

COUNTY OF SAN MATEO Agreement No. 17710-04-P731
AGREEMENT WITH
INDEPENDENT
CONTRACTOR

Contractor Name and Address:

Xerox Corporation
2665 North First Street
San Jose, Ca (408) 953-2368

Contractor: Upon completion of services provided or agreed-upon work billing periods, mail invoice with above Agreement Number to:

Employee and Public Services, Special Services (Copy Center)

Attention: Steven M. Rossi, Manager, Special Services

455 County Center, EPS 129
Redwood City, CA 94063-1663

It is agreed between the County of San Mateo, California, and Contractor as follows:

1. **Services to be performed by Contractor** In consideration of the payments hereinafter set forth, Contractor shall perform services for County in accordance with the terms, conditions and specifications set forth herein and in Exhibit "A" (Xerox Terms and Conditions Attachment) attached hereto, for the COUNTY OF SAN MATEO Employee and Public Services Department, Special Services Division. Contractor shall ensure compliance with all state, federal and local laws or rules applicable to performance of the work required under this contract.
2. **Contract Term** The term of this Agreement shall be from July 1, 2004 to September 30, 2008 unless terminated earlier (3 months discount period, plus a 48 month lease). Additionally, San Mateo County may, at its sole option, extend the period of this lease one (1) additional year from October 1, 2008 through September 30, 2009 by notifying vendor in writing on or before August 30, 2008.
3. **Payments** In consideration of the services rendered in accordance with all terms, conditions and specifications set forth herein and in Exhibits "A" County shall make payment to Contractor in the manner specified herein and in Exhibits "A". In the event that the County makes any advance payments, Contractor agrees to refund any amounts in excess of the amount owed by the County at the time of contract termination. The County reserves the right to withhold payment if the County determines that the quantity or quality of the work performed is unacceptable. In no event shall total payment for services under this Agreement exceed Three Hundred Sixty Thousand (\$360,000) Dollars (includes monetary authority for optional one year extension, in the event said option is exercised).
4. **Relationship of the Parties** Contractor agrees and understands that the work/services performed under this Agreement are performed as an Independent Contractor and not as an employee of the County and that Contractor acquires none of the rights, privileges, powers or advantages of County employees.
5. **Workers' Compensation Insurance** The Contractor shall have in effect, during the entire life of this Agreement, Worker's Compensation and Employer Liability Insurance providing full statutory coverage. In signing this Agreement, Contractor certifies awareness of the provisions of section 3700 of the California Labor Code which requires every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of the Code, and certifies compliance with such provisions before commencing the performance of this work of the Agreement as set forth in California Labor Code section 1861.
6. **Insurance** The Contractor shall take out and maintain during the life of this Agreement such Bodily Injury Liability and Property Damage Liability Insurance as shall protect him/her while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all operations under this Agreement, whether such operations be by himself/herself or by any

Subcontractor or by anyone directly or indirectly employed by either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall not be less than the amount specified by Risk Management.

Contractor/Vendor shall take out and maintain during the life of the resultant Agreement such Bodily Injury Liability and Property Damage Liability Insurance as shall protect him/her while performing work covered by the resultant Agreement from any and all claims for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from Contractor's/Vendor's operations under the resultant Agreement, whether such operations be by Contractor/Vendor or by anyone directly or indirectly employed by Contractor/Vendor. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall not be less than the amount specified below.

Such insurance shall include:

- | | | |
|-----|-----------------------------------|------------------------------|
| (a) | Comprehensive General Liability | \$1,000,000.00/ 3,000,000.00 |
| (b) | Motor Vehicle Liability Insurance | \$1,000,000.00 |
| (c) | Professional Liability | \$1,000,000.00/ 3,000,000.00 |

If the resultant Agreement remains in effect more than one (1) year from the date of its original execution, County may, at its sole discretion, require an increase in the amount of liability insurance to the level then customary in similar County Agreements given sixty (60) days' notice to the Contractor.

The County and its officers, agents, employees and servants shall be named as additional insured on any such policies of insurance, which shall also contain a provision that the insurance afforded thereby to County, its officers, agents, employees, and servants shall be primary insurance to the full limits of liability of the policy, and that if County or its officers and employees have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only.

