

AGREEMENT ADDENDUM # 1

THIS ADDENDUM (“Addendum”) amends the Contract entered into between the Midwestern Higher Education Commission and Xerox Corporation (“Xerox”), which was effective July 1, 2008 (the “Contract”).

The parties agree to amend the Contract as follows by adding:

1. This Agreement shall now be identified as MHEC # 080701.
2. The respective state government agencies and instrumentalities of 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 SREB member states shall be eligible to purchase under this Agreement and the preamble of the Agreement is amended to include the additional member organizations:
 - a. **Southern Regional Education Board (SREB)**, which includes the Member States of Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia.
3. Section 32, Order of Precedence shall be amended as follows:

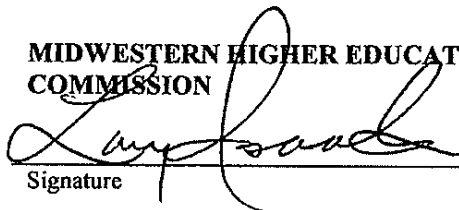
“B. the terms and conditions of this Agreement and any addendums between MHEC and Xerox to this Agreement”
4. Section 42, Managed Services Agreement shall be amended as follows: Delete the whole paragraph and replace it with:

“Xerox Corporation’s Managed Services Agreement, Document Services Agreement, and Services and Solutions Agreement are incorporated into this Agreement as Articles IV, V, and VI. 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 and conditions of this Agreement shall control.”
5. Section 45, Entire Agreement add the following after Article V – Xerox Corporation Managed Services Agreement,

“Article VI – Xerox Corporation Services and Solutions Agreement”
6. Article V – Section 10 LIMITATION OF LIABILITY, add the following at the end of the last sentence “or the Agreement”
7. **ARTICLE VI – XEROX CORPORATION SERVICES AND SOLUTIONS AGREEMENT.**

Except as set forth above, the Contract shall remain as stated. In the event of a conflict between the terms found elsewhere in the Contract and this Addendum, this Addendum shall control.

**MIDWESTERN HIGHER EDUCATION
COMMISSION**



Signature

Larry Isaak

President

Title

1300 S. 2nd Street
Suite 130


Minneapolis, Minnesota 55454

Address

July 1, 2009

Date

XEROX CORPORATION



Signature

Tom Mandell

Major Account Contract Manager

Title

8700 Freeport Parkway
Irving TX 75063

Address

Address

July 1, 2009

Date

ARTICLE VI

SERVICES AND SOLUTIONS TERMS AND CONDITIONS

Xerox Corporation's Services and Solutions Agreement is incorporated into this Agreement as Article VI. In the event any of the terms and conditions contained in Xerox Corporation's Services and Solutions 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 SERVICES AND SOLUTIONS AGREEMENT ("Agreement Article" or "SSA Article"), which bears SSA No. _____, is entered by and between ("Customer") and Xerox Corporation ("Xerox").

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 Services and Solutions Agreement ("SSA"). Services, Products, and Maintenance Services are, collectively, "Offerings".

2. SERVICES GUARANTEE. Xerox will provide the Services set forth in each Order and, if **the Services do not comply with the service levels set forth in a Statement of work ("SOW") during its term, Customer agrees to notify Xerox in writing detailing its concerns regarding the same.** 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 either modify such Services so they are compliant with such SOW or re-do the work at no additional charge. You will legally dispose of all hazardous wastes generated from use of Third Party Hardware or supplies.

3. ORDERS.

a. Services and Deliverables provided by Xerox will be set forth in one or more Services and Solutions Orders ("SSO") which will be mutually agreed upon and signed by the Customer and Xerox. SSOs assigned the same 10 digit number constitute a "Services Contract". Unless otherwise provided in a SSO, terms and conditions in a SSO that is part of a Services Contract shall be applicable to all SSOs constituting that Services Contract. 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, services description and term, and applicable Trade-In Equipment. Such purchase orders shall incorporate and be subject solely to the terms and conditions of the applicable Services Contract, notwithstanding anything contained in any such purchase order at variance with or in addition to the applicable Services Contract. Any SSO or Customer-issued purchase order shall be an individual order ("Order") hereunder and, irrespective of its form, must reference the contract number of the applicable Services Contract.

