

**OKLAHOMA CONTRACT  
FOR PRODUCTS AND RELATED SERVICES**

**XEROX CORPORATION**

This Oklahoma Contract for Products and Related Services (this "Agreement") is entered into by and between the State of Oklahoma by and through the Office of Management and Enterprise Services (the "State of Oklahoma" or "Oklahoma") and Xerox Corporation ("Contractor"), effective as of October 30, 2015. Oklahoma and Contractor are sometimes collectively referred to herein as the "Parties."

RECITALS

- A. Oklahoma and the Texas Department of Information Resources ("DIR") have entered into that certain Interlocal Procurement Participation Agreement, dated June 13, 2014, as amended and restated by that certain Revision No. One to Interlocal Procurement Participation Agreement, dated August 31, 2015 (as amended and restated, the "IPPA").
- B. Pursuant to the IPPA, certain DIR cooperative contracts may be utilized for procurement transactions of State of Oklahoma agencies and affiliates (each a "Customer").
- C. DIR and Contractor entered into that certain Contract for Products and Related Services effective June 16, 2015, which is a DIR cooperative contract also known as DIR Contract No. DIR-TSO-3043 (as amended from time to time, and, for the avoidance of doubt, inclusive of all Appendices thereto, the "DIR Contract").
- D. Oklahoma desires to procure, purchase, or lease, as the case may be, from Contractor, and Contractor desires to provide, sell, or lease, as the case may be, to Oklahoma, certain products and services under the DIR Contract, each on a non-exclusive basis.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**1. Scope.**

The DIR Contract is incorporated herein by reference and made a part hereof. Pursuant to Section IV(B)(5) of the IPPA, the Parties agree to modify the terms and conditions of the DIR Contract as set forth in the sections that follow (such modifications shall apply only to procurement transactions of Oklahoma Customers under the IPPA and do not apply to DIR or DIR Customers other than State of Oklahoma state agencies and affiliates). With respect to Oklahoma Customers, references to DIR Contract No. DIR-TSO-3043 in any and all contract documents shall mean DIR Contract No. DIR-TSO-3043 as modified

2. **DIR Contract, Section 1. Introduction, C. Order of Precedence is hereby modified to add the following provision:**

With respect to transactions involving Oklahoma-based Customers, the terms of this Agreement have precedence over the terms of any other contract document.

3. **DIR Contract, Section 6. Notification, is hereby modified to add the following:**

**If sent to the State of Oklahoma:**

James L. Reese, II  
Chief Information Officer  
3115 North Lincoln Boulevard  
Oklahoma City, Oklahoma 73105

**With a copy to:**

OMES-IS Deputy General Counsel  
3115 North Lincoln Boulevard  
Oklahoma City, Oklahoma 73105

4. **DIR Contract, Section 7. Rental and Service Agreements, B. Rental and Service Agreements is hereby modified to add the following provision.**

With respect to the Service Agreements set forth in Appendices F-J of this Contract, no changes to the terms and conditions of the Services Agreements to which Oklahoma Customers are a party may be made unless previously agreed to by Vendor and the State of Oklahoma and the applicable Oklahoma Customer.

5. **DIR Contract, Section 7. Rental and Service Agreements, C. Master Lease Agreement and D. Master Operating Lease Agreement is hereby deleted in its entirety.**
6. **Authorized Exceptions to Appendix A, Standard Terms and Conditions for Product and Related Service Contracts are as follows:**

- a. **Section 3, Definitions, A. Customer is hereby modified to add the following provision:**

The defined term "Oklahoma Customer" shall include the State of Oklahoma and any governmental entity specified as a political subdivision of the State pursuant to the Governmental Tort Claims Act including any associated institution, instrumentality, board, commission, committee department or other entity designated to act in behalf of the political subdivision; a state county or local governmental entity in its state of origin; and entities authorized to utilize contracts awarded by the State via a multistate or multi-governmental contract.

- b. **Section 4, General Provisions, C. Invalid Term or Condition is hereby modified to add the following provisions:**

3). With respect to procurement transactions for Oklahoma Customers, to the extent any term or condition in the Contract conflicts with an applicable Oklahoma and/or United States law or regulation, such Contract term or condition is void and unenforceable. By executing a contract that contains such conflicting term or condition, Customer makes no representation or warranty regarding the enforceability of such term or condition, and Oklahoma Customer does not waive the applicable Oklahoma and/or United States law or regulation that conflicts with the Contract term or condition.

4) If one or more term or condition in the Contract, or application of any term or condition to any party or circumstance, is held invalid, unenforceable, or illegal in any respect by a final judgment or order of a court of competent jurisdiction with respect to procurement transactions for Oklahoma Customers, the remainder of the Contract and the application of the term or condition to other parties or circumstances shall remain valid and in full force and effect.

**c. Section 4, General Provisions, F. Choice of Law is hereby modified to add the following provision:**

With respect to procurement transactions for Oklahoma Customers, unless Oklahoma Customer affiliates and Vendor agree otherwise, the laws of the State of Oklahoma shall govern the construction and interpretation of the Contract. Exclusive venue for all actions will be in state court, Oklahoma County, Oklahoma or, if an Oklahoma Customer affiliate, if and as agreed to otherwise between Vendor and such affiliate.

**d. Section 4, General Provisions, G. Limitation of Authority is hereby modified to add the following provision:**

With respect to procurement transactions for Oklahoma Customers, Vendor shall have no authority to act for or on behalf of Oklahoma Customers or the State of Oklahoma, except as expressly provided for in this Contract; no other authority, power or use is granted or implied. Vendor may not incur any debts, obligations, expenses or liabilities of any kind on behalf of Oklahoma Customers or the State of Oklahoma.

**e. Section 6, Product Terms and Conditions is hereby replaced in its entirety with the following provision:**

6. For Oklahoma Customers, Vendor shall comply with federal and state laws, rules and regulations related to information technology accessibility, as applicable to Vendor as the provider of information technology products and services under the Contract, including but not limited to Oklahoma Information Technology Accessibility Standards ("Standards") set forth at [http://www.ok.gov/cio/documents/isd\\_itas.pdf](http://www.ok.gov/cio/documents/isd_itas.pdf). If products furnished by Vendor do not require additional development or customization, Contractor shall, upon

request, but not later than thirty (30) calendar days after the State of Oklahoma's request, provide a Voluntary Product Accessibility Template ("VPAT") describing such compliance, which may be provided via a URL linking to the VPAT. If the products will require development or customization, the Vendor shall provide a VPAT describing such compliance without additional request by the applicable Oklahoma Customer. In such case, additional requirements and documentation may be required and compliance therewith shall be required of Vendor. Such requirements may be stated in appropriate documents, including, but not limited to, state bids, requests for proposals, statements of work, riders, agreements, purchase orders and amendments. Accordingly, in each statement of work or similar document issued pursuant to this Contract, Vendor shall describe such compliance and identify, if and as applicable, (i) which exception to the Standards applies or (ii) a description of the tasks and estimated cost to make the proposed products and/or services compliant with applicable Standards.

Vendor acknowledges and agrees that all representations contained in the VPAT provided by the Vendor will be relied upon by the Oklahoma Customer for accessibility-compliance purposes.

- f. Section 7, Contract Fulfillment and Promotion, F. DIR Logo, is hereby modified to add the following provision:**

With respect to procurement transactions for Oklahoma Customers, the utilization of this Contract by Oklahoma Customer is not in any way an endorsement by the Oklahoma Customer of Vendor or the products or services and shall not be so construed by Vendor in any advertising or publicity materials. Vendor agrees to submit to the Oklahoma Customer all advertising, sales promotion, and other publicity matters relating to this Contract wherein the Oklahoma Customer's name is mentioned or language used from which the connection of the Oklahoma Customer's name therewith may, in the Oklahoma Customer's sole judgment, be inferred or implied as an endorsement. Vendor further agrees not to publish or use such advertising, sales promotion, or publicity matter or release any informational pamphlets, notices, press releases, research reports, or similar public notices concerning this Contract without obtaining the prior written approval of the Oklahoma Customer.

- g. Section 7, Contract Fulfillment and Promotion, G. Vendor and Order Fulfiller Logo, references to the "DIR" are hereby replaced with "the State of Oklahoma and Oklahoma Customers".**
- h. Section 7, Contract Fulfillment and Promotion, H. Trade Show Participation, references to the "DIR" are hereby replaced with "the State of Oklahoma and Oklahoma Customers".**
- i. Section 7, Contract Fulfillment and Promotion, I. Orientation Meeting, references to "DIR" are hereby replaced with "the State of Oklahoma", and**

the reference to "Austin, Texas" is hereby replaced with "Oklahoma City, Oklahoma".

- j. **Section 7, Contract Fulfillment and Promotion, J. Performance Review Meetings is hereby modified to add the following provision:**

Oklahoma Customers reserve the right, but shall have no obligation, to require the Vendor to attend periodic meetings to review the Vendor's performance under the Contract with respect to Oklahoma transactions. Upon request by an Oklahoma Customer, Vendor shall provide such Oklahoma Customer with a detailed report of a representative sample of products sold or leased under the Contract to Oklahoma Customers.

- k. **Section 8, Pricing, Purchase Orders, Invoices, and Payments, E. Tax-Exempt is hereby replaced in its entirety with the following:**

Pursuant to Section 6.A. of the Oklahoma Constitution and 68 O.S. §§ 1404, 1352, and 1356, Customers under this Contract that are Oklahoma state agencies are exempt from the assessment of State sales, use and excise taxes. Further, such Customers and Customers that are political subdivisions of the State of Oklahoma are exempt from Federal Excise Taxes, 26 U.S.C. Sections 4253(i). Customers will provide Contractor with a tax exemption certificate upon request.

- l. **Section 8, Pricing, Purchase Orders, Invoices, and Payments, F. Travel Expense Reimbursement is hereby deleted in its entirety.**

- m. **Section 8, Pricing, Purchase Orders, Invoices, and Payments, G. Changes to Prices is hereby modified to add the following provision:**

Xerox shall notify the State of Oklahoma in writing of any and all price increases prior to the effective date of such increases.