- Hold Harmless** Contractor agrees to indemnify and defend the County, its employees and agents from any and all claims, damages and liability in any way occasioned by or arising out of the negligence of the contractor in the performance of this agreement, including any sanctions, penalties or claims of damages resulting from Contractor's failure to comply with the requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated there under, as amended.
- Confidentiality** All data produced or compiled by Contractor shall be considered confidential unless it can be obtained as public record and shall not be shared with a third party without the prior written consent of County. All financial, statistical, personal, technical, and other data and information relating to the County's operations which is made available to the Contractor in order to carry out this Agreement shall be presumed to be confidential. Contractor shall protect said data and information from unauthorized use and disclosure by the observance of the same or more effective procedures as the County requires of its own personnel. The Contractor shall not, however, be required by this paragraph to keep confidential any data or information which is or becomes publicly available, is already rightfully in the Contractor's possession, is independently developed by the Contractor outside the scope of the Agreement or is rightfully obtained from third parties.
- Non-Assignability** The County understands that this contract will initially be assigned to a wholly owned subsidiary of Xerox Corporation at the time the contract is effectuated, and the County waives its notice right hereunder for this initial assignment. Notwithstanding such assignment, Contractor shall not thereafter assign this Agreement or any portion thereof to a third party without the prior written consent of County, and any attempted assignment without such prior written consent in violation of this Section shall automatically terminate this Agreement.
- Payment of Permits/Licenses** It shall be the Contractor's responsibility to obtain any license, permit or approval required from any agency for work/services to be performed at his/her own expense, prior to commencement of said work/services or forfeit any right to compensation under this Agreement.

11. **Non-Discrimination** No person shall be excluded from participation in, denied benefits of, or be subject to discrimination under this Agreement on the basis of their race, color, religion, national origin, age, sex, sexual orientation, pregnancy, childbirth or related conditions, medical condition, mental or physical disability or veteran's status. Contractor shall ensure full compliance with federal, state and local laws, directives and executive orders regarding non-discrimination for all employees and Subcontractors under this Agreement. The Contractor shall comply fully with the non-discrimination requirements required by 41 CFR 60-741.5(a), which is incorporated herein as if fully set forth.

Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the Contractor to penalties, to be determined by the County Manager, including but not limited to: i) termination of this Agreement; ii) disqualification of the Contractor from bidding on or being awarded a County contract for a period of up to 3 years; iii) liquidated damages of \$2,500 per violation; iv) imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager.

To effectuate the provisions of this paragraph, the County Manager shall have the authority to: i) examine Contractor's employment records with respect to compliance with this paragraph; ii) set off all or any portion of the amount described in this paragraph against amounts due to Contractor under the Contract or any other Contract between Contractor and County.

Contractor shall report to the County Manager the filing by any person in any court of any complaint of discrimination or the filing by any person of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission or any other entity charged with the investigation of allegations within 30 days of such filing, provided that within such 30 days such entity has not notified Contractor that such charges are dismissed or otherwise unfounded. Such notification shall include the name of the complainant, a copy of such complaint and a description of the circumstance. Contractor shall provide County with a copy of its response to the Complaint when filed.

Section 504 applies only to contractors who are providing services to member of the public. Contractor shall comply with Section 504 of the Rehabilitation Act of 1973, which provides that no otherwise qualified handicapped individual shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of this contract.

12. **Equal Benefits** With respect to the provision of employee benefits, Contractor shall comply with the County Ordinance which prohibits contractors from discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse.
13. **Retention of Records** Contractor shall maintain all records related to this Agreement for no less than three years after the County makes final payment or after termination of this contract and all other pending matters are closed. All records shall be subject to the examination and/or audit by agents of the County, the State of California and/or Federal grantor agencies.
14. **Health Insurance Portability and Accountability Act of 1996 (HIPAA)** Contractor shall perform all services in accordance with HIPAA, and the Federal regulations promulgated there under, as amended, and will comply with the Business Associate requirements set forth in Attachment H.
15. **Merger Clause** This Agreement, including Exhibit "A" attached hereto and incorporated herein by reference, constitutes the sole Agreement of the parties hereto and correctly states the rights, duties, and obligations of each party as of this document's date. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications shall be in writing and signed by the County Purchasing Agent. In the event of a conflict between the terms, conditions, or specifications set forth herein and those in Exhibit "A" attached hereto, the terms, conditions, or specifications set forth herein shall prevail. This Agreement, or facsimile proposal of the Agreement, constitutes the entire Agreement between County and Contractor. Further, liability referenced to in section 6 is limited to Contractor's negligence during the Contractor's performance under this contract.

16. **Governing Law** This Agreement, including any exhibits, shall for all purposes be deemed subject to the laws of the State of California, and in the event of a lawsuit concerning this Agreement shall be venue in the County of San Mateo.