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.

4. TERM.

a. This SSA Article shall commence on the date it is accepted by Xerox and MHEC, and shall continue unless terminated earlier by either Xerox or MHEC upon not less than thirty (30) days

prior written notice to the other party. In the event this SSA Article expires, or Xerox or MHEC elects to terminate this SSA Article, each Order hereunder shall remain in full force and effect until the end of its term (including any renewals or extensions thereto) or it is terminated, and shall at all times be governed by the terms and conditions of this SSA Article and the Agreement as if it were still in effect.

- b. The term of each SSO hereunder shall be set forth under the heading "Term" in the "Order Summary" area on the face of said SSO, and shall continue for the term stated. If an Order is terminated, the term of any remaining Orders shall continue unaltered.
- c. Unless Xerox or Customer provides notice at least thirty (30) days before the end of the term of any Order hereunder 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 set forth in said Order. During said continuation, Xerox or Customer may terminate such Order on at least thirty (30) days notice.

5. PERSONNEL. Xerox agrees to comply with Customer's internal policies Customer provide to Xerox in writing for security and safety that are reasonable and customary under the circumstances, and that do not conflict with this SSA Article. Customer will provide Xerox with reasonable prior notice of such policies and any changes thereto. Neither Customer 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 an Order under this 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.

6 PRICING. Pricing shall be as set forth in an Order. The monthly charge ("Monthly Minimum Charge" or "MMC"), along with any Additional Impression Charges, covers Customer's monthly cost for the Services, Products and Maintenance Services hereunder and such MMC will change with each Order. The MMC may also include, but not be limited to, lease buyout funds, Third Party Funds, supplemental funds, monthly equipment component amounts, remaining Customer obligations 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.

7. PAYMENT, CREDIT AND TAXES.

a. **PRICING, PAYMENT AND CREDIT.** Invoices are payable upon receipt and you shall pay Xerox all sums due hereunder no later than 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 SSA Article will apply. 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. You authorize 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.** You shall be responsible for all Taxes, which will be included in Xerox's invoice unless you provide proof of your 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 on this SSA Article or any Order hereunder or the amounts

payable to Xerox under this Agreement or any Order. 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. Taxes do not include, and Xerox shall be responsible for: (i) taxes on Xerox's net income, and (ii) personal property taxes on Equipment installed under Rental or Lease Orders, unless such Equipment is installed in a jurisdiction where the taxing authority requires you to pay such personal property taxes. If a taxing authority determines Xerox did not collect all applicable Taxes, you shall remain liable to Xerox for such additional Taxes.

8. CONSUMABLE SUPPLIES INCLUDED. For Equipment, Xerox (or a designated servicer) will provide black toner (excluding highlight color toner), black developer, Cartridges, and, if applicable fuser agent ("Consumable Supplies"), required to make impressions. For full-color Equipment, Consumable Supplies also includes color toner and developer. For Equipment 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. Consumable Supplies are Xerox's property until used by Customer 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 Customer's use of Consumable Supplies exceed Xerox's published yields for them by more than ten percent (10%), Xerox shall have the right to charge Customer for any such excess usage. If Xerox provides paper hereunder, upon thirty (30) days notice, Xerox may adjust the paper pricing or either Xerox or Customer may terminate the provision of paper.

9. 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 an amount permitted by law.
- b. Customer will be in default under this 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 the 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 Article or an Order written hereunder, Customer agrees to pay all reasonable costs as determined by a court of competent jurisdiction.

10. 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 applicable law 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 is 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" means 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 the Master Agreement, this SSA Article, or Order under this SSA 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 SSA Article. Notwithstanding anything to the contrary, in this Agreement or SSA 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 (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.

12. 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. 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 your 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 SSA 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. Any rights or licenses that are granted to you shall immediately terminate if you (i) default hereunder with respect to any of your obligations related to such rights or licenses, (ii) fail to pay amounts due, or (iii) otherwise default under this SSA Article. Notwithstanding the foregoing Customer shall retain its rights to all Output of Services it has paid for.