- n. **Section 8, Pricing, Purchase Orders, Invoices, and Payments, I. Invoices, subsection 1) first sentence is modified to delete references to compliance with Chapter 2251, Texas Government Code.**

- o. **Section 8, Pricing, Purchase Orders, Invoices, and Payments, J. Payments is hereby replaced in its entirety:**

As applicable, the parties (including, without limitation, Order Fulfillers) shall comply with applicable Oklahoma law with respect to invoicing and making payments hereunder. Payments for goods and services are generally due thirty (30) days after receipt of a proper invoice; provided, however, Vendor acknowledges and agrees that payment received in accordance with applicable Oklahoma law allowing forty-five (45) days to pay Order Fulfillers shall not constitute default hereunder nor entitle Vendor or Order Fulfillers to late payment

fees or interest. Any applicable late fees or interest incurred after forty-five (45) days of nonpayment shall be paid only in accordance with Oklahoma law. Payment made under the Contract shall not foreclose the right to recover wrongful payments.

- p. Section 9, Contract Administration, B. Reporting and Administrative Fees, is modified to add the following provision:**

**6) Oklahoma Reports**

For Oklahoma Customers, Vendor agrees to submit a Contract Usage Report to the State of Oklahoma on a quarterly basis. Each "Contract Usage Report" shall include the following: (i) the applicable state contract number, (ii) report amount(s), (iii) reporting period covered, and (iv) the applicable state agency name(s). Contract Usage Reports shall also include usage of the Contract by any other governmental entities (i.e. county, city, etc.). Continuous failure to submit Contract Usage Reports as required herein may result in termination of the Contract with respect to Oklahoma Customers.

All Contract Usage Reports shall meet the following criteria:

- a) Must be submitted electronically in Microsoft Excel format.
- b) Reports shall be submitted quarterly, regardless of whether this Contract has been used during the applicable quarterly reporting period.
- c) Must be submitted within thirty (30) calendar days of the end of each quarterly reporting period.
- d) Quarterly reporting periods shall be as follows:

January 01 through March 31 – State of Oklahoma Quarter 3  
April 01 through June 30 – State of Oklahoma Quarter 4  
July 01 through September 30 – State of Oklahoma Quarter 1  
October 01 through December 31 – State of Oklahoma Quarter 2

All Contract Usage Reports shall be delivered electronically (format: .xls) to:  
E-mail: [strategic.sourcing@omes.ok.gov](mailto:strategic.sourcing@omes.ok.gov)

- q. Section 9, Contract Administration, C. Records and Audit, is hereby modified to reflect that references to "State Auditor's Office" shall mean and refer to the Oklahoma State Auditor's Office and the fourth sentence of subsection 1) is hereby replaced in its entirety with the following:**

A Vendor that is the subject of an audit or investigation by the State of Oklahoma's Auditor's Office must provide the Auditor's Office with access to any invoice, statement of work, or purchase order records or other such information the Auditor's Office considers relevant to the investigation or audit. The records may be provided electronically, and the state agrees that in absence of fraud, the state may audit no more than once per year, and upon thirty (30) days' prior notice.

- r. Section 9, Contract Administration, C. Records and Audit, subsection 2) is hereby replaced in its entirety with the following:**

As used in this clause, "records" includes an invoice, statement of work, purchase order records or such other documents related to this Contract and kept by Xerox in the ordinary course of business, regardless of whether such items are in written form, in the form of computer data, or in any other form. In accepting any contract with an Oklahoma Customer, Vendor agrees any pertinent state or federal agency shall have the right to examine and audit all such records relevant to execution and performance of this Contract.

Vendor is required to retain records relative to this Contract and kept in the ordinary course of business for the duration of this Contract and for a period of seven (7) years following completion and/or termination of this Contract. If an audit, litigation, or other action involving such records is started before the end of the seven-year period, the records are required to be maintained for two (2) years from the date that all issues related to or arising out of the action are resolved, or until the end of the seven (7) year retention period, whichever is later.

- s. Section 10, Vendor Responsibilities, A. Indemnification, 1) Independent Contractor is hereby modified to reflect that references to the "State of Texas" shall mean and refer to the "State of Oklahoma".**

- t. Section 10, Vendor Responsibilities, A. Indemnification, 2) Acts or Omissions is hereby modified to add the following provision:**

IN CONNECTION WITH INDEMNIFICATION OF A CUSTOMER WHEN AN OKLAHOMA STATE AGENCY IS A NAMED DEFENDANT IN ANY LAWSUIT, THE DEFENSE OF THE OKLAHOMA STATE AGENCY SHALL BE COORDINATED BY THE ATTORNEY GENERAL OF OKLAHOMA. THE ATTORNEY GENERAL OF OKLAHOMA MAY, BUT HAS NO OBLIGATION TO, AUTHORIZE CONTRACTOR TO CONTROL THE DEFENSE AND ANY RELATED SETTLEMENT NEGOTIATIONS; PROVIDED, HOWEVER, THAT, IN SUCH EVENT, VENDOR SHALL NOT AGREE TO ANY SETTLEMENT OF CLAIMS AGAINST THE STATE OF OKLAHOMA WITHOUT FIRST OBTAINING A CONCURRENCE FROM THE ATTORNEY GENERAL OF OKLAHOMA. IF THE ATTORNEY GENERAL OF OKLAHOMA DOES NOT AUTHORIZE SOLE CONTROL OF THE DEFENSE AND SETTLEMENT NEGOTIATIONS FOR VENDOR, VENDOR SHALL BE GRANTED AUTHORIZATION TO EQUALLY PARTICIPATE IN ANY PROCEEDING RELATED TO THIS SECTION. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, VENDOR SHALL, AT ALL TIMES, HAVE AN OBLIGATION TO INDEMNIFY THE CUSTOMER IN ACCORDANCE WITH AND TO THE EXTENT VENDOR PROVIDES SUCH INDEMNIFICATION IN THIS CONTRACT.

- u. Section 10, Vendor Responsibilities, A. Indemnification, 3) Infringements is hereby modified to add the following provision:**

IN CONNECTION WITH INDEMNIFICATION OF A CUSTOMER WHEN AN OKLAHOMA STATE AGENCY IS A NAMED DEFENDANT IN ANY LAWSUIT, THE DEFENSE OF THE OKLAHOMA STATE AGENCY SHALL BE COORDINATED BY THE ATTORNEY GENERAL OF OKLAHOMA. THE ATTORNEY GENERAL OF OKLAHOMA MAY, BUT HAS NO OBLIGATION TO, AUTHORIZE CONTRACTOR TO CONTROL THE DEFENSE AND ANY RELATED SETTLEMENT NEGOTIATIONS; PROVIDED, HOWEVER, THAT, IN SUCH EVENT, VENDOR SHALL NOT AGREE TO ANY SETTLEMENT OF CLAIMS AGAINST THE STATE OF OKLAHOMA WITHOUT FIRST OBTAINING A CONCURRENCE FROM THE ATTORNEY GENERAL OF OKLAHOMA. IF THE ATTORNEY GENERAL OF OKLAHOMA DOES NOT AUTHORIZE SOLE CONTROL OF THE DEFENSE AND SETTLEMENT NEGOTIATIONS FOR VENDOR, VENDOR SHALL BE GRANTED AUTHORIZATION TO EQUALLY PARTICIPATE IN ANY PROCEEDING RELATED TO THIS SECTION. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, VENDOR SHALL, AT ALL TIMES, HAVE AN OBLIGATION TO INDEMNIFY THE CUSTOMER IN ACCORDANCE WITH AND TO THE EXTENT VENDOR PROVIDES SUCH INDEMNIFICATION IN THIS CONTRACT.

- v. Section 10, Vendor Responsibilities, B. Taxes/Worker's Compensation/ UNEMPLOYMENT INSURANCE, subsection 2) is hereby modified to add the following provision:**

IN CONNECTION WITH INDEMNIFICATION OF A CUSTOMER WHEN AN OKLAHOMA STATE AGENCY IS A NAMED DEFENDANT IN ANY LAWSUIT, THE DEFENSE OF THE OKLAHOMA STATE AGENCY SHALL BE COORDINATED BY THE ATTORNEY GENERAL OF OKLAHOMA. THE ATTORNEY GENERAL OF OKLAHOMA MAY, BUT HAS NO OBLIGATION TO, AUTHORIZE CONTRACTOR TO CONTROL THE DEFENSE AND ANY RELATED SETTLEMENT NEGOTIATIONS; PROVIDED, HOWEVER, THAT, IN SUCH EVENT, VENDOR SHALL NOT AGREE TO ANY SETTLEMENT OF CLAIMS AGAINST THE STATE OF OKLAHOMA WITHOUT FIRST OBTAINING A CONCURRENCE FROM THE ATTORNEY GENERAL OF OKLAHOMA. IF THE ATTORNEY GENERAL OF OKLAHOMA DOES NOT AUTHORIZE SOLE CONTROL OF THE DEFENSE AND SETTLEMENT NEGOTIATIONS FOR VENDOR, VENDOR SHALL BE GRANTED AUTHORIZATION TO EQUALLY PARTICIPATE IN ANY PROCEEDING RELATED TO THIS SECTION. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, VENDOR SHALL, AT ALL TIMES, HAVE AN OBLIGATION TO INDEMNIFY THE CUSTOMER IN ACCORDANCE WITH AND TO THE



EXTENT VENDOR PROVIDES SUCH INDEMNIFICATION IN THIS CONTRACT.

**w. Section 10, Vendor Responsibilities, C. Vendor Certifications is hereby modified to add the following provision:**

For Oklahoma-based transactions and Customers, in connection with its performance of obligations under the terms of the Contract, Vendor shall comply with all applicable federal, state, and local laws, rules, regulations, ordinances and orders, as amended, that are, by their terms, expressly applicable to Vendor's delivery of products and/or services under the Contract and impose obligations upon Vendor in its role as an information technology products and services provider, including, but not limited to, the following:

- a) Drug-Free Workplace Act of 1988 and as implemented at 45 C.F.R. part 76, Subpart F;
- b) Section 306 of the Clean Air Act, Section 508 of the Clean Water Act, Executive Order 11738, and Environmental Protection Agency Regulations which prohibit the use under nonexempt Federal contract, grant or loans of facilities included on the EPA List of Violating Facilities;
- c) Title VII of the 1964 Civil Rights Act, Title IX of the Education Amendment of 1972, Section 504 of the Rehabilitation Act of 1973, Americans with Disabilities Act of 1990 and Executive Orders 11246 and 11375; and
- d) Anti-Lobbying Law set forth at 31 U.S.C. §1325 and as implemented at 45 C.F.R. part 93.