17. **Non-appropriation of Funding** In order to terminate this contract due to non-appropriation of funding, the County shall provide written notice 30 days prior to the beginning of the fiscal year (July 1st), stating that through no action on the part of the Special Services Division (Copy Center), that the County Manager or Board of Supervisors has communicated an intention not to appropriate funding for the next fiscal year. Said notice shall certify that the canceled equipment is not being replaced by similar equipment or equipment performing similar functions during the ensuing fiscal year. In exercising this clause, the County agrees to return the equipment in good condition to a location designated by Xerox within 100 miles of Redwood City, Ca, and that when returned, the equipment will be free of all liens and encumbrances. Xerox would retain all sums paid to date.

18. **Products and Services included in this Contract** The equipment to be delivered shall be as described in Xerox's proposal, responses to questions 1 through 44, and supplies as listed in response to question 46, including:

Xerox Docutech 6115 (6115 PMC & 10B-T/HUB
DocuSP Controller (DTCNTRL-3 & DT115PPM)
Two-tray interposer (6135INT),
Finisher (DTFIN1)
Digipath PC (DIGIPC4)
Make-Ready Table (MRTBL)
Digipath Software (DIGIPRO4)
Digipath Scanner (PRODSCAN)
Color Drive Software (CLRDRV3)
Mobility Rails (98K03152)

Supplies included are toner, developer and fuser, and all necessary parts and support to keep the system in operating condition.

19. **Training** Xerox shall provide 5 full days training (Digipath – 3 days; DocuSp Controller and Print Engine – 2 days) for two operators and one manager at their training facility in Oakland.

20. **Cost/Payment** In return for the Products, supplies maintenance and service, training, and all other promises contained herein, the County shall make monthly payments to Xerox as follows:

(a) for months 1 through 3, inclusive, (introductory discount period) the County shall pay Xerox a flat rate of \$2,900 plus applicable sales tax (90-day no risk program). For this discount period, the following supplies shall not be included, and will require purchase at the rate set next to each:

Toner (quantity discount 3-4 cartons): \$265 plus tax
Developer (quantity discount 3-4 cartons): \$274 plus tax
Fuser (quantity discount 3-4 cartons): \$235 plus tax
Binder Tape (Black): \$119 plus tax
Binder Tape (various colors): \$127 plus tax
Stitcher Wire: \$60 plus tax

(b) thereafter, for months 4 through 51 (48-month lease period) the County shall pay Xerox \$5,026.63 plus tax, each and every month, plus \$.0037 per copy for every copy that exceeds 200,000 during a given monthly period. (pricing referenced per County of Los Angeles Blanket Purchase Agreement #0718364-04, contract #41830).

(c) should the County exercise its option and extend the contract an additional year (months 52 through 63), the County's monthly payment shall also be \$5,026.63 plus tax, each and every month, plus \$.0037 per copy for every copy that exceeds 200,000 during a given monthly period. (County of Los Angeles Blanket Purchase Agreement #0718364-04, contract #41830).

21. **Additional Products** Should the County decide to lease or purchase any additional machines, such as color machine, to network with the system provided herein, Xerox promises to offer San Mateo County the same or better pricing, terms and conditions as offered in County of Los Angeles Blanket Purchase Agreement #0718364-04, contract #41830, whichever shall be more favorable to San Mateo County.

22. **Duplicate Originals** Two duplicate originals shall be signed of this contract, one original to San Mateo County, and one original to Xerox.

THIS CONTRACT IS NOT VALID UNTIL SIGNED BY ALL PARTIES

For Xerox:

Danielle McG
Contractor's Signature

6-7-04
Date

Danielle McAnernay
Contractor's Name & Title (Please Print)

Production Solutions Executive

I hereby certify that the services requested are necessary, that the selection process documentation is accurate, that all insurance certificates including Worker's Compensation are on file in this office, that Risk Management has approved any reductions in Contractor's insurance limits below \$1,000,000, and that no work will commence until this document is signed by the County Purchasing Agent.

Purchasing Agent

Date

ATTACHMENT A

County of San Mateo Contract #17710-04-P731

Request for Proposals # 1076 for High Speed Duplication Equipment

For use by the San Mateo County Copy Center

Opening Date: April 29, 2004

Revised June 3, 2004

XEROX

Please note that the following clarifications and the "Xerox Corporation Terms and Conditions Attachment" are a part of our bid proposal. In the event there is a conflict between the "Xerox Corporation Terms and Conditions Attachment" and those of the RFP, the latter shall prevail.

Section II: Terms and Conditions

Liability Insurance, County as "An Additional Insured": Xerox agrees to this requirement providing the loss or damage was due to Xerox' fault or negligence.

