

Appendix B

ADDITIONAL TERMS BETWEEN XEROX AND CITY

1. **Products.** “Products” means Xerox-brand equipment (“Equipment”), Software, Consumable Supplies and Maintenance Services ordered under the Agreement.

2. **Equipment Status.** City requires that the “essence” of a unit delivered under a Equipment Lease be “new”. The parties acknowledge that Xerox considers equipment to be (a) “Newly Manufactured,” which may contain some reconditioned components; or (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 new and reconditioned components. Should Contractor propose to provide any component or unit that is not “new,” or “newly manufactured” or a “Factory Produced New Model” as defined above, Contractor shall first notify the Office of Contract Administration and receive approval before providing the unit.

3. **Total Satisfaction Guarantee.** Without limitation of City’s right to equipment replacement or uptime credits set forth in Section 2.4. b., if Customer is not totally satisfied with any Equipment delivered under the Agreement, Xerox will, at Customer’s request, replace it without charge with identical Equipment or, at Xerox’s option, with Xerox-branded equipment with comparable features and capabilities.

4. **Order Documents.** Customer may issue purchase orders or other Customer documents (“Order” or “Agreement” document(s)) for order entry purposes, describing the acquisitions under the Agreement, specifying Customer’s requested shipment date, installation site, bill-to address, quantities ordered, product description including any Trade-In Equipment, components, pricing, and installation term. Regardless of the form, the Order Documents must reference the Customer Contract number. Notwithstanding anything contained in any Order Document which is at variance with or additional to the Agreement, Order Documents will incorporate and be subject solely to the terms and conditions of the Agreement.

5. **Equipment Commencement & Installation Dates.** The initial Equipment Lease or Rental term will commence on the “Installation Date”, which means: (a) for Equipment installed by Xerox, the date Xerox determines the Equipment to be operating satisfactorily and is available for Customer’s use, as demonstrated by successful completion of diagnostic routines; and (b) for Equipment mutually agreed to be “Customer Installable”, the Equipment delivery date. Any equipment that does not perform to its published specification will be repaired or replaced by Xerox at its expense. Any Equipment that needs to be replaced will be replaced with an identical model, or at Xerox’s option a unit with similar capabilities, and comparable usage.

6. **Reserved.**

7. **Maintenance Services.** Except for Equipment that the parties agree to designate as “No Svc.”, Xerox will keep the Equipment in good working order (“Maintenance Services”).

Maintenance Services are provided as a mandatory part of an Equipment Lease or Rental Agreement.

A. Basic Maintenance Services. Maintenance Services excludes repairs due to: (a) misuse, neglect, or abuse; (b) failure of the installation site or the PC or workstation used with the Equipment to comply with Xerox's published specifications; (c) use of options, accessories or products not supplied/installed by Xerox; (d) non-Xerox alterations, relocation, service or supplies; or (e) failure to perform operator maintenance procedures identified in operator manuals. A user's field manual is provided with each device.

B. Replacement Parts. Replacement parts may be new, reprocessed or recovered and all replaced parts become Xerox's property.

C. 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, Cartridge(s) for many models of Equipment have been designed to cease functioning at a predetermined point.

D. Consumable Supplies. Maintenance Services will include black toner, highlight color toner, clear toner, and custom color toner and/or solid ink and color toner, and/or solid ink, if applicable ("Consumable Supplies"). Consumable Supplies are Xerox's property until used by Customer, and Customer will use Consumable Supplies only with the Equipment for which "Consumable Supplies" is included in the Maintenance Plan. If recycling information is furnished with Consumables Supplies, Customer agrees to return the used item, at Xerox's expense, for remanufacturing. Shipping information is available at Xerox.com/GWA. Upon the Contract's expiration, Customer will include any unused Consumable Supplies with the Equipment for return to Xerox at the time of removal. If Customer's use of Consumable Supplies exceeds Xerox's published yield by more than 20%, Xerox will notify Customer of such excess usage. For the avoidance of doubt, Xerox's yields are based on prints, impressions, linear fleet, or copies containing the normal mix of test and graphics to determine the expected yield of Consumable Supplies under normal operating conditions. Upon request, Customer will provide current meter reads and/or an inventory of Consumable Supplies in its possession.

E. Meter Reads. Customer will provide meter reads using the method and frequency identified by Xerox. End users can mail, fax, phone in, or allow Xerox to electronically collect the meter read for networked connected devices. If Customer does not provide a meter reading, Xerox may reasonably estimate the reading and bill Customer accordingly. If meter readings have been estimated, Xerox after receiving the actual meter readings for the equipment shall make an appropriate adjustment on the subsequent invoice.

F. Replacement. Xerox will replace the Equipment with an identical model or, at Xerox's option, another Xerox-branded model with comparable features and capabilities. There will be no additional charge for the replacement Equipment during the remainder of the Equipment's Agreement Term.

G. Downtime Credits. Xerox will issue an appropriate downtime service credit if Xerox's is unable to maintain an average 98% equipment uptime for each specific unit over a three-month rolling average. Should Xerox not meet its Uptime commitment, Xerox shall replace the equipment at Contractor's expense with a like or better unit and provide a credit to City of 1/30 of the monthly lease or rental for that piece of equipment for each 24 business hours that the equipment was not in service as provided in Section 2.4.c.