Without limiting the generality of the foregoing, Vendor shall, at all times during the term of this Contract, be registered as a business entity licensed to do business in the State of Oklahoma, have obtained and shall maintain a sales tax permit in the State of Oklahoma, and shall be current on all franchise- and/or other business-tax payments to the State of Oklahoma, as applicable.

**x. Section 10, Vendor Responsibilities, H. Confidentiality is hereby replaced in its entirety:**

1) Vendor acknowledges that Oklahoma state agency and certain affiliate Customers are subject to the Oklahoma Open Records Act. Vendor also acknowledges that such Customers will comply with the Oklahoma Open Records Act and with all opinions of the Oklahoma Attorney General concerning such Act.

2) Under the terms of this Contract, the State of Oklahoma may provide Vendor with information related to Customers. Vendor shall not re-sell or otherwise distribute or release Customer information to any party in any manner.

y. **Section 10, Vendor Responsibilities, K. Limitation of Liability** is hereby modified to reflect that references to the "State" shall mean and refer to the "State of Oklahoma".

z. **Section 10 Vendor Responsibilities, O. Use of State Property** is hereby modified to reflect that references to the "State" and "DIR" shall mean and refer to the "State of Oklahoma".

aa. **Section 11, Contract Enforcement, A. Enforcement of Contract and Dispute Resolution** is hereby replaced in its entirety:

A party's failure to require strict performance of any provision of the Contract shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision.

bb. **Section 11, Contract Enforcement, B. Termination, 1) Termination for Non-Appropriation, subsection a) Termination for Non-Appropriation by Customer**, the first sentence is hereby replaced in its entirety with the following:

Customer may terminate any Purchase Order if funds sufficient to pay its obligations under the Contract are not appropriated by the applicable state legislature, federal government or other appropriate government entity or received from an intended third-party funding source.

cc. **Section 11, Contract Enforcement, B. Termination, 3) Termination for Convenience** is hereby modified to reflect that reference to the "DIR" shall mean and refer to the "State of Oklahoma".

dd. **Section 11, Contract Enforcement, B. Termination, 4) Termination for Cause, subsection b) Purchase Order**, first sentence is hereby modified to delete references to compliance with Chapter 2260, Texas Government.

7. **Appendix B, Historically Underutilized Business (HUB) Subcontracting Plan** is hereby deleted in its entirety.

8. **Appendix D, Master Lease Agreement** is hereby replaced in its entirety with **Appendix D** attached hereto and made a part hereof.

9. **Appendix E, Master Operating Lease Agreement** is hereby deleted in its entirety.

10. **Appendix F, Rental Agreement, Section 7. Remote Services** is hereby replaced in its entirety with the following:

Unless otherwise agreed to in writing by an Oklahoma Customer and Xerox and approved in writing by the State of Oklahoma's Chief Security Officer, Xerox shall turn off and disenable

Remote Services capability on all equipment purchased, leased, or rented by any and all Oklahoma Customers. Xerox acknowledges and agrees that it shall comply in all respects with the State of Oklahoma Information Security Policy, Procedures, Guidelines, currently available at [http://www.ok.gov/OSF/documents/StateOfOklahomaInfoSecPPG\\_osf\\_12012008.pdf](http://www.ok.gov/OSF/documents/StateOfOklahomaInfoSecPPG_osf_12012008.pdf), as well as any and all other security rules, policies, procedures, and guidelines promulgated by the State of Oklahoma from time to time. Xerox further acknowledges and agrees that no offshore services are provided for under the Contract.

Xerox shall maintain strict physical security of all data and records entrusted to it. If certain functions are subcontracted in accordance with the terms expressed in the Contract, Xerox shall ensure that the sub-contractor maintains strict physical security of all data and records transmitted to Xerox. Xerox shall never turn State of Oklahoma data or records over to a third party unless specifically authorized to do so by the State of Oklahoma. All requests for State of Oklahoma data or records (whether from litigants, State of Oklahoma employees, the press, open records or FOIA requests, or subpoenas) shall be referred to the State of Oklahoma.

Xerox agrees to use and disclose protected health information in compliance with the Standards for Privacy of Individually Identifiable Health Information (Privacy Rule) (45 CFR Parts 160 and 164) under the Health Insurance Portability and Accountability Act (HIPAA) of 1996. The definitions set forth in the Privacy Rule (45 CFR §§ 160.103 and 164.501) are incorporated by reference in the Contract.

**11. Appendix G, Maintenance and Support Terms, Section 3. Basic Services, A. Hours & Exclusions, first sentence is hereby replaced with the following sentence:**

Unless otherwise stated, Basic Services will be provided during Customer standard working hours, exclusive of State of Oklahoma published holidays.

**12. Appendix G, Maintenance and Support Terms, Software Terms, Section 2. Software Support, C., is hereby modified to add the following provision:**

Xerox shall notify the State of Oklahoma in writing of any and all price increases prior to the effective date of such increases.

**13. Appendix G, Maintenance and Support Terms, Software Terms, Section 4. Remote Services, is hereby replaced in its entirety with the following:**

Unless otherwise agreed to in writing by an Oklahoma Customer and Xerox and approved in writing by the State of Oklahoma's Chief Security Officer, Xerox shall turn off and disable Remote Services capability on all equipment purchased, leased, or rented by any and all Oklahoma Customers. Xerox acknowledges and agrees that it shall comply in all respects with the State of Oklahoma Information Security Policy, Procedures, Guidelines, currently available at [http://www.ok.gov/OSF/documents/StateOfOklahomaInfoSecPPG\\_osf\\_12012008.pdf](http://www.ok.gov/OSF/documents/StateOfOklahomaInfoSecPPG_osf_12012008.pdf), as well as any and all other security rules, policies, procedures, and guidelines promulgated

by the State of Oklahoma from time to time. Xerox further acknowledges and agrees that no offshore services are provided for under the Contract.

Xerox shall maintain strict physical security of all data and records entrusted to it. If certain functions are subcontracted in accordance with the terms expressed in the Contract, Xerox shall ensure that the sub-contractor maintains strict physical security of all data and records transmitted to Xerox. Xerox shall never turn State of Oklahoma data or records over to a third party unless specifically authorized to do so by the State of Oklahoma. All requests for State of Oklahoma data or records (whether from litigants, State of Oklahoma employees, the press, open records or FOIA requests, or subpoenas) shall be referred to the State of Oklahoma.

Xerox agrees to use and disclose protected health information in compliance with the Standards for Privacy of Individually Identifiable Health Information (Privacy Rule) (45 CFR Parts 160 and 164) under the Health Insurance Portability and Accountability Act (HIPAA) of 1996. The definitions set forth in the Privacy Rule (45 CFR §§ 160.103 and 164.501) are incorporated by reference in the Contract.

**14. Appendix H, Services Agreement is hereby replaced in its entirety with Appendix H attached hereto and made a part hereof.**

**15. Appendix I, Purchase and Maintenance Agreement, Section 2, Purchase Order Taking Term is hereby modified to add the following provision.**

Xerox shall notify the State of Oklahoma in writing of any and all price increases prior to the effective date of such increases.

**16. Appendix I, Purchase and Maintenance Agreement, Section 7. Default & Remedies; Late Charges & Collection Costs is hereby replaced in its entirety with the following:**

A. Payments will be handled in accordance with Appendix A, Section 8J of DIR Contract No. DIR-TSO-3043 as modified for the State of Oklahoma.

B. To the extent permitted by Oklahoma law, (i) you will be in default under this Agreement if (a) Xerox does not receive any undisputed payment or (2) if you breach any other obligation hereunder; and (ii) Xerox in addition to its other remedies may require immediate payment of all amounts then due until paid, plus interest.

**17. Appendix I, Purchase and Maintenance Agreement, Section 11. Remote Services, is hereby replaced in its entirety with the following:**

Unless otherwise agreed to in writing by an Oklahoma Customer and Xerox and approved in writing by the State of Oklahoma's Chief Security Officer, Xerox shall turn off and disable Remote Services capability on all equipment purchased, leased, or rented by any and all Oklahoma Customers. Xerox acknowledges and agrees that it shall comply in all respects with the State of Oklahoma Information Security Policy, Procedures, Guidelines, currently

available at [http://www.ok.gov/OSF/documents/StateOfOklahomaInfoSecPPG\\_osf\\_12012008.pdf](http://www.ok.gov/OSF/documents/StateOfOklahomaInfoSecPPG_osf_12012008.pdf), as well as any and all other security rules, policies, procedures, and guidelines promulgated by the State of Oklahoma from time to time. Xerox further acknowledges and agrees that no offshore services are provided for under the Contract.

Xerox shall maintain strict physical security of all data and records entrusted to it. If certain functions are subcontracted in accordance with the terms expressed in the Contract, Xerox shall ensure that the sub-contractor maintains strict physical security of all data and records transmitted to Xerox. Xerox shall never turn State of Oklahoma data or records over to a third party unless specifically authorized to do so by the State of Oklahoma. All requests for State of Oklahoma data or records (whether from litigants, State of Oklahoma employees, the press, open records or FOIA requests, or subpoenas) shall be referred to the State of Oklahoma.

Xerox agrees to use and disclose protected health information in compliance with the Standards for Privacy of Individually Identifiable Health Information (Privacy Rule) (45 CFR Parts 160 and 164) under the Health Insurance Portability and Accountability Act (HIPAA) of 1996. The definitions set forth in the Privacy Rule (45 CFR §§ 160.103 and 164.501) are incorporated by reference in the Contract.