14. Termination, Termination for Convenience or without Cause: Termination of individual leases resulting from this RFP without cause or for the convenience of the County is considered a breach of the lease agreement. The remedy for breach is the remaining lease balance, less any unearned charges, plus a reasonable disengagement fee calculated by Xerox not to exceed 15%.

15. Extension to Other Public Entities and Affiliated Non-Profit Agencies: Any resulting contract will be available for use by other public entities. Contract prices and terms may not be extended to affiliated non-profit agencies.

County of San Mateo

Agreement with Independent Contractor

7. Hold Harmless: Indemnification is contingent upon Customer giving Xerox written notice, by registered mail, promptly after it becomes aware of any claim to be indemnified hereunder and permits Xerox to control the defense of any such claim or action at Xerox' own expense. Notice shall be sent to "Corporate Risk, Xerox Corporation, Long Ridge Road, Stamford, Connecticut 06904." Customer agrees that Xerox may employ attorneys of its own choice to appear and defend the claim or action and that 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.

Except for indemnified matters and to the extent permitted by applicable law, all other liability of Xerox to the Customer for damages of any kind or type, including but not limited to direct, indirect, consequential, incidental, or special damages, arising from Xerox' performance or failure to perform under this Contract or by virtue of Xerox'

tortious conduct (including negligence whether passive or active) shall be limited the amounts paid by Customer under this Agreement. Provided, however, that the foregoing limitation of liability shall not apply to claims by the Customer for damage to real or tangible property caused by Xerox' negligence.

9. Non-Assignability: Please note that Xerox assigns all leases to a wholly owned subsidiary of Xerox Corporation. Such assignment shall be transparent to the County.

10. Termination of Agreement: Termination of individual leases resulting from this RFP without cause or for the convenience of the County is considered a breach of the lease agreement. The remedy for breach is the remaining lease balance, less any unearned charges, plus a reasonable disengagement fee calculated by Xerox not to exceed 15%.

County of San Mateo

Standard Terms and Conditions for Request for Proposals

7. Payment Terms and 8. Late Payment Charges: Payment terms are net 30 days. In the event payments are not received within the stated time, Xerox reserves the right to bill the County late charges as permitted by the State of California Prompt Pay Act or other similar law.

16. Hold Harmless: Indemnification is contingent upon Customer giving Xerox written notice, by registered mail, promptly after it becomes aware of any claim to be indemnified hereunder and permits Xerox to control the defense of any such claim or action at Xerox' own expense. Notice shall be sent to "Corporate Risk, Xerox Corporation, Long Ridge Road, Stamford, Connecticut 06904." Customer agrees that Xerox may employ attorneys of its own choice to appear and defend the claim or action and that 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.

Except for indemnified matters and to the extent permitted by applicable law, all other liability of Xerox to the Customer for damages of any kind or type, including but not limited to direct, indirect, consequential, incidental, or special damages, arising from Xerox' performance or failure to perform under this Contract or by virtue of Xerox' tortious conduct (including negligence whether passive or active) shall be limited the amounts paid by Customer under this Agreement. Provided, however, that the foregoing limitation of liability shall not apply to claims by the Customer for damage to real or tangible property caused by Xerox' negligence.

18. Rights and Remedies of County for Default: Xerox requests written notice of default and a minimum of thirty days to cure its performance before the County exercises its rights under this section.

22. Equipment Lease Termination, Termination Due to Lack of Funds: Xerox agrees with this section with these stipulations:

1. You provide written notice 30 days prior to the beginning of the fiscal year for which your legislative body does not appropriate funds, stating that your legislative body, though no action on your part, failed to appropriate funds for the next fiscal year
2. You must also certify that the canceled Equipment is not being replaced by similar equipment or equipment performing similar functions during the ensuing fiscal year.
3. In addition, you agree at your 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. You will then be released from your obligations to make any further payments to Xerox (with Xerox retaining all sums paid to date).

Thank you for the opportunity to propose Xerox Products and services.

