardware/Software for which Funds have been provided is removed or replaced prior to expiration, you agree to pay to Xerox, in addition to any other amounts owed under the SOW or NCA, an amount equal to the remaining

principal balance of the Funds. Should the Customer be required to pay such an amount, Xerox will transfer the lease to Customer and Customer will retain the usage of the Third Party Equipment/Software.

You agree to maintain the manufacturer's maintenance agreement for any Third Party Hardware and applicable Third Party Software licenses. Any express warranties for such Third Party Hardware or Third Party Software shall be available to you.

20. WARRANTY DISCLAIMER & WAIVERS.

- a. EXCEPT AS EXPRESSLY PROVIDED HEREIN AND AS PERMITTED BY APPLICABLE LAW, CUSTOMER WAIVES ALL RIGHTS AND REMEDIES CONFERRED UPON A LESSEE BY ARTICLE 2A OF THE UNIFORM COMMERCIAL CODE.
- b. FOR EQUIPMENT, SOFTWARE, XEROX-BRAND SUPPLIES AND MAINTENANCE SERVICES, XEROX DISCLAIMS, AND CUSTOMER WAIVES, IMPLIED WARRANTIES OF NON-INFRINGEMENT.

END OF ARTICLE

ARTICLE V

DOCUMENT SERVICES TERMS AND CONDITIONS

Xerox Corporation's Managed Services Agreement and Document Services Agreement are incorporated into this Agreement as Articles IV and V. In the event any of the terms and conditions contained in Xerox Corporation's Managed Services Agreement are in conflict with the terms and conditions of the Agreement between MHEC and Xerox Corporation the terms of the Agreement shall control.

1. SCOPE. The acquisition of (i) "Services" (collectively managed services and consultative services), (ii) Xerox-brand equipment ("Equipment"), third party hardware ("Third Party Hardware"), Xerox-brand software ("Software") and/or third party software ("Third Party Software") (collectively "Products") and/or (iii) Maintenance Services by Customer (or "you") is subject to the prices and terms and conditions set forth in this Document Services Agreement Article ("DSA Article").

2. SERVICES GUARANTEE. If Services Xerox provides do not comply with service levels set forth in the SOW, you will notify Xerox in writing detailing your concerns. Within ten (10) days following Xerox's receipt of said notice, you and Xerox shall meet, clarify your concerns and develop a corrective action plan ("Plan") to remedy such alleged non-compliance. As your exclusive remedy for Xerox's non-compliance, Xerox, within sixty (60) days of finalizing the Plan or a time period as otherwise agreed in writing by the parties, will then either modify such Services so they are compliant with such SOW or redo the work at no charge to you. You grant or transfer to Xerox rights to use equipment and software owned, licensed or otherwise controlled by you ("Customer Assets") for Xerox's provision of Services. You will legally dispose of all hazardous wastes generated from use of Third Party Hardware or supplies.

3. PERSONNEL. Xerox agrees to comply with your internal policies you provide to Xerox in writing for security and safety that are reasonable and customary under the circumstances that do not conflict with this DSA Article. You will provide Xerox with reasonable prior notice of such policies and any changes thereto. Neither you nor Xerox shall, directly or indirectly, actively solicit the employment of the other party's staff providing Services hereunder, which includes Xerox's agents, and their supervisors during the term of this DSA Article and for a period of one (1) year thereafter. Employment arising from inquiries received via advertisements in newspapers, job fairs, unsolicited resumes or applications for employment shall not be considered active solicitation. The sole remedy of a party for breach of this restriction is to receive payment, as liquidated damages and not as a penalty, from the defaulting party equal to the individual's then current annual salary (or the fees paid to an agent in the past twelve (12) months), within thirty (30) days of the start date of the individual. Xerox is an independent contractor hereunder.