- 18. Travel.** With respect to all Oklahoma-based transactions and all Oklahoma-based Customers, Contractor acknowledges and agrees that, pursuant to Okla. Stat. tit. 74, § 85.40, Oklahoma Customers shall not pay Contractor any travel expenses in addition to the total price of the products and/or services purchased; therefore, Contractor shall not invoice Oklahoma-based Customers for any travel expenses in addition to the total price of the products and/or services purchased hereunder.
- 19. Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same Agreement. Delivery of an executed counterpart of this Agreement by electronic means, including, without limitation, by facsimile transaction or by electronic delivery in portable document format (".pdf") or tagged image file format (".tiff"), shall be equally effective as delivery of a manually executed counterpart thereof.
- 20. Severability.** In the event of any provision of this Agreement shall be determined by a court of competent jurisdiction to be invalid or unenforceable, the Parties agree that such provision shall be ineffective without invalidating the remaining provisions hereof.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective as of the date first written above.

Xerox Corporation

By: Marie Nelson

Name: Marie E. Nelson

Title: Industry Vice President, Public Sector

Date: 12-29-15

The State of Oklahoma by and through the Office of Management and Enterprise Services

By: James L. Reese II

Name: James L. Reese II

Title: Chief Information Officer

Date: 11-13-15

## **Appendix D to DIR Contract No. DIR-TSO-3043**

### **MASTER LEASE AGREEMENT**

This Master Lease Agreement (this "MLA") is entered into by and between the State of Oklahoma by and through the Office of Management and Enterprise Services (the "State of Oklahoma" or "Lessee") and Xerox Corporation ("Lessor"), as Appendix D to that certain Oklahoma Contract for Products and Related Services dated effective as of October 30, 2015 by and between Lessee and Lessor (the "Contract") and is effective of even date therewith. Lessee and Lessor are sometimes collectively referred to herein as the "Parties."

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

#### **1. Scope.**

Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor the Equipment described on each Supplementary Schedule ("Schedule"), which is a separate agreement executed from time to time by Lessor and Lessee and/or other State of Oklahoma agency (as that term is defined in the Contract) (each, also a Lessee) and makes specific reference to this MLA. Any state of Oklahoma Agency may enter into lease transactions under the terms of this Master Lease Agreement executed by Vendor and the State of Oklahoma. Nothing herein contained is intended to prohibit a Customer Affiliate from entering into a Master Lease Agreement with Vendor. The terms and conditions contained herein shall apply to each Schedule that is properly executed in conjunction with this MLA and made subject to such terms and conditions as if a separate MLA were executed for each Schedule by the Lessee. Each Lessee has made an independent legal and management determination to enter into each Schedule. The State of Oklahoma by and through the Office of Management and Enterprise Services ("OMES") has not offered or given any legal or management advice to the Lessor or to any Lessee under any Schedule. Lessee may negotiate additional terms or more advantageous terms with the Lessor to satisfy individual procurements, such terms shall be developed by the Lessor and Lessee and stated within a Rider to the MLA the Schedule. To the extent that any of the provisions of the MLA conflict with any of the terms contained in any Schedule, the terms of the Schedule shall control. It is expressly understood that the term "Equipment" shall refer to the Products and any related Services as allowed within the Contract, as described on a Schedule and any associated items therewith, including but not limited to all parts, replacements, additions, repairs, and attachments incorporated therein and/or affixed thereto, all documentation (technical and/or user manuals), operating system and application software as needed.

If more than one Lessee is named in a Schedule, the liability of each named Lessee shall be joint and several. However, unless OMES leases Equipment for its own use, OMES is not a party to any Schedule executed under this MLA and is not responsible for Rents, payments or any other obligations under such Lessee's Schedule. The invalidation, fulfillment, waiver, termination, or other disposition of any rights or obligations of either a Lessee or the Lessor or both of them arising from the use of this MLA in conjunction with any one Schedule shall not affect the status

of the rights or obligations of either or both of those parties arising from the use of this MLA in conjunction with any other Schedule.

Any reference to "MLA" shall mean this Agreement, including the Opinion of Counsel, and any riders, amendments and addenda thereto, and any other documents as may from time to time be made a part hereof upon mutual agreement by the State of Oklahoma and Lessor.

As to conditions precedent to Lessor's obligation to purchase any Equipment, (i) Lessee shall accept the MLA terms and conditions as set forth herein and execute all applicable documents such as the Schedule, Opinion of Counsel, and any other documentation as may be required by the Lessor that is not in conflict with this MLA, and (ii) there shall be no material adverse change in Lessee's financial condition except as provided for within Section 7 of this MLA.

## **2. Term of MLA.**

The term of this MLA shall commence on the effective date of the Contract and shall continue until (i) the obligations of Lessee under every Schedule are fully discharged, (ii) the full and final expiration date of the Contract, or (iii) either party exercises its termination rights as stated within Appendix A, Section 11B of the Contract. In regards to either the Contract expiration date or Contract termination date or the termination of this MLA, before all obligations of Lessee under every Schedule are fully discharged, such Schedules and such other provisions of the Contract and this MLA as may be necessary to preserve the rights of the Lessor or Lessee hereunder shall survive said termination or expiration.

## **3. Term of Schedule.**

The term for each Schedule, executed under this MLA, shall commence on the date of acceptance of Equipment by Lessee. For purposes of this provision, Lessee will provide Lessor written notice of non-acceptance within ten (10) business days of Equipment delivery in accordance with Section 9 herein, otherwise the Equipment will be deemed accepted eleven (11) business days after the delivery of the last piece of Equipment to the Lessee ("Commencement Date"), and unless earlier terminated as provided for in the MLA, shall continue for the number of whole months or other payment periods as set forth in the applicable Schedule Term, commencing on the first day of the month following the Commencement Date (or commencing on the Commencement Date if such date is the first day of the month). The Schedule Term may be earlier terminated upon: (i) the Non-appropriation of Funds pursuant to Section 7 of this MLA, (ii) an Event of Loss pursuant to Section 18 of this MLA, or (iii) an Event of Default by Lessee and Lessor's election to cancel the Schedule pursuant to Section 24 of this MLA.

## **4. Administration of MLA.**

- (a) For requests involving the leasing of Equipment, each potential Lessee will submit its request directly to the Lessor. Lessor shall apply the then current Equipment pricing discounts as stated within the Contract or the price as agreed upon by Lessee and Lessor, whichever is lower. Lessor shall submit the lease proposal and all other applicable documents directly to the potential Lessee and negotiate the Schedule terms directly with the potential Lessee.



- (b) All leasing activities in conjunction to this MLA shall be treated as a "purchase sale" in regards to the requirements of the Lessor to report the sale and make payment of the DIR administrative fee as defined within Section 5 of the DIR Contract (as that term is defined in the Contract).
- (c) Upon agreement by Lessor and Lessee on pricing, availability and the like, Lessee may issue a purchase order in the amount indicated on the Schedule to Lessor for the Equipment and reference said Contract number DIR-TSO-3043 on the purchase order. Any pre-printed terms and conditions on the purchase order submitted by the Lessee shall not be effective with respect to the lease of Equipment hereunder. Rather, the terms and conditions of this MLA and applicable Schedule terms and conditions shall control in all respects.
- (d) Nothing herein shall require the Lessor to use this MLA exclusively with Lessees. Further, this MLA shall not constitute a requirements Agreement and Lessor shall not be obligated to enter into any Schedule for the lease of Equipment with any Lessee.

## **5. Rent Payments.**

During the Schedule Term and any renewal terms, Lessee agrees to pay Lessor Rent Payments. Rent Payments shall be the amount equal to the Rent Payment amount specified in the Schedule multiplied by the amount of the total number of Rent Payments specified therein. Lessee shall pay Rent Payments in the amount and on the due dates specified by Lessor until all Rent Payments and all other amounts due under the Schedule have been paid in full. If the Schedule Commencement Date is other than the first day of a month, Lessee shall make an initial payment on the Schedule Commencement Date in an amount equal to one-thirtieth of the Rent Payment specified in the Schedule for each day from the Schedule Commencement Date (including the Schedule Commencement Date) through the last day of such month (including that day). For example, if a scheduled payment amount is \$3,000 and the Scheduled Commencement date is the 15<sup>th</sup> of the month, a payment of \$1,500 will be made.

Any amounts received by Lessor from the Lessee in excess of Rent Payments and any other sums required to be paid by the Lessee shall be applied to the next scheduled Rent Payment due under the applicable Schedule, or if prohibited by law, the Lessor shall return the excess funds directly to Lessee. All Rent Payments shall be paid to the Lessor at the address stated on the Schedule or any other such place as the Lessor or its assigns may hereafter direct to the Lessee. Lessee shall abide by Appendix A, Section 8J of the Contract in making payments to the Lessor. Any sum received by the Lessor later than allowed by applicable Oklahoma law will bear interest from such due date at the rate of one-percent (1%) per month (or the maximum rate allowable by law, if less) until paid. To the extent allowed by applicable law, late charges, attorney's fees and other costs or expenses necessary to recover Rent Payments and any other amounts owed by Lessee hereunder are considered an integral part of this MLA.

Each Schedule is a net lease and except as specifically provided herein, Lessee shall be responsible for all costs and expenses arising in connection with the Schedule or Equipment. Lessee acknowledges and agrees, except as specifically provided for in Section 7 of this MLA, that its obligation to pay Rent and other sums payable hereunder, and the rights of Lessor and

Lessor's assignees, shall be absolute and unconditional in all events, and shall not be abated, reduced or subject to offset or diminished as a result of any event, including without limitation damage, destruction, defect, malfunction, loss of use, or obsolescence of the Equipment, or any other event, defense, counterclaim or recoupment due or alleged to be due by reason of any past, present or future claims Lessee may have against Lessor, Lessor's assigns, the manufacturer, vendor, or maintainer of the Equipment, or any person for any reason whatsoever.

"Price" shall mean the actual purchase price of the Equipment. Rent Payments shall be adjusted proportionately downward if the actual price of the Equipment is less than the estimate (original proposal), and the Lessee herein authorizes Lessor to adjust the Rent Payments downward in the event of the decrease in the actual Equipment price. However, in the event that the Equipment price is more than the estimate (original proposal), the Lessor may not adjust the Rent Payment without prior written approval of the Lessee.