Sincerely,

Chuck Mitchell
Contract Manager,
Xerox Corporation

Xerox Corporation Terms and Conditions Attachment
County of San Mateo
Request for Proposals # 1076 for High Speed Duplication Equipment
For use by the San Mateo County Copy Center
Opening Date: April 29, 2004
Revised June 3, 2004

GENERAL TERMS: The following terms apply to all transactions:

- 1) **EQUIPMENT STATUS.** In support of Xerox's environmental leadership goals, and unless you are 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.
- 2) **BASIC SERVICES.** Xerox (or a designated servicer) will provide the following Basic Services under this Agreement (unless you are acquiring Equipment for which Xerox does not offer Basic Services; such Equipment to be designated as "No Svc."):
 - A) **REPAIRS & PARTS.** Xerox will make repairs and adjustments necessary to keep Equipment in good working order (including such repairs or adjustments required during initial installation). Parts required for repair may be new, reprocessed, or recovered.
 - B) **HOURS & EXCLUSIONS.** Unless otherwise stated, Basic Services will be provided during Xerox's standard working hours (excluding Xerox-recognized holidays) in areas within the United States, its territories, and possessions open for repair service for the Equipment at issue. You agree to give Xerox reasonable access to the Equipment. Basic Services shall cover repairs and adjustments required as a result of normal wear and tear or defects in materials or workmanship (and shall exclude repairs or adjustments Xerox determines to relate to or be affected by the use of options, accessories, or other connected products not serviced by Xerox, as well as any non-Xerox alterations, relocation, service, supplies, or consumables). You agree to use the Equipment in accordance with all applicable manuals and instructions. You also agree to perform all operator maintenance procedures for the Equipment and to purchase all referenced parts, tools, and supplies needed to perform those procedures that are described in the applicable manuals and instructions.
 - C) **INSTALLATION SITE & METER READINGS.** The Equipment installation site must conform to Xerox's published requirements throughout the term of this Agreement. If applicable, you agree to provide meter readings in the manner prescribed by Xerox. If you do not provide Xerox with meter readings as required, Xerox may estimate them and bill you accordingly.
 - D) **EXCLUSIVE REMEDY.** If Xerox is unable to maintain the Equipment as described above, Xerox will, as your exclusive remedy for Xerox's failure to provide Basic Services, replace the Equipment with an identical product or, at Xerox's option, another product of equal or greater capabilities. If a replacement product is provided pursuant to this Section, it shall be subject to the terms and conditions of this Agreement, there will not be an additional charge for the replacement product and, except as set forth in Section 10 below, there will not be an additional charge for Basic Services during the then-current term during which Basic Services are being provided.
 - E) **PC/WORKSTATION REQUIREMENTS.** In order to receive Basic Services and/or Software Support for Equipment requiring connection to a PC or workstation, you must utilize a PC or workstation that either (1) has been provided by Xerox or (2) meets Xerox's published specifications.
- 3) **INTELLECTUAL PROPERTY INDEMNITY.** Xerox will defend and indemnify you if any Product is alleged to infringe someone else's U.S. intellectual property rights provided you promptly notify Xerox of the alleged infringement and permit Xerox to direct the defense. Xerox is not responsible for any non-Xerox litigation expenses or settlements unless it preapproves them in writing. To avoid infringement, Xerox may modify or substitute an equivalent Product, refund the price paid for the Product (less the reasonable rental value for the period it was available to you), or obtain any necessary licenses. Xerox is not liable for any infringement-related liabilities outside the scope of this Section including, but not limited to, infringement based upon a Product being modified to your specifications or being used or sold with products not provided by Xerox.
- 4) **REPRESENTATIONS, WARRANTIES & COVENANTS.** You agree that during the term of this Agreement, you will promptly notify Xerox in writing if you move your principal place of business, if you change the name of your business or if there is a change in ownership.

- 5) **SUPPLIES INCLUDED IN BASE/PRINT CHARGES.** If this option has been selected, Xerox (or a designated servicer) will provide you with black toner, black developer, copy cartridges, and fuser ("Consumable Supplies") throughout the term of this Agreement. For full-color Equipment, Consumable Supplies shall also include color toner and developer. You agree that the Consumable Supplies are Xerox's property until used by you, that you will use them only with the Equipment, that you will return all Cartridges to Xerox for remanufacturing once they have been run to their cease-function point, and that you will return any unused Consumable Supplies to Xerox at the end of this Agreement. Should your use of Consumable Supplies exceed the typical use pattern (as determined by Xerox) for these items by more than 10%, you agree that Xerox shall have the right to charge you for any such excess usage.
- 6) **EXTENDED SERVICE HOURS.** If this option has been selected, Xerox will provide Basic Services during the hours indicated, with the first number establishing the number of eight-hour shifts covered and the second establishing the days of the week (e.g., 2 x 6 would provide service from 8:00 A.M. to 11:59 P.M., Monday through Saturday). The cost of this enhanced service coverage will be billed separately and, as such, is not included in your Minimum Lease Payment or Print Charges.
- 7) **FORCE MAJEURE.** Xerox shall not be liable to you 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; epidemic; strike or other labor dispute; riot; piracy or other misadventure of the sea; embargo; inability to secure materials and / or transportation; or, a restriction imposed by legislation, an order or a rule or regulation of a governmental entity. If such a circumstance occurs, Xerox shall undertake reasonable action to notify you of the same.