For Third Party Hardware and Software provided through Xerox, Xerox will obtain rights for Customer to use these products as envisioned by Xerox.

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.

13. REPORTS. Upon Customer's request, Xerox may issue mutually agreed upon reports reflecting information that is accurate at the time the report is issued, including estimates of information based on pending Orders.

14. EARLY TERMINATION. Xerox is providing Equipment for the entire term of the Order under which it is installed. If, prior to the expiration of an Order, you terminate Equipment, require Equipment to be removed or replaced, or Xerox terminates said Order 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 that will not exceed fifteen percent (15%) of the MEC, for all affected Equipment multiplied by the number of months remaining in the SSA Article. 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 SSA Article pursuant to this Paragraph 14, 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 SSA 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.

15. 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 ETCs. Notwithstanding the foregoing, if any Services or personnel are terminated (i) by Xerox due to your default or (ii) by you for any reason other than default by Xerox 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.

16. EARLY TERMINATION – THIRD PARTY and AMORTIZED SERVICES.

Certain Xerox Services, such as consulting and training, may be amortized over the life of an Order (“Amortized Services”). Xerox may provide funds to acquire Third Party Hardware, to license Third Party Software and/or to retire debt on existing Third Party Hardware (“Third Party Funds”). Collectively, Third Party Funds and Amortized Services are “Funds”. The Funds amount will be included and itemized in the MMC. Notwithstanding the provision entitled “EARLY TERMINATION – SERVICES AND PERSONNEL”, should an Order be terminated prior to expiration for any reason except for default by Xerox or a unit of Third Party Hardware or any Third Party Software for which Third Party Funds have been provided is removed or replaced prior to expiration except where removal or replacement occurs through no fault of Customer, you agree to pay to Xerox, in addition to any other amounts owed under said Order, an amount equal to the remaining principal balance of the Funds together with a 15% disengagement fee, for loss of bargain and not as a penalty. 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.

17. 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 SSA 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.

18. 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 SSA Article or any Order 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 SSA Article, the Agreement or to Customer's breach of confidentiality obligations regarding the Xerox Tools.

19. ASSIGNMENT. Neither Party may assign any of their rights or obligations hereunder without the prior written consent of the other party; which consent shall not be unreasonably withheld.

20. 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. **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"), 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. 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. 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.

21. TITLE, RISK OF LOSS AND PROTECTION OF XEROX'S RIGHTS. Title to Equipment and Third Party Hardware shall remain with Xerox until you purchase same. Risk of loss for the Products shall pass to you upon delivery. You will keep the Products insured against loss and the policy will name Xerox as Loss Payee. You hereby authorize Xerox or its agents to file financing statements necessary to protect Xerox's rights in Equipment and/or Third Party Hardware.

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

a. 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.**

b. 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.

c. THIRD PARTY PRODUCT WARRANTY. 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, FITNESS FOR A PARTICULAR PURPOSE 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. 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.**

- d. THE WARRANTIES AND GUARANTEES SET FORTH IN THIS SECTION OF THE SSA 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.)

23. SOFTWARE TERMS

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

24. MISCELLANEOUS. Except for documentation for Equipment replaced by Xerox for reasons other than trade-in, all changes to this SSA Article or any Order or amendment hereunder must be made in a writing signed by Customer and Xerox. Customer represents that, as of the date of an Order under this SSA Article, it has the lawful power and authority to enter into the Order, and that the person signing any Order on its behalf is duly authorized to do so and, by entering into an Order, it will not violate any law or other agreement to which it is a party. Xerox may accept any Order under this SSA Article either by its signature or by commencing performance (e.g., Equipment delivery, initiating Maintenance Services, commencement of Services, etc.).

Customer is not aware of anything that will have a material negative effect on its ability to satisfy Customer's payment obligations under this SSA Article 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. Any part of this SSA Article or any amendment 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 SSA Article or any amendment 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 to the payment of amounts owed hereunder or refunded to you.