#### **6. Liens and Taxes.**

Lessee shall keep the Equipment free and clear of all levies, liens and encumbrances, except those in favor of Lessor or its assigns, and shall give Lessor immediate notice of any attachment or other judicial process affecting any item of Equipment. Unless Lessee first provides proof of exemption therefrom, Lessee shall promptly reimburse Lessor, upon receipt of an accurate invoice, as an additional sum payable under this MLA, or shall pay directly if so requested by Lessor, all license and registration fees, sales, use, personal property taxes and all other taxes and charges imposed by any federal, state, or local governmental or taxing authority, from which the Lessee is not exempt, whether assessed against Lessee or Lessor, relating to the purchase, ownership, leasing, or use of the Equipment or the Rent Payments, excluding all taxes computed upon the net income of Lessor. Any tax statement received by the Lessor, for taxes payable by the Lessee, shall be promptly forwarded by the Lessor to the Lessee for payment.

#### **7. Appropriation of Funds.**

The following paragraph applies only to Lessees designated as state agencies or other governmental entities authorized by Oklahoma law to utilize contracts awarded by the State of Oklahoma.

Lessee intends to continue each Schedule to which it is a party for the Schedule Term and to pay the Rent and other amounts due thereunder. Lessee reasonably believes that legally available funds in an amount sufficient to pay all Rent during the Schedule Term can be obtained. Lessee further intends to act in good faith to do those things reasonably and lawfully within its power to obtain and maintain funds from which the Rent may be paid. Notwithstanding the foregoing, in the event sufficient funds are not appropriated or received from an intended third party funding source to continue the Schedule Term for any Fiscal Period (as set forth on the Schedule) of Lessee beyond the Fiscal Period first in effect at the Commencement of the Schedule Term, Lessee may terminate the Schedule with regard to not less than all of the Equipment on the Schedule so affected. Lessee shall provide Lessor written notice within a reasonable time after which the Lessee has knowledge of such insufficiency and confirm the Schedule will be so terminated prior to the end of its current Fiscal Period. All obligations of Lessee to pay Rent due

after the end of the Fiscal Period for which such termination applies will cease, all interests of Lessee in the Equipment will terminate and Lessee shall surrender the Equipment in accordance with Section 13 of this MLA. Notwithstanding the foregoing, Lessee agrees, without creating a pledge, lien or encumbrance upon funds available to Lessee in other than its current Fiscal Period, that it will use reasonable efforts to obtain appropriation of funds to avoid termination of the Schedule by taking reasonable and appropriate action including the inclusion in Lessee's budget request for each Fiscal Period during the Schedule Term hereof a request for adequate funds to meet its obligations and to continue the Schedule in force. Lessee represents and warrants it has adequate funds to meet its obligations during the first Fiscal Period of the Schedule Term. Lessor and Lessee understand and intend that the obligation of Lessee to pay Rent hereunder shall constitute a current expense of Lessee and shall not in any way be construed to be a debt of Lessee in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by Lessee, nor shall anything contained herein constitute a pledge of the general revenues, funds or monies of Lessee beyond the Fiscal Period for which sufficient funds have been appropriated to pay Rent hereunder.

#### **8. Selection of Equipment.**

The Equipment is the size, design, capacity and manufacture selected by Lessee in its sole judgment and not in reliance on the advice or representations of Lessor. No representation by the manufacturer or a vendor shall in any way affect Lessee's duty to pay Rent and perform its other obligations hereunder. Each Schedule is intended to be a "finance lease" as defined in Article 2A of the Uniform Commercial Code. Lessor has acquired or will acquire the Equipment in connection with this MLA. Lessor shall not be liable for damages for any reason, for any act or omission of the supplying manufacturer. Lessor agrees, to the extent they are assignable, to assign the Lessee, without recourse to Lessor, any warranties provided to Lessor with respect to the Equipment during the Term of the applicable Schedule. Lessee acknowledges that neither its dissatisfaction with any unit of Equipment, nor the failure of any of the Equipment to remain in useful condition for the Schedule Term, nor the loss of possession or the right of possession of the Equipment or any part thereof by the Lessee, shall relieve Lessee from the obligations under this MLA or Schedule Term. Lessee shall have no right, title or interest in or to the Equipment except the right to use the same upon the terms and conditions herein contained. The Equipment shall remain the sole and exclusive personal property of the Lessor and not be deemed a fixture whether or not it becomes attached to any real property of the Lessee. Any labels supplied by Lessor to Lessee, describing the ownership of the Equipment, shall be affixed by Lessee upon a prominent place on each item of Equipment.

#### **9. Inspection and Acceptance.**

Promptly upon delivery of the Equipment, Lessee will inspect and test the Equipment, and not later than ten (10) business days following the Commencement Date, Lessee will execute and deliver a Non-Acceptance Certificate with written notification of any defects in the Equipment. If Lessee has not given notice within such time period, the Equipment shall be conclusively deemed accepted by the Lessee as of the eleventh (11<sup>th</sup>) business day after the delivery date. Lessor, its assigns or their agents, shall be permitted free access at reasonable times authorized by the Lessee, the right to inspect the Equipment.

**10. Installation and Delivery; Use of Equipment; Repair and Maintenance.**

- (a) Except as otherwise provided in a Schedule, all transportation, delivery, and installation costs associated with the Equipment shall be borne by the Lessee. Lessor is not and shall not be liable for damages if for any reason the manufacturer of the Equipment delays the delivery or fails to fulfill the order by Lessee's desired timeframe. Any delay in delivery by the manufacturer shall not affect the validity of any Schedule. Lessee shall provide a place of installation for the Equipment, which conforms to the requirements of the manufacturer and Lessor.
- (b) Subject to the terms hereof, Lessee shall be entitled to use the Equipment in compliance with all laws, rules, and regulations of the jurisdiction wherein the Equipment is located and will pay all cost, claims, damages, fees and charges arising out of its possession, use or maintenance. Lessee agrees to solely use the Equipment in the conduct of Lessee's business. Lessee agrees, at its expense, to obtain all applicable permits and licenses necessary for the operation of the Equipment, and keep the Equipment in good working order, repair, appearance and condition (reasonable wear and tear is acceptable). Lessee shall not use or permit the use of the Equipment for any purpose, which according to the specification of the manufacturer, the Equipment is not designed or reasonably suited. Lessee shall use the Equipment in a careful and proper manner and shall comply with all of the manufacturer's instructions, governmental rules, regulations, requirements, and laws, and all insurance requirements which have been made known to Lessee by Lessor, if any, with regard to the use, operation or maintenance of the Equipment.
- (c) Lessee, at its expense, shall take good and proper care of the Equipment and make all repairs and replacements necessary to maintain and preserve the Equipment and keep it in good order and condition. Unless Lessor shall otherwise consent in writing, Lessee shall, at its own expense, enter into and maintain in force a maintenance agreement covering each unit of Equipment. Lessee shall furnish Lessor with a copy of such agreement, upon request. Lessee shall pay all costs to install and dismantle the Equipment. Lessee shall not make any alterations, additions, or improvements, or add attachments to the Equipment without the prior written consent of Lessor, except for additions or attachments to the Equipment purchased by Lessee from the original supplier of the Equipment or any other person approved by Lessor. Subject to the provisions of Section 13B of this MLA, Lessee agrees to restore the Equipment to Return Condition prior to its return to the Lessor.

**11. Relocation of Equipment.**

Lessee shall at all times keep the Equipment within its exclusive possession and control. Upon Lessor's prior written consent, which shall not be unreasonably withheld, Lessee may move the Equipment to another location of Lessee within the continental United States, provided (i) Lessee is not in default on any Schedule, (ii) Lessee executes and causes to be filed at its expense such instruments as are necessary to preserve and protect the interests of Lessor and its assigns in the Equipment, (iii) Lessee pays all costs of, and provides adequate insurance during such movement, and (iv) Lessee pays all costs otherwise associated with such relocation. Notwithstanding the foregoing, Lessee may move the Equipment to another location within Oklahoma without

notification to, or the consent of, Lessor; provided, however, that not later than December 31 of each calendar year, Lessee shall provide Lessor a written report detailing the total amount of Equipment at each location of Lessee as of that date, and the complete address for each location. Lessor shall make all filings and returns for property taxes due with respect to the Equipment, and Lessee agrees that it shall not make or file any property tax returns, including information returns, with respect to the Equipment.

## **12. Ownership.**

The Equipment shall at all times be and remain the sole and exclusive property of Lessor, subject to the parties rights under any applicable software license agreement. Lessee shall have no right, title or interest in the Equipment except a leasehold interest as provided for herein. Lessee agrees that the Equipment shall be and remain personal property and shall not be so affixed to realty as to become a fixture or otherwise to lose its identity as the separate property of the Lessor. Upon request, Lessee will enter into any and all agreements necessary to ensure that the Equipment remain the personal property of Lessor.

## **13. Purchase and Renewal Options; Location and Surrender of Equipment.**

(a) Not less than ninety (90) days prior to the expiration of the initial Schedule Term Lessor shall notify Lessee of options for continued use of Equipment. Lessee shall have the option to: (i) renew the Schedule as to all but not less than all of the Equipment, or (ii) purchase all but not less than all of the Equipment for cash or by the Lessor's acceptance of a purchase order from Lessee upon the last business day on or prior to the expiration of the Schedule Term thereof for a price equal to the amount set forth in the Schedule. If the Fair Market Value (FMV) Purchase Option was selected on the Schedule, the FMV shall be determined on the basis of and shall be equal in amount to, the value which would be obtained in an arms-length transaction between an informed and willing buyer-user (other than a used equipment dealer), who would be retaining the Equipment as part of its current operations, in continuing and consistent use, and an informed and willing seller under no compulsion to sell, and in such determination, costs of removal from the location of current use shall not be a deduction from such value. If Lessee desires to exercise either option, it shall give Lessor irrevocable written notice of its intention to exercise such option at least sixty (60) days (and not more than 180 days) before the expiration of such Schedule Term. In the event that Lessee exercises the purchase option described herein, upon payment by Lessee to Lessor of the purchase price for the Equipment, together with all Rent Payments and any other amounts owing to Lessor hereunder, Lessor shall transfer to Lessee with warranty of title, but without any other representation or warranty of any kind, express or implied, title to such Equipment. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, IF LESSEE FAILS TO NOTIFY LESSOR OF ITS INTENT WITH RESPECT TO THE EXERCISE OF THE OPTIONS DESCRIBED IN THIS SECTION 13 WITHIN THE TIME FRAMES CONTEMPLATED HEREIN, THE INITIAL SCHEDULE TERM SHALL BE TERMINATED ON THE DATE AS STATED IN THE SCHEDULE.