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

- 1) **SOFTWARE LICENSE.** The following terms apply to copyrighted software and the accompanying documentation, including, but not limited to, operating system software, provided with or within the Xerox-brand Equipment acquired hereunder ("Base Software") as well as software specifically set out as "Application Software" on the face of this Agreement. This license does not apply to any Diagnostic Software or to any software and accompanying documentation made subject to a separate license agreement.
 - A) Xerox grants you a non-exclusive, non-transferable license to use the Base Software within the United States, its territories, and possessions (the "United States") only on or with the Equipment with which (or within which) it was delivered. For Application Software, Xerox grants you a non-exclusive, non-transferable license to use this software within the United States on any single unit of equipment for as long as you are current in the payment of any indicated software license fees (including any Annual Renewal Fees). You have no other rights to the Base or Application Software and, in particular, may not: (1) distribute, copy, modify, create derivatives of, decompile, or reverse engineer this software; (2) activate any software delivered with or within the Equipment in an unactivated state; or, (3) allow others to engage in same. Title to the Base and Application Software and all copyrights and other intellectual property rights in it shall at all times reside solely with Xerox and/or its licensors (who shall be considered third-party beneficiaries of this Agreement's software and limitation of liability provisions). Base and Application Software may contain, or be modified to contain, computer code capable of automatically disabling proper operation or functioning of the Equipment. Such disabling code may be activated if: (a) Xerox is denied access to the Base or Application Software to periodically reset such code; (b) you otherwise breach any term of this Agreement; or, (c) your license is terminated or expires.
 - B) Xerox may terminate your license for any Base Software (1) immediately if you no longer use or possess the Equipment or are a lessor of the Equipment and your first lessee no longer uses or possesses it, or (2) upon the termination of any agreement under which you have rented or leased the Equipment.
 - C) If you transfer possession of the Equipment after you obtain title to it, Xerox will offer the transferee a license to use the Base Software within the United States on or with it, subject to Xerox's then-applicable terms and license fees, if any, and provided the transfer is not in violation of Xerox's rights.
 - D) Xerox warrants that the Base and Application Software will perform in material conformity with its published specifications for a ninety (90) day period from the date it is delivered or, for software installed by Xerox, the date of software installation. Neither Xerox nor its licensors warrant that the Base or Application Software will be free from errors or that its operation will be uninterrupted.
- 2) **SOFTWARE SUPPORT.** During the period that Xerox (or a designated servicer) provides Basic Services for the Equipment but in no event longer than five (5) years after Xerox stops taking orders from customers for their acquisition of the subject model of Equipment, Xerox (or a designated servicer) will also provide software support for the Base Software under the following terms. For Application Software, Xerox will provide this same level of support provided you are current in the payment of all Initial License and Annual Renewal Fees (or, for programs not requiring Annual Renewal Fees, the payment of the Initial License Fee and the annual "Support Only" Fees):
 - A) Xerox will assure that Base and Application Software performs in material conformity with its published specifications and will maintain a toll-free hotline during standard business hours to answer related questions.
 - B) Xerox may make available new releases of the Base or Application Software that primarily incorporate coding error fixes and are designated as "Maintenance Releases". Maintenance Releases are provided at no charge and must be implemented within six (6) months after being made available to you. Each new Maintenance Release shall be considered Base or Application Software governed by these Software Terms. New releases of the Base or Application Software that are not Maintenance Releases, if any, may be subject to additional license fees at Xerox's then-current pricing and shall be considered Base or Application Software governed by these Software Terms (unless otherwise noted). You agree to return or destroy all prior releases.
 - C) Xerox will use reasonable efforts, either directly and/or with its vendors, to resolve coding errors or provide workarounds or patches, provided you report problems in the manner specified by Xerox.
 - D) Xerox shall not be obligated (1) to support any Base or Application Software that is two or more generations older than Xerox's most current release or (2) to remedy coding errors if you have modified the Base or Application Software.
 - E) Xerox may annually increase the Annual Renewal and Support-Only Fees, each such increase not to exceed 10%. (For state and local-government customers, this adjustment shall take place at the commencement of each of your annual contract cycles.)