4. PRICING, PAYMENT, CREDIT AND TAXES.

- a. **PRICING, PAYMENT AND CREDIT.** Invoices are payable upon receipt and Customer agrees to pay Xerox all sums due hereunder as follows:
- (i) if the invoice displays a due date, payment is due and must be received by Xerox on or before said due date, but in no event shall the due date be less than thirty (30) days unless Customer has provided Xerox with prior written approval of the shorter due date; or
 - (ii) If the invoice does not display a due date, payment is due and must be received by Xerox no later thirty (30) days after the invoice date.

Restrictive covenants on instruments or documents submitted for or with payments will not reduce your obligations. If Services begin partially and/or early, Xerox will bill you on a pro rata basis, based on a 30-day billing month, and the terms and conditions of this DSA will apply. The Monthly Minimum Charge ("MMC") (including, but not limited to, monthly equipment component amounts from previous contracts, amounts financed or refinanced, analyst services, Funds and/or customer training), along with any additional Print or Impression Charges, covers your monthly cost for Services, Products and Maintenance Services. Other items are billed separately. You authorize Xerox (or its agent) to obtain credit reports from commercial credit reporting agencies. Services requested and performed outside your standard working hours will be at Xerox's then-current overtime rate. Xerox is responsible for all standard delivery and removal charges for Equipment and Third Party Hardware and you are responsible for any non-standard delivery and removal charges.

b. **TAXES.** You shall be responsible for any and all applicable Taxes, which will be included in Xerox's invoice unless you provide proof of your tax-exempt status. "Taxes" means any tax, assessment, or charge imposed or collected by any governmental entity or any political subdivision, however designated or levied, imposed on this DSA Article or any amendment hereunder or the amounts payable to Xerox by you for the billing hereunder of any kind.

Taxes include, but are not limited to, sales and use, rental, excise, gross receipts and occupational or privilege taxes, plus any interest and/or penalty thereon, but excluding any personal property taxes for Equipment leased hereunder and taxes on Xerox's net income. If a taxing authority determines Xerox did not collect all applicable Taxes, you shall remain liable to Xerox for such additional Taxes.

5. CONSUMABLE SUPPLIES INCLUDED. For Equipment, Xerox (or a designated servicer) will provide black toner (excluding highlight color toner), black developer, Cartridges, and, if applicable, and fuser agent) ("Consumable Supplies") required to make impressions. For full-color Equipment, Consumable Supplies also includes color toner and developer. Consumable Supplies are Xerox's property until used by you and you will (i) use them only with the Equipment hereunder, (ii) return all Cartridges to Xerox as provided herein, and (iii) return any other Consumable Supplies to Xerox, at Xerox's expense when using Xerox-supplied shipping labels, at the end of the term of the applicable Equipment or destroy them in a manner permitted by applicable law. Should your use of Consumable Supplies exceed Xerox's published yields for them by more than ten percent (10%), Xerox shall have the right to charge you for any such excess usage. If Xerox provides paper hereunder, upon thirty (30) days notice, Xerox may adjust the paper pricing or either party may terminate the provision of paper.

6. LATE CHARGES AND DEFAULT.

- a. For any payment not received by Xerox within ten (10) days of the due date as set forth herein, Xerox may charge, and Customer agrees to pay, an interest charge equal to the amount permitted by law.
- b. Customer will be in default under this DSA Article if Xerox does not receive any payment within fifteen (15) days after the date it is due or if Customer breaches any other obligation hereunder. If you default, Xerox, in addition to its other remedies (including cessation of Services), may require immediate payment, as liquidated damages for loss of bargain and not as a penalty, of (i) all amounts then due, plus interest on all amounts due from the due date until paid at the rate of one and one-half percent (1.5%) per month (not to exceed the maximum amount permitted by law) and (ii) any applicable MECs and ETCs.
- c. Xerox's decision to waive or forgive a particular default shall not prevent Xerox from declaring any other default. In addition, if Customer defaults under this DSA Article or an Order written hereunder, Customer agrees to pay all reasonable costs as determined by a court of competent jurisdiction.