(b) Subject to Section 11 herein, the Equipment shall be delivered to and thereafter kept at the location specified in the Schedule and shall not be removed therefrom without Lessor's prior

written consent. Upon the expiration, early termination as provided herein, or upon final termination of the Schedule, upon at least ninety (90) days prior written notice to Lessor, Lessee at its cost and expense, shall immediately disconnect, properly package for transportation and return all (not part) of the Equipment (including, without limitation, all service records and user manuals), freight prepaid, to Lessor in good repair, working order, with unblemished physical appearance and with no defects which affect the operation or performance of the Equipment ("Return Condition"), reasonable wear and tear excepted. Lessee shall, at Lessor's request, affix to the Equipment, tags, decals or plates furnished by Lessor indicating Lessor's ownership and Lessee shall not permit their removal or concealment. Lessee shall return the Equipment to Lessor at a location specified by Lessor, provided, however, such location shall be within the United States no farther than 500 miles from the original Lessee delivery location, unless otherwise agreed to on the applicable Schedule. If the Equipment is not in Return Condition, Lessee shall remain liable for all reasonable costs required to restore the Equipment to Return Condition. Lessee shall arrange and pay for the de-installation and packing of the Equipment and the de-installation shall be performed by manufacturer-certified technicians, and the Lessor shall have the right to supervise and direct the preparation of the Equipment for return. IF, UPON TERMINATION OR EXPIRATION OF THE SCHEDULE FOR ANY REASON, LESSEE FAILS OR REFUSES FORTHWITH TO RETURN AND DELIVER THE EQUIPMENT TO LESSOR, LESSEE SHALL REMAIN LIABLE FOR ANY RENT PAYMENTS ACCRUED AND UNPAID WITH RESPECT TO ALL OF THE EQUIPMENT ON THE SCHEDULE AND SHALL PAY RENT UP TO THE DATE THAT THE EQUIPMENT IS RETURNED TO THE ADDRESS SPECIFIED BY LESSOR. Notwithstanding the foregoing, Lessor shall have the right, with due process of law, to enter Lessee's premises or any other premises where the Equipment may be found and to take possession of and to remove the Equipment, at Lessee's sole cost and expense. Without waiving the doctrines of sovereign immunity and immunity from suit and to the extent authorized by the constitution and laws of the State of Texas, Lessee's obligation to return Equipment may, at Lessor's option, be specifically enforced by Lessor.

**14. Quiet Enjoyment.**

During the Schedule Term, Lessor shall not interfere with Lessee's quiet enjoyment and use of the Equipment provided that an Event of Default (as hereinafter defined in Section 23 of the MLA) has not occurred and is remaining uncured after any applicable cure period.

**15. Warranties.**

Lessor and Lessee acknowledge that manufacturer Equipment warranties, if any, inure to the benefit of the Lessee. Lessee agrees to pursue any warranty claim directly against such manufacturer of the Equipment and shall not pursue any such claim against Lessor. Except as otherwise provided in Section 7, Lessee shall continue to pay Lessor all amounts payable under any Schedule under any and all circumstances.

**16. No Warranties.**

LESSEE ACKNOWLEDGES THAT LESSOR IS NOT THE MANUFACTURER OR LICENSOR OF THE EQUIPMENT. LESSEE AGREES THAT LESSOR HAS NOT MADE AND MAKES NO REPRESENTATIONS OR WARRANTIES OF WHATSOEVER NATURE,

DIRECTLY OR INDIRECTLY, EXPRESS OR IMPLIED, AS TO THE SUITABILITY, DURABILITY, FITNESS FOR USE, MERCHANTABILITY, CONDITION, OR QUALITY OF THE EQUIPMENT OR ANY UNIT THEREOF. LESSEE SPECIFICALLY WAIVES ALL RIGHT TO MAKE CLAIM AGAINST LESSOR FOR BREACH OF ANY EQUIPMENT WARRANTY OF ANY KIND WHATSOEVER; AND WITH RESPECT TO LESSOR, LESSEE LEASES EQUIPMENT "AS IS". LESSOR SHALL NOT BE LIABLE TO LESSEE FOR ANY LOSS, DAMAGE, OR EXPENSE OF ANY KIND OR NATURE CAUSED DIRECTLY OR INDIRECTLY BY ANY EQUIPMENT LEASED HEREUNDER, OR BY THE USE OR MAINTENANCE THEREOF, OR BY THE REPAIRS, SERVICE OR ADJUSTMENT THERETO OR ANY DELAY OR FAILURE TO PROVIDE ANY THEREOF, OR BY ANY INTERRUPTION OF SERVICE OR LOSS OF USE THEREOF, OR FOR ANY LOSS OF BUSINESS OR DAMAGE WHATSOEVER AND HOWSOEVER CAUSED WITHOUT IN ANY WAY IMPLYING THAT ANY SUCH WARRANTY EXISTS AND WITHOUT INCREASING ITS LIABILITY HEREUNDER, TO ASSIGN TO LESSEE UPON LESSEE'S REQUEST THEREFOR ANY WARRANTY OF A MANUFACTURER OR LICENSOR OR SELLER RELATING TO THE EQUIPMENT THAT MAY HAVE BEEN GIVEN TO LESSOR.

**17. Indemnification.**

- (a) Without waiving the doctrines of sovereign immunity and immunity from suit, and to the extent permitted by the laws and Constitution of the State of Oklahoma, Lessee shall indemnify, protect, save and hold harmless Lessor, its agents, servants and successors from and against all losses, damages, injuries, claims, demands and expenses, including legal expenses and attorney's fees, of whatsoever nature, arising out of the use, misuse, condition, repair, storage, return or operation (including, but not limited to, latent and other defects, whether or not discoverable by it) of any unit of Equipment, regardless of where, how and by whom operated, and arising out of negligence (excluding the gross negligence or willful misconduct of Lessor). Without waiving the doctrines of sovereign immunity and immunity from suit, and to the extent permitted by the laws and Constitution of the State of Oklahoma, Lessee is liable for the expenses of the defense or the settlement of any suit or suits or other legal proceedings brought to enforce any such losses, damages, injuries, claims, demands, and expenses and shall pay all judgments entered in any such suit or suits or other legal proceedings. The indemnities and assumptions of liabilities and obligations herein provided for shall continue in full force and effect notwithstanding the termination of the MLA or a Schedule whether by expiration of time, by operation of law or otherwise. With respect to Lessor, Lessee is an independent contractor, and nothing contained herein authorizes Lessee or any other person to operate the Equipment so as to impose or incur any liability or obligation for or on behalf of Lessor.
- (b) Without waiving the doctrines of sovereign immunity and immunity from suit, and to the extent permitted by the laws and Constitution of the State of Oklahoma, Lessee and the State of Oklahoma individually and collectively assume all risks and liabilities with respect to any claim made by any third party that the lease arrangements herein are not authorized by law. Without waiving the doctrines of sovereign immunity and immunity from suit, and to the extent permitted by the laws and Constitution of the State of Oklahoma, Lessee agrees to indemnify, save and hold harmless Lessor from any and all such claims and all expenses

incurred in connection with such claims or to defend against such claims, including without limitation any judgments by a court of competent jurisdiction or settlement or compromise with such claimant.

- (c) Lessor is the owner of the Equipment and has title to the Equipment. If any other person attempts to claim ownership of the Equipment by asserting that claim against Lessee or through Lessee, Lessee agrees, at its expense, to protect and defend Lessor's title to the Equipment. Lessee further agrees that it will at all times keep the Equipment free from any legal process, encumbrance or lien whatsoever, and Lessee shall give Lessor immediate notice if any legal process, encumbrance or lien is asserted or made against the Equipment. Lessee's obligations herein do not apply to any claim of ownership asserted against or through Lessor.

#### **18. Risk of Loss.**

Subject to Section 19, Commencing upon acceptance of the Equipment and continuing throughout the Schedule Term, Lessee shall bear the entire risk of loss or damage in respect to any Equipment, whether partial or complete, from any cause whatsoever. In the event of loss, theft, destruction or damage of any kind to any item of Equipment, or if any Equipment is lost stolen, or taken by governmental action for a stated period extending beyond the Term of any Schedule (an "Event of Loss"), Lessee shall promptly notify Lessor. Lessee shall, at its option: (a) immediately place the affected Equipment in good condition and working order, (b) replace the affected Equipment with identical equipment of at least equal value, in good condition and repair, and transfer clear title thereto to Lessor, or (c) to the extent permitted by law, pay to Lessor, within thirty (30) days of the Event of Loss, an amount equal to the Stipulated Loss Value ("SLV" as hereafter defined) for such affected Equipment, plus any other unpaid amounts then due under the Schedule to the extent such amounts are not paid to Lessor as insurance proceeds. If an Event of Loss occurs as to part of the Equipment for which the SLV is paid, a prorated amount of each Rent Payment shall abate from the date the SLV payment is received by Lessor. The SLV shall be an amount equal to the sum of all future Rent Payments from the last Rent Payment date to the end of the Schedule Term with such Rent Payments discounted to present value at the like-term Treasury Bill rate for the remaining Schedule Term in effect on the date of such Event of Loss, or if such rate is not permitted by law, then at the lowest permitted rate.

In the event of a governmental taking of Equipment for an indefinite period or for a stated period, which does not extend beyond the Schedule Term, all obligations of the Lessee with respect to such Equipment (including payment of Rent) shall continue. So long as Lessee is not in default hereunder, Lessor shall pay to Lessee all sums received by Lessor from the government by reason of such taking.