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

LEASE TERMS: The following additional terms apply only to lease transactions:

- 1) **NON-CANCELABLE LEASE.** THIS AGREEMENT IS A LEASE AND IT CANNOT BE CANCELED OR TERMINATED EXCEPT AS EXPRESSLY PROVIDED HEREIN. YOUR OBLIGATION TO MAKE MINIMUM LEASE PAYMENTS AND TO PAY ANY OTHER AMOUNTS DUE HEREUNDER 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 CLAIM THAT YOU MAY HAVE AGAINST XEROX MAY BE ASSERTED SOLELY AGAINST XEROX IN A SEPARATE ACTION, PROVIDED YOU CONTINUE TO FULFILL ALL YOUR OBLIGATIONS UNDER THIS LEASE.
- 2) **LEASE COMMENCEMENT, PAYMENT, TAXES & CREDIT HISTORY.**
 - A) The lease term for this Agreement shall commence upon installation of the Equipment; provided, however, for customer-installable Equipment, the lease term for this Agreement shall commence upon delivery of the Equipment.
 - B) You agree to pay Xerox each Minimum Lease Payment, all Print Charges and all other sums due hereunder (including, but not limited to, any non-typical delivery or removal expenses incurred) within thirty (30) days of the invoice date or on the due date listed on the invoice, whichever is earlier. Restrictive covenants on checks you send to Xerox will not reduce your obligations.
 - C) 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" 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 or the amounts payable to Xerox by you for the billing of Products, Print Charges, 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 personal property taxes and taxes on Xerox's net income. If a taxing authority determines that Xerox did not collect all applicable Taxes, you shall remain liable to Xerox for such additional Taxes.
 - D) As part of this transaction, you authorize Xerox (or its agent) to obtain credit reports (including in connection with credit analysis or subsequent review, collection or enforcement of your obligations hereunder), make such other credit inquiries as Xerox may deem necessary, furnish payment history information to credit reporting agencies, and release to prospective assignees of this Agreement or any rights hereunder information Xerox has about you and this Agreement. Even if Products have been delivered, Xerox may, within sixty (60) days following its acceptance of this Agreement, revoke the Agreement if your credit approval is denied.
- 3) **ASSIGNMENT.** You may not assign any of your rights or obligations under this Agreement without Xerox's prior written consent. Xerox may assign this Agreement, in whole or in part, without prior notice to you and may release information it has about you and this Agreement. Each successive assignee of Xerox shall have all of the rights but none of the obligations of Xerox hereunder. You shall continue to look to Xerox for performance of Xerox's obligations, including the provision of Basic Services, and you hereby waive and release any assignees of Xerox from any such claim. To the extent that Xerox notifies you of any such assignment, you shall make all payments due hereunder in accordance with the instructions of such assignees. You shall not assert any defense, counterclaim or set-off that you may have or claim against Xerox against any assignees of Xerox.
- 4) **MINIMUM LEASE PAYMENTS.** The Minimum Lease Payments, along with any additional Print Charges, cover your cost for the use of the Equipment and its maintenance as described herein. Each Minimum Lease Payment (which may be billed on more than one invoice) shall consist of the total of (a) any Periodic Base Charge, and (b) any Periodic Minimum Number of Prints multiplied by the applicable Meter 1 Print Charge(s). For full-color Equipment, color copies are counted on Meter 1.
- 5) **MAINTENANCE COMPONENT PRICE INCREASES.** Xerox may annually increase that amount of the Minimum Lease Payment and Print Charges you are charged for maintenance of the Equipment (the "Maintenance Component"), each such increase not to exceed 10%. (For state and local government customers, this adjustment shall take place at the commencement of each of your annual contract cycles.)