7. CONFIDENTIAL INFORMATION. Each party will disclose to the other certain business information identified as confidential ("Confidential Information"). Customer Content consists of documents, materials and data provided in hard copy or electronic format by you to Xerox containing information about you and/or your clients and is considered your Confidential Information. To the extent permitted by law this DSA Article, as well as Developments and Pre-Existing Work (collectively "Xerox Work") and Xerox Tools as defined herein, shall be considered Xerox's Confidential Information. "Developments" are items created by Xerox employees, agents and/or licensors, including, but not limited to, computer programs, code, reports, operations and procedures manuals, forms, design or other works of authorship, and "Pre-existing Work" are items used or incorporated into a Deliverable (a "Deliverable" includes, but not limited to, Products, Output of Services, Assessments, Documentation) or developed or acquired by Xerox independent of performing the Services. "Output of Services" constitute electronic images created by scanning tangible documents containing Customer Content, or the content of any reports and other materials, created by Xerox specific to and for Customer per the applicable SOW, but shall not include software. "Assessments" are assessment and recommendation reports created as a result of assessment services. "Documentation" shall mean all manuals, brochures, specifications, information and software descriptions in electronic, printed, and/or camera-ready form, and related materials customarily provided by Xerox for use as part of the Services. Each party will make reasonable efforts not to disclose the other party's Confidential Information to any third party, except as may be required by law, unless such Confidential Information: (i) was in the public domain prior to, at the time of, or subsequent to the date of disclosure through no fault of the non-disclosing party; (ii) was rightfully in the non-disclosing party's possession or the possession of any third party free of any obligation of confidentiality; or (iii) was developed by the non-disclosing party's employees or agents independently of and without reference to any of the other party's Confidential Information. Except as required by applicable law the parties do not intend for Customer to disclose confidential technical information hereunder, which includes, but is not limited to, computer programs, source code, and algorithms, and Customer will only disclose the same under the auspices of a separate agreement. Upon expiration or termination of this Agreement or DSA Article, each party shall return to the other or, if so requested, destroy, all Confidential Information of the other in its possession or control, except such Confidential Information as may be reasonably necessary to exercise rights that survive termination of this Agreement or DSA Article and the Orders entered hereunder. Notwithstanding anything to the contrary in this Agreement or DSA Article, both Customer and Xerox agree to comply with the data practices laws of the State in which Customer is located or founded.

8. FERPA and other Privacy Laws. Where applicable Xerox agrees to comply with the Family Education Rights and Privacy Act (FERPA), the Health Insurance Portability and Accountability Act (HIPPA), the Gramm-Leach Bliley Act (GLBA) and all other state and Federal privacy laws; and agrees to implement and maintain safeguards to protect the security, confidentiality, and integrity of information it receives from Customer.

9. INTELLECTUAL PROPERTY. You represent and warrant you own the Customer Content and Customer Assets or otherwise have the right to authorize Xerox to perform Services hereunder and the Customer Content does not, and shall not, contain content that (ii) infringe on or violate any applicable laws, regulations or rights of a third party of any kind. Xerox, its employees, agents and/or licensors shall at all times retain all rights to Xerox Work and Xerox Tools (with "Xerox Tools" being proprietary tools used by Xerox to provide the Services, and any modifications, enhancements, improvements and derivative works thereof), and except as expressly set forth herein, no rights to Xerox Work and Xerox Tools are granted to you. You shall have no rights to use, access or operate the Xerox Tools, which will be installed and operated only by Xerox. You will have access to data and reports generated by the Xerox Tools and stored in a provided database as set forth in the applicable SOW. All Xerox Tools may be removed at Xerox's sole discretion. You acknowledge that Xerox does not license the Xerox Tools separate and apart from the provision of Services associated with their use. You agree not to decompile or reverse engineer any Xerox Work or Xerox Tools. Xerox grants you a non-exclusive, perpetual fully paid-up, worldwide right to use, display and reproduce Xerox Work and Documentation only as required for use of the Services and Deliverables for your customary business purposes, and not for resale, license and/or distribution outside of your organization. You may not sublicense any rights granted to you hereunder, but may authorize a third party ("Designee") to use such rights, solely for your benefit and internal business purposes. Any Designee operating or maintaining the delivered solution shall be subject to written confidentiality obligations with respect to Confidential Information that shall be no less restrictive than those set forth in this DSA Article. Output of Services is your sole and exclusive property and Xerox shall gain no rights therein, except as may be required for Xerox to perform Services hereunder. Xerox hereby assigns, grants, conveys, and transfers to you all rights in and to the Output of Services hereunder. You may duplicate and distribute Assessments only for your internal business purposes. Recommendations, assessments and processes described in Assessments may only be implemented for you by Xerox and only for your internal business purposes. Except as set forth expressly in this Section, no other rights or licenses are granted to you and they shall immediately terminate if you default hereunder with respect to any of obligations related to such rights or licenses, fail to pay amounts due, or otherwise default under this DSA Article. Notwithstanding the foregoing, Customer shall retain its rights to all Output of Services it has paid for.