#### **19. Insurance.**

Lessor shall insure the Equipment. The cost to insure the Equipment shall be included in the Rent. With respect to insurance of the Equipment, (i) Lessor shall be responsible for its liability and shall not look to Lessee for recovery of any kind and (ii) Lessee shall be responsible for its



liability as required under the Oklahoma Governmental Tort Claims Act and shall not look to Lessor for recovery of any kind.

**20. Representations and Warranties of Lessee.**

Lessee represents and warrants for the benefit of Lessor and its assigns, and Lessee will provide an opinion of counsel to the effect that, as of the time of execution of the MLA and each Schedule between Lessor and Lessee:

- (a) Lessee is either an Oklahoma state agency or an Oklahoma Affiliate. "Affiliate" means any governmental entity specified as a political subdivision of the state of Oklahoma pursuant to the Governmental Tort Claims Act including any associated institution, instrumentality, board, commission, committee department or other entity designated to act in behalf of the political subdivision; a state county or local governmental entity in its state of origin; and entities authorized to utilize contracts awarded by the state of Oklahoma via a multistate or multi-governmental contract. Lessee has made an independent legal and management determination to enter into this transaction;
- (b) This MLA and each Schedule executed in conjunction with this MLA by Lessee has been, or will be, as applicable, duly authorized, executed and delivered by Lessee and constitutes, or will constitute, as applicable, a valid, legal and binding agreement of Lessee, enforceable with respect to the obligations of Lessee herein or therein, as applicable, in accordance with its terms;
- (c) No approval, consent or withholding of objection is required from any federal or other governmental authority or instrumentality with respect to the entering into or performance by Lessee of any Schedule between Lessor and Lessee;
- (d) The entering into and performance of any Schedule between Lessor and Lessee will not violate any judgment, order, law or regulation applicable to Lessee or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon assets of the Lessee or on the Equipment leased under any Schedule between Lessor and Lessee pursuant to any instrument to which the Lessee is a party or by which it or its assets may be bound;
- (e) To the best of Lessee's knowledge and belief, there are no suits or proceedings pending or threatened against or affecting Lessee, which if determined adversely to Lessee will have a material adverse effect on the ability of Lessee to fulfill its obligations under the MLA or any Schedule, as applicable, between Lessor and Lessee;
- (f) The use of the Equipment is essential to Lessee's proper, efficient and economic operation, and Lessee will sign and provide to Lessor upon execution of each Schedule between Lessor and Lessee hereto written certification to that effect; and
- (g) Lessee represents and warrants that (i) it has, or will have, as applicable, authority to enter into any Schedule under this MLA, (ii) the persons executing a Schedule have been duly

authorized to execute the Schedule on Lessee's behalf, (iii) all information supplied to Lessor is true and correct, including all credit and financial information and (iv) subject to Section 7, it is able to meet all its financial obligations, including the Rent Payments hereunder.

**21. Representations and Warranties of Lessor.**

Lessor represents and warrants for the benefit of Lessee and its permitted assigns, and Lessor will provide an opinion of counsel to the effect that, as of the time of execution of the MLA and each Schedule between Lessor and Lessee:

- (a) Lessor is an entity authorized and validly existing under the laws of its state of organization, is and shall remain authorized to do business in Oklahoma, and is not in default as to taxes owed to the State of Oklahoma and any of its political subdivisions;
- (b) The MLA and each Schedule executed in conjunction to this MLA has been, or will be, as applicable, duly authorized, executed and delivered by Lessor and constitutes, or will constitute, as applicable, a valid, legal and binding agreement of Lessor, enforceable with respect to the obligations of Lessor herein or therein, as applicable, in accordance with its terms;
- (c) No approval, consent or withholding of objection is required from any federal or other governmental authority or instrumentality with respect to the entering into or performance by Lessor of this MLA or any Schedule;
- (d) The entering into and performance of the MLA or any Schedule will not violate any judgment, order, law or regulation applicable to Lessor or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon the assets of the Lessor, including Equipment leased under the MLA and Schedules thereto, pursuant to any instrument to which the Lessor is a party or by which it or its assets may be bound;
- (e) To the best of Lessor's knowledge and belief, there are no suits or proceedings pending or threatened against or affecting Lessor, which if determined adversely to Lessor will have a material adverse effect on the ability of Lessor to fulfill its obligations under the MLA or any Schedule; and
- (f) Lessor represents and warrants that the person executing the MLA or any Schedule has been duly authorized to execute the MLA or Schedule, as applicable, on Lessor's behalf.

**22. Default.**

Lessee shall be in default under a Schedule upon the occurrence of any one or more of the following events (each an "Event of Default"): (a) nonpayment or incomplete payment by Lessee of Rent or any other sum payable; (b) nonpayment or incomplete payment by Lessee of Rent or any other sum payable on its due date; (c) failure by Lessee to perform or observe any other term, covenant or condition of this MLA, any Schedule, or any applicable software license agreement,

which is not cured within ten (10) days after notice thereof from Lessor; (d) insolvency by Lessee; (e) Lessee's filing of any proceedings commencing bankruptcy or the filing of any involuntary petition against Lessee or the appointment of any receiver not dismissed within sixty (60) days from the date of said filing or appointment; (f) subjection of a substantial part of Lessee's property or any part of the Equipment to any levy, seizure, assignment or sale for or by any creditor or governmental agency; or (g) any material representation or warranty made by Lessee in this MLA, any Schedule or in any document furnished by Lessee to Lessor in connection therewith or with the acquisition or use of the Equipment being or becoming untrue in any material respect.

### **23. Remedies.**

- (a) Upon the occurrence of an "Event of Default" and as long as such Event of Default is continuing, Lessor may, in its sole discretion, do any one or more of the following: (i) After giving fifteen (15) days prior written notice to Lessee of default, during which time Lessee shall have the opportunity to cure such default, terminate any or all Schedules executed by Lessor and the defaulting Lessee; (ii) without Lessee waiving the doctrines of sovereign immunity and immunity from suit, and to the extent allowed by the laws and Constitution of the State of Oklahoma, Lessor may proceed by appropriate court action to enforce the performance of the terms of the Schedule under which Lessor claims default and/or recover damages; (iii) whether or not the Schedule is terminated, upon notice to Lessee and with due process of law, take possession of the Equipment wherever located, and for such purposes Lessee, to the extent authorized by Oklahoma law, hereby authorizes Lessor, its assigns or the agents of either to enter upon the premises where such Equipment is located or cause Lessee, and Lessee hereby agrees, to return such Equipment to Lessor in accordance with the requirements of Section 13 of the MLA; (iv) by notice to Lessee, and to the extent permitted by law, declare immediately due and payable and recover from Lessee, as liquidated damages and as a remedy, the sum of (a) the present value of the Rent owed from the earlier of the date of payment by Lessee or the date Lessor obtains a judgment against Lessee until the end of the Schedule Term plus, if the Equipment is not returned to or repossessed by Lessor, the present value of the estimated in-place fair market value of the Equipment at the end of the Schedule Term as reasonably determined by Lessor, each discounted at a rate equal to the rate used by Lessor for business opportunity analysis; (b) all Rent and other amounts due and payable on or before the earlier of the date of payment by Lessee or the date Lessor obtains a judgment against Lessee; and (c) without Lessee and the State of Oklahoma waiving the doctrines of sovereign immunity and immunity from suit, and to the extent allowed by the laws and Constitution of the State of Oklahoma, costs, fees (including all attorneys' fees and court costs) and expenses associated with collecting said sums; and (d) interest on (a) and (b) from the date of default at 1 1/2% per month or portion thereof (or the highest rate allowable by law, if less) and, on (c) from the date Lessor incurs such fees, costs or expenses.
- (b) Upon return or repossession, with due process of law, of the Equipment, Lessor may, if it so decides in its sole discretion, upon notice to Lessee, use reasonable efforts to sell, re-lease or otherwise dispose of such Equipment, in such manner and upon such terms as Lessor may determine in its sole discretion, so long as such manner and terms are commercially reasonable. Upon disposition of the Equipment, Lessor shall credit the Net Proceeds (as defined below) to

the unpaid Rent and reasonable damages incurred by Lessee. Proceeds upon sale of the Equipment shall be the sale price paid to Lessor less the Stipulated Loss Value in effect as of the date of default. Without Lessee waiving the doctrines of sovereign immunity and immunity from suit, and to the extent allowed by the laws and Constitution of the State of Oklahoma, "Net Proceeds" shall be the proceeds of sale or re-lease as determined above, less all costs and expenses incurred by Lessor in the recovery, storage and repair of the Equipment, in the remarketing or disposition thereof, or otherwise as a result of Lessee's default, including any court costs and attorney's fees and interest on the foregoing at eighteen percent (18%) per annum or the highest rate allowable by law, if less, calculated from the dates such costs and expenses were incurred until received by Lessor. Lessee shall remain liable for the amount by which all sums, including liquidated damages, due from Lessee exceeds the Net Proceeds. Net Proceeds in excess thereof are the property of and shall be paid to Lessee.

- (c) No termination, repossession or other act by Lessor in the exercise of its rights and remedies upon an Event or Default shall relieve Lessee from any of its obligations hereunder. No remedy referred to in this Section 23 is intended to be exclusive, but each shall be cumulative and in addition to any other remedy referred to above or otherwise available to Lessor at law or in equity.
- (d) Neither the State of Oklahoma nor non-defaulting Lessees shall be deemed in default under the MLA or Schedules because of the default of a particular Lessee. Lessor's remedies under this Section 23 shall not extend to the State of Oklahoma or those non-defaulting Lessees.

#### **24. Notices and Waivers.**

All notices relating to this MLA shall be delivered to the Lessor as specified within Section 6 of the Contract, or to another representative and address subsequently specified in writing by the appropriate parties hereto. All notices relating to a Schedule shall be delivered in person to an officer of the Lessor or Lessee or shall be mailed certified or registered to Lessor or Lessee at its respective address shown on the Schedule or to another address subsequently specified in writing by the appropriate parties thereof. Lessee and Lessor intend and agree that a photocopy or facsimile of this MLA or a Schedule and all related documents, including but not limited to the Acceptance Certificate, with their signatures thereon shall be treated as originals, and shall be deemed to be as binding, valid, genuine, and authentic as an original signature document for all purposes. This MLA and each corresponding Schedule agreed to in connection herewith are a "Finance Lease" as defined in Article 2A of the Uniform Commercial Code ("UCC"). A waiver of a specific Event of Default shall not be a waiver of any other or subsequent Event of Default.