H. Remote Services. Certain models of Equipment are supported and serviced using data that is automatically collected by Xerox via electronic transmission from the Equipment to a secure off-site location. Examples of automatically transmitted data include product registration, meter reads, supply levels, Equipment configuration and settings, software version, and problem/fault code data. All such data will be transmitted in a secure manner specified by Xerox. The automatic data transmission capability will not allow Xerox to read, view, or download any Customer data, documents, or other information residing on or passing through the Equipment or Customer's information management systems. If requested in writing Xerox will turn off and disable the Remote Services capability.

8. Force Majeure. Contractor shall not be liable for failure to maintain equipment when such failures are due to causes beyond its reasonable control, such as acts of God, acts of civil or military authority, fires, strikes, floods, epidemics, quarantine, war, riot, delays in transportation, care shortages, and inability due to causes beyond its reasonable control to obtain necessary labor, materials or manufacturing facilities, and in such event Contractor shall perform as soon as such cause is removed.

9. Payment. The City will make a good faith effort to pay all undisputed amounts in invoices otherwise acceptable to the Controller within thirty days of receipt of Contractor's invoice. In no event shall City be liable for interest or late charges for any late payments.

10. Reserved.

11. Miscellaneous.

Data Security. Certain models of Equipment can be configured to include a variety of data security features. There may be an additional cost associated with certain data security features. The selection, suitability, and use of data security features are solely Customer's responsibility. Xerox shall include pricing for optional security features available for particular Equipment models in its initial quote provided to a department.

12. Reserved.

13. Reserved.

14. Reserved.

Software

15. Software License. Xerox grants Customer a non-exclusive, non-transferable license to use: (a) software and accompanying documentation provided with the Xerox-brand Equipment (“Base Software”) only with the Xerox-brand Equipment with which it was delivered; and (b) software and accompanying documentation identified in an Order as “Application Software” only on any single unit of equipment for as long as Customer is current in the payment of all fees. “Base Software” and “Application Software” are referred to collectively as “Software”.

- A.** Customer has no other rights and may not: (a) copy, distribute, modify, create derivatives of, decompile, or reverse engineer Software; (b) activate Software delivered with the Equipment in an inactivated state; or (c) allow others to engage in same.
- B.** Title to, and all intellectual property rights in, Software will reside solely with Xerox and/or its licensors, who will be considered third-party beneficiaries of this subsection.
- C.** Software may contain code capable of automatically disabling the Equipment. Disabling code may be activated if Customer is notified of a default under the Agreement or an individual Lease. Xerox will send Customer written notice describing the performance failure and provide 60 days for the Customer to correct the failure before disabling any unit. Xerox will provide the City with written notice of the specific issue and 60 days to correct the matter before disabling the Equipment.
- D.** The Base Software license will terminate upon the expiration of any Individual Agreement under which Customer has rented or leased the Equipment, unless Customer has exercised an option to purchase the Equipment or (b) if Customer no longer uses or possesses the Equipment.
- E.** Neither Xerox nor its licensors warrant that Software will be free from errors or that its operation will be uninterrupted.
- F.** The foregoing terms do not apply to Diagnostic Software or to software/documentation accompanied by a click wrap or shrink-wrap license agreement or otherwise made subject to a separate license agreement.

16. Software Support. Xerox will provide the software support set forth below (“Software Support”). For Base Software, Software Support will be provided during the initial Term of the applicable Lease and any renewal period. For Application Software, Software Support will be provided as long as the Application Software support is covered under the Agreement.

- A.** Xerox will maintain a web-based or toll-free hotline during Xerox’s standard working hours to report Software problems and answer Software-related questions.
- B.** Xerox, either directly or with its vendors, will make reasonable efforts to: (a) assure that Software performs in material conformity with its user documentation; (b) provide available workarounds or patches to resolve Software performance problems; and

(c) resolve coding errors for (i) the current Release and (ii) the previous Release for a period of six (6) months after the current Release is made available to Customer. Xerox will not be required to provide Software Support if Customer has modified the Software.

C. New releases of Software that primarily incorporate compliance updates and coding error fixes are designated as "Maintenance Releases" or "Updates". Maintenance Releases or Updates that Xerox may make available will be provided at no charge. New releases of software that include new content or functionality ("Feature Releases") will be subject to additional license fees at Xerox's then-current pricing. Maintenance Releases, Updates, and Feature Releases are collectively referred to as "Releases". Each Release will be considered Software governed by the Software License and Software Support provisions of the Contract, unless otherwise noted.

17. Diagnostic Software. Software used to maintain the Equipment and/or diagnose its failure or substandard performance (collectively "Diagnostic Software") is embedded in, resides in, or may be loaded on the Equipment. Title to Diagnostic Software will remain with Xerox or its licensors. Customer agrees that Customer's acquisition of the Equipment does not grant Customer a license or right to use Diagnostic Software for any purpose, or allow third parties to do so. Customer agrees at all times to allow Xerox reasonable access to the Equipment to access, monitor, and otherwise takes steps to prevent unauthorized use or reproduction of Diagnostic Software, provided that such access to Customer's facility will be during normal business hours.