10. LIMITATION OF LIABILITY. Xerox shall not be liable to you, in the aggregate, for any direct damages in excess of the amounts paid by you to Xerox or \$50,000, whichever is greater, and neither party shall be liable to the other for any special, indirect, incidental, consequential or punitive damages arising out of or relating to this DSA Article, whether the claim alleges tortious conduct (including negligence) or any other legal theory. The preceding sentence is not applicable to specific indemnification obligations set forth in this DSA.

11. EARLY TERMINATION. Xerox is providing Equipment for the entire term of the DSA Article or a Noncoterminous Amendment ("NCA"). If, prior to the end of the term of the DSA Article or NCA, you terminate Equipment, require Equipment be removed or replaced or Xerox terminates the DSA Article or NCA due to your default, you shall pay all amounts due Xerox as of that date, together with the Xerox-calculated monthly equipment component ("MEC"), which is available upon request and includes a disengagement charge, for all affected Equipment multiplied by the number of months remaining in the DSA Article or NCA. You shall either make the subject Equipment (in the same condition as when delivered, reasonable wear and tear excepted) and its Software available for removal by Xerox when requested to do so or purchase the subject Equipment "AS IS, WHERE IS" and WITHOUT ANY WARRANTY AS TO CONDITION OR VALUE by paying Xerox the Fair Market Value ("FMV") of the Equipment at the conclusion of its term. If Customer is required to make and actually makes the MEC payment multiplied by the number of months remaining in the DSA Article or NCA pursuant to this Paragraph 11, and elects not to purchase the subject Equipment Customer shall retain the right to use the Equipment as if no default under this Agreement or DSA Article had occurred. Payment of such amounts entitles the Customer to possession of the equipment for the remainder of the original term of the Agreement. The Customer would be required to purchase maintenance, consumable supplies, and any value added services for the equipment under a separate agreement.

12. EARLY TERMINATION – SERVICES AND PERSONNEL. Except as otherwise set forth in a SOW, upon ninety (90) days prior written notice, you may terminate or reduce any Services or personnel without incurring Early Termination Charges ("ETCs"). Notwithstanding the foregoing, if any Services or personnel are terminated (i) by Xerox due to your default or (ii) by you and you acquire Services from another supplier within six (6) months of the termination of such Services or personnel, you shall pay all amounts due as of the termination date, together with ETCs, for loss of bargain and not as a penalty, equal to the then current MMC for said terminated or reduced Services or personnel multiplied by the number of months remaining in their term, not to exceed six (6) months.