- 6) **TITLE, RISK & RELOCATION.** Title to the Equipment shall remain with Xerox unless and until you exercise your option to purchase the Equipment. If you acquire title to the Equipment, you must comply with all applicable laws and regulations regarding the export of any commodity, technology and/or software. You agree that: (a) the Equipment shall remain personal property; (b) you will not attach any of the Equipment as a fixture to any real estate; (c) you 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) you will not make any permanent alterations to the Equipment. The risk of loss due to your fault or negligence, as well as theft or disappearance, shall pass to you upon shipment from a Xerox controlled facility. The risk of loss due to all other causes shall remain with Xerox unless and until you exercise your option to purchase the Equipment. Unless and until title passes to you, all Equipment relocations must be arranged (or approved in advance) by Xerox. All parts/materials replaced, including as part of an upgrade, will become Xerox's property.
- 7) **RENEWAL.** Unless either party provides notice at least thirty (30) days before the end of the lease term of its intention not to renew the lease, it will be renewed automatically on a month-to-month basis at the same price and on the same terms and conditions. Billing will occur at the same frequency as the original lease. During this renewal period, either side may terminate this Agreement upon at least thirty (30) days notice.
- 8) **BREACH & REMEDIES; LATE CHARGES & COLLECTION EXPENSES.**
- A) If any payment is not received by Xerox on or before the date it is due, Xerox may charge you, and you agree to pay, a late charge to cover Xerox's costs of collection equal to \$25.00 (not to exceed the maximum amount permitted by law).
- B) You will be in default under this Agreement if Xerox does not receive any payment within Thirty (30) days after the date it is due or if you breach any other obligation hereunder. If you default, Xerox, in addition to its other remedies (including the cessation of Basic Services), may require immediate payment, 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 Agreement's term 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 (the amount of such fee to be available from Xerox at any time upon request); and, (d) all applicable Taxes. In addition to paying the amounts required in the preceding sentence if you default, you shall either (1) return the Equipment to Xerox in the same condition as when delivered, reasonable wear and tear excepted, when requested to do so by Xerox, or (2) purchase the Equipment by paying Xerox the Purchase Option therefor and all applicable Taxes. If you elect to purchase the Equipment, title to the Equipment shall pass to you "AS IS, WHERE IS" and WITHOUT ANY WARRANTY AS TO CONDITION OR VALUE after Xerox receives payment of the amounts required under (a), (b), (c), (d) and (2) above in this Section and the Purchase Option. Xerox's decision to waive or forgive a particular default shall not prevent Xerox from declaring any other default. In addition, if you default under this Agreement, you agree to pay all of the costs Xerox incurs to enforce its rights against you, including reasonable attorneys' fees and actual costs.
- 9) **PURCHASE OPTIONS.** You may purchase the Equipment, "AS IS, WHERE-IS" and WITHOUT ANY WARRANTY AS TO CONDITION OR VALUE, at the end of, or during, the lease term. You may purchase the Equipment at the end of the lease term for the Purchase Option indicated in this Agreement (i.e., either a set dollar amount or the Fair Market Value of the Equipment at the lease term's conclusion ["FMV"]), plus any applicable Taxes. You may purchase the Equipment at any time during the lease term by paying: (a) all amounts then due; (b) the remaining Minimum Lease Payments in the Agreement's term 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 (the amount of such fee to be available from Xerox at any time upon request); (d) the applicable Purchase Option; and, (e) all applicable Taxes. When these amounts have been fully paid, title to the Equipment will transfer to you.
- 10) **PROTECTION OF XEROX'S RIGHTS.** Unless and until you purchase the leased Equipment, you hereby authorize Xerox or its agents to execute on your behalf all documents necessary to protect Xerox's rights as the Equipment Lessor (including any Uniform Commercial Code protective filings in favor of Xerox). You agree that Xerox can, but shall not be obligated to, take on your behalf and at your expense any action required to be taken by you under this Agreement and which you fail to take.
- 11) **WARRANTY DISCLAIMER & WAIVERS.** XEROX DISCLAIMS, AND YOU WAIVE, THE IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE. THE PARTIES INTEND THIS AGREEMENT TO BE A "FINANCE LEASE" UNDER ARTICLE 2A OF THE UNIFORM COMMERCIAL CODE ("UCC"). EXCEPT TO THE EXTENT EXPRESSLY PROVIDED HEREIN, YOU WAIVE, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ALL RIGHTS AND REMEDIES CONFERRED UPON A LESSEE BY ARTICLE 2A OF THE UCC.

GOVERNMENT CUSTOMER TERMS: The following additional terms apply only to lease transactions with state and local government customers:

12) REPRESENTATIONS & WARRANTIES, FUNDING, TAX TREATMENT & PAYMENT

- A) **REPRESENTATIONS & WARRANTIES.** You hereby represent and warrant, as of the date of this Agreement, that: (1) you are a State or a fully constituted political subdivision or agency of the State in which you are located and are authorized to enter into, and carry out, your obligations under this Agreement and any other documents required to be delivered in connection with the Agreement (collectively, the "Documents"); (2) the Documents have been duly authorized, executed and delivered by you 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 and the acquisition of the Equipment) 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 your governing body and hold the offices indicated below their signatures, each of which are genuine; (3) the Equipment is essential to the immediate performance of a governmental or proprietary function by you within the scope of your authority and shall be used during the lease term only by you and only to perform such function; and, (4) your obligations to remit payments under this Agreement constitute a current expense and not a debt under applicable state law and no provision of this Agreement constitutes a pledge of your 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.
- B) **PAYMENT.** Your payment is due within thirty (30) days of our invoice date.