13. INDEMNIFICATION.

- a. Xerox, at its expense, if promptly notified by Customer and given the right to control the defense, will defend Customer (including its directors, officers, employees and agents) from, and pay any settlement agreed to by Xerox or any ultimate judgment for, any claim not identified in i. below that any Services or Deliverables (excluding Third Party Products) infringe a third party's U.S. intellectual property rights. Xerox is not responsible for any non-Xerox litigation expenses or settlements unless Xerox pre-approves them in writing.
- i. Xerox will indemnify, defend and hold MHEC and Customer harmless from a claim that any Services or Deliverables (excluding Third Party Products) infringes a third party's US intellectual property rights. Xerox will have no obligation under this section with respect to any claim of infringement resulting from: (A) Services performed using Customer Assets and/or Customer Content for which Customer failed to provide to Xerox sufficient rights to the extent that such claim is caused by such Customer Assets and/or Customer Content; (B) Services performed, or Deliverables provided, to Customer's specification or design, (C) infringement resulting from or caused by Customer's misuse or unauthorized modification of systems or product; (D) use of Services or Deliverables in combination with other products, services or data streams not provided by Xerox if such combination forms the basis of such claim; (E) Customer's failure to use corrections or enhancements to the Services or Deliverables provided by Xerox, or (F) Customer provision to Xerox of material for duplication in violation of the copyright of a third party if such duplication of third party copyrighted material forms the basis for such claim. It is agreed and understood by the parties that, under this DSA Article or any Order entered hereunder, Xerox is not undertaking, and will not undertake, any obligation or duty of any kind or type to determine or ascertain whether material provided to it for duplication may be duplicated without violating a third party's copyright therein. .
- ii. If the use of the Services or Deliverables (excluding Third Party Products) are enjoined as a result of a claim under this Section, or in the reasonable opinion of Xerox are likely to be the subject of such a claim, Xerox will, at its option and its sole expense, exercise any or all of the following remedies: (A) obtain for Customer the right to continue to use such Services or Deliverables; (B) modify such Services or Deliverables so they are non-infringing and in compliance with the applicable Order; (C) replace such Services or Deliverables with non-infringing ones that comply with the applicable Order; or (D) terminate such infringing Services, accept the return of such infringing Deliverables and refund to Customer any amount paid for the infringing item, less net benefits realized.
- b. With respect to any claim that Third Party Products infringe upon another person or entity's patent, copyright, trade secret or other intellectual property rights, Xerox agrees (to the extent permitted) to pass through to MHEC and Customer any rights to indemnification protection for which Xerox currently or subsequently has an agreement in place with the potentially infringing Third Party Product manufacturer/entity.

14. MAINTENANCE SERVICES. Unless otherwise stated, Xerox (or a designated servicer) will provide the following Maintenance Services (a/k/a "Break / Fix") for Equipment.

- a. **REPAIRS & PARTS.** Xerox will make repairs necessary to keep Equipment in good working order (including such repairs or adjustments required during initial installation). Parts required for repair may be new, reprocessed, or recovered.
- b. **HOURS & EXCLUSIONS.** Unless otherwise stated, Maintenance Services will be provided during Xerox's standard working hours. Maintenance Services shall cover repairs and adjustments required as a result of normal wear and tear or defects in materials or workmanship (and shall exclude repairs or adjustments Xerox determines to relate to or be affected by the use of options, accessories, or other connected products not serviced by Xerox, as well as any non-Xerox alterations, relocation, service, supplies, or consumables).
- c. **INSTALLATION SITE & METER READINGS.** The Equipment installation site must at all times conform to Xerox's published requirements. Unless meter read Services are provided by Xerox hereunder, you agree to provide meter readings in the manner prescribed by Xerox. If you do not provide Xerox with meter readings as required, Xerox may estimate them and bill you accordingly.
- d. **EQUIPMENT REPLACEMENT.** If Xerox is unable to maintain the Equipment as described above, Xerox will, as your exclusive remedy for Xerox's failure to provide Maintenance Services, replace the Equipment with an identical product or, at Xerox's option, another product of equal or greater capabilities. Notwithstanding anything to the contrary herein, Xerox shall have no obligation to replace Equipment beyond its end of service ("EOS") date. An EOS Date Equipment List is available upon request.

e. **CARTRIDGE PRODUCTS.** If Xerox is providing Maintenance Services for Equipment utilizing cartridges designated by Xerox as customer replaceable units, including copy/print cartridges and xerographic modules or fuser modules ("Cartridges"), you agree to use only unmodified Cartridges purchased directly from Xerox or its authorized resellers in the United States and the failure to use such Cartridges shall void any warranty applicable to such Equipment.

f. **PC/WORKSTATION REQUIREMENTS.** For Equipment requiring connection to a PC or workstation, you must utilize a PC or workstation that either (1) has been provided by Xerox or (2) meets Xerox's published specifications.

15. CARTRIDGES. Cartridges packed with Equipment and replacement Cartridges may be new, remanufactured or reprocessed. Remanufactured and reprocessed Cartridges meet Xerox's new Cartridge performance standards and contain new and/or reprocessed components. To enhance print quality, Cartridges for many models of Equipment have been designed to cease functioning at a predetermined point and many Equipment models are designed to function only with newly manufactured original Xerox Cartridges or with Cartridges intended for use in the U.S. Equipment configuration that permits use of non-newly manufactured original Xerox Cartridges may be available from Xerox at an additional charge. Environmental Partnership ("EP") Cartridges remain the property of Xerox. You agree to return all EP Cartridges and any other Cartridges to Xerox, at Xerox's expense when using Xerox-supplied shipping labels.

16. TITLE, RISK OF LOSS AND PROTECTION OF XEROX'S RIGHTS. Title to Equipment and Third Party Hardware remains with Xerox until you purchase same. Risk of loss for Equipment and Third Party Hardware shall pass to you upon delivery and installation. You hereby authorize Xerox or its agents to file financing statements necessary to protect Xerox's rights in Equipment or Third Party Hardware.

17. SOFTWARE TERMS:

THIRD PARTY SOFTWARE. Third Party Software is subject to license and support terms provided by the vendor therefor.

18. FUNDS. If Xerox provides funds to retire the debt on your existing equipment lease obligations ("Buyout Funds"), Xerox shall retain or receive unencumbered title to such equipment. Xerox may also provide funds to acquire Third Party Equipment and/or to license Third Party Software hereunder ("3rd Party Funds"). Collectively, Buyout Funds and 3rd Party Funds are "Funds". The Funds amount will be included in the MMC unless the SOW or NCA does not include a MMC, in which case it will be shown as a separate line item on your invoice. Should the SOW or NCA expire or be terminated prior to expiration for any reason or a unit of Third Party Hardware/Software for which Funds have been provided is removed or replaced prior to expiration, you agree to pay to Xerox, in addition to any other amounts owed under the SOW or NCA, an amount equal to the remaining principal balance of the Funds. Should the Customer be required to pay such an amount, Xerox will transfer the lease to Customer and Customer will retain the usage of the Third Party Equipment/Software. You agree to maintain the manufacturer's maintenance agreement for any Third Party Hardware and applicable Third Party Software licenses. Any express warranties for such Third Party Hardware or Third Party Software shall be available to you.

19. MISCELLANEOUS. Unless either party provides notice at least thirty (30) days before the end of the term of the SOW under this DSA Article or any NCA of its intention not to renew same, it will continue on a month-to-month basis at the same price and on the same terms and conditions. During said continuation, either party may terminate the SOW or such NCA on at least thirty (30) days notice. All changes to this DSA Article or any NCA must be made in a writing signed by both Customer and Xerox. Terms and conditions in a Customer-generated order document, including, but not limited to purchase orders shall be of no force or effect. Order documents may be submitted via hard copy or electronic means and those submitted electronically by you shall be considered for all purposes to (i) be a "writing" or "in writing"; (ii) be "signed"; (iii) constitute an "original" when printed from electronic records established and maintained in the ordinary course of business; and, (iv) be valid and enforceable.

END OF ARTICLE