No waiver of any provision of this MLA or a provision of a Schedule shall be a waiver of any other provision or matter, and all such waivers shall be in writing and executed by an officer of the Lessor or authorized representative of Lessee, with authorization of Lessee representative provided to and found acceptable by Lessor, as applicable; provided, however, individuals authorized to represent Lessee pursuant to an incumbency certificate delivered to Lessor are deemed acceptable. No failure to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof.

**25. Assignment by Lessor; Assignment or Sublease by Lessee.**

- (a) Lessor may (i) assign all or a portion of Lessor's right, title and interest in this MLA and/or any Schedule; (ii) grant a security interest in the right, title and interest of Lessor in the MLA, any Schedule and/or any Equipment; and/or (iii) sell or transfer its title and interest as owner of the Equipment and/or as Lessor under any Schedule; and the State of Oklahoma and each Lessee leasing Equipment under the MLA understands and agrees that Lessor's assigns may each do the same (hereunder collectively "Assignment"). All such Assignments shall be subject to each Lessee's rights under the Schedule(s) executed between it and Lessor and to the State of Oklahoma's rights under the MLA. Each Lessee leasing Equipment through Schedules under this MLA and the State of Oklahoma hereby consent to such Assignments and agree to execute and deliver promptly such acknowledgements and other instruments reasonably requested in connection therewith. Each Lessee leasing Equipment through Schedules under this MLA and the State of Oklahoma acknowledge that the assigns do not assume Lessor's obligations hereunder and agree to make all payments owed to the assigns without abatement and not to assert against the assigns any claim, defense, setoff or counterclaim which the State of Oklahoma or the Lessee(s) may possess against the Lessor or any other party that is not the Lessor's assignee. Lessor shall remain liable for performance under the MLA and any Schedule(s) executed hereunder to the extent Lessor's assigns do not perform Lessor's obligations under the MLA and Schedule(s) executed hereunder. Upon any such Assignment, all references to Lessor, except such references in provisions that differentiate between Lessor and its assigns, shall also include all such assigns, whether specific reference thereto is otherwise made herein.
- (b) **LESSEE WILL NOT SELL, ASSIGN, SUBLET, PLEDGE OR OTHERWISE ENCUMBER, OR PERMIT A LIEN TO EXIST ON OR AGAINST ANY INTEREST IN THIS LEASE, OR THE EQUIPMENT, OR REMOVE THE EQUIPMENT FROM ITS LOCATION REFERRED TO ON THE SCHEDULE, WITHOUT LESSOR'S PRIOR WRITTEN CONSENT EXCEPT AS PROVIDED IN SECTION 11 OF THIS MLA. LESSOR MAY ASSIGN ITS INTEREST IN THIS LEASE AND SELL OR GRANT A SECURITY INTEREST IN ALL OR ANY PART OF THE EQUIPMENT WITHOUT LESSEE'S CONSENT. LESSEES THAT ARE STATE AGENCIES, WITHOUT WAIVING THE DOCTRINE OF SOVEREIGN IMMUNITY AND IMMUNITY FROM SUIT, AND ONLY AS MAY BE AUTHORIZED BY THE CONSTITUTION AND LAWS OF THE STATE OF OKLAHOMA, AGREE THAT IN ANY ACTION BROUGHT BY AN ASSIGNEE AGAINST LESSEE TO ENFORCE LESSOR'S RIGHTS HEREUNDER, LESSEE WILL NOT ASSERT AGAINST SUCH ASSIGNEE AND EXPRESSLY WAIVES AS AGAINST ANY ASSIGNEE, ANY BREACH OR DEFAULT ON THE PART OF LESSOR HEREUNDER OR ANY OTHER DEFENSE, CLAIM OR SET-OFF WHICH LESSEE MAY HAVE AGAINST LESSOR EITHER HEREUNDER OR OTHERWISE. NO SUCH ASSIGNEE SHALL BE OBLIGATED TO PERFORM ANY OBLIGATION, TERM OR CONDITION REQUIRED TO BE PERFORMED BY LESSOR HEREUNDER.** Without the prior written consent of Lessor, the State of Oklahoma shall not assign, sublease, transfer, pledge or hypothecate the MLA; provided, however, that no such prior written consent from Lessor is

necessary in the event of a legislative mandate to transfer the contract to another state agency.

**26. Delivery of Related Documents.**

For each Schedule, Lessee will provide the following documents and information satisfactory to Lessor: (a) Opinion of Counsel; (b) Financial Statements; (c) Incumbency Certificate; and (d) Other mutually agreed documents as reasonably required by Lessor.

**27. Lessee's Waivers.**

To the extent permitted by applicable law and to the extent not otherwise provided in this MLA, Lessee hereby waives, with respect to Lessor, the following rights and remedies conferred upon Lessee by Article 2A of the UCC: to (i) cancel any Schedule under the MLA; (ii) repudiate any Schedule; (iii) reject the Equipment; (iv) revoke acceptance of the Equipment; (v) recover damages from Lessor for any breach of warranty by the manufacturer; (vi) claim a security interest in the Equipment in Lessee's possession or control for any reason; (vii) deduct all or any part of any claimed damages resulting from Lessor's default, if any, under any Schedule; (viii) accept partial delivery of the Equipment; (ix) "cover" by making any purchase or lease of or contract to purchase or lease equipment in substitution for the Equipment due from Lessor; (x) recover any special, punitive, incidental or consequential damages, for any reason whatsoever. Lessee agrees that any delay or failure to enforce Lessor's rights under this MLA or a Schedule does not prevent Lessor from enforcing any rights at a later time. For the avoidance of doubt, this waiver of UCC rights does not include Lessee's right to terminate a lease subject to a non-appropriation of funds pursuant to Section 7 above.

**28. Security Interest and UCC Filings.**

To secure payments hereunder, Lessor reserves and Lessee hereby grants to Lessor a continuing security interest in the Equipment and any and all additions, replacements, substitutions, and repairs thereof. When all of the Lessee's obligations under this MLA and respective Schedules have been fully paid and satisfied, Lessor's security interest shall terminate. Nothing contained herein shall in any way diminish Lessor's right, title, or interest in or to the Equipment. Lessor and Lessee agree that a reproduction of this MLA and/or any associated Schedule may be filed as a financing statement and shall be sufficient as a financing statement under the UCC. Lessee hereby appoints Lessor, its agents, successors or assigns its true and lawful attorney-in-fact for the limited purpose of executing and filing on behalf of Lessee any and all UCC Financing Statements which in Lessor's sole discretion are necessary or proper to secure Lessor's interest in the Equipment in all applicable jurisdictions. Lessee shall execute or obtain and deliver to Lessor, upon Lessor's request, such instruments, financing statements and assurances, as Lessor deems necessary or advisable for the protection or perfection of this Lease and Lessor's rights hereunder and will pay all costs incident thereto.

**29. Miscellaneous.**

- (a) Applicable Law and Venue. The MLA and each Schedule SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF OKLAHOMA. In the event of a dispute between the parties, suit may be brought in Oklahoma County, Oklahoma or in the case of an Affiliate Lessee, in the federal or state courts where Lessee has its principal office or where the Equipment is located.
- (b) Counterpart. Only original counterpart No. 1 of each Schedule shall be deemed to be an "Original" for chattel paper purposes under the UCC. Any and all other counterparts shall be deemed to be a "Copy". NO SECURITY INTEREST IN THIS MLA, IN ANY SCHEDULE, OR IN ANY OF THE EQUIPMENT MAY BE CREATED, TRANSFERRED, ASSIGNED OR PERFECTED BY THE TRANSFER AND POSSESSION OF THIS MLA ALONE OR OF ANY "COPY" OF THE SCHEDULE, BUT RATHER SOLELY BY THE TRANSFER AND POSSESSION OF THE "ORIGINAL" COUNTERPART OF THE SCHEDULE INCORPORATING THIS MLA BY REFERENCE.
- (c) Either party shall be temporarily excused from performance to the extent delayed as a result of unforeseen causes beyond its reasonable control including fire or other casualty, act of God, strike or labor dispute, war or other violence, or any law, order or requirement of any governmental agency or authority ("Force Majeure Event"). In the event that a party's performance of its obligations is materially hindered as a result of a Force Majeure Event, such party shall promptly notify the other party of its best reasonable assessment of the nature and duration of the Force Majeure Event and steps it is taking, and plans take, to mitigate the effects of the Force Majeure Event. The party shall use commercially reasonable best efforts to continue performance to the extent possible during such event and resume full performance as soon as reasonably practicable.
- (d) Severability. In the event of any provision of this MLA or any Schedule shall be determined by a court of competent jurisdiction to be invalid or unenforceable, the parties hereto agree that such provision shall be ineffective without invalidating the remaining provisions thereof.
- (e) Entire Agreement. Lessor and Lessee acknowledge that there are no agreements or understanding, written or oral, between them with respect to the Equipment, other than as set forth in the Contract, this MLA and in each Schedule to which Lessee is a signatory party, and any other contract document executed in connection therewith. Lessor and Lessee further acknowledge that this MLA and each Schedule to which Lessee is a party contain the entire agreement between Lessor and Lessee and supersedes all previous discussions and terms and conditions of any purchase orders issued by Lessee. The State of Oklahoma and Lessor acknowledge that there are no agreements or understandings, written or oral, between them other than as set forth in this MLA and the Contract and any other contract document executed in connection therewith and that such documents contain the entire agreement between them. Neither this MLA nor any Schedule may be altered, modified, terminated, or discharged except by a writing signed by the party against whom enforcement of such action is sought.
- (f) Headers. The descriptive headings hereof do not constitute a part of any Schedule and no inferences shall be drawn therefrom.

(g) Language context. Whenever the context of this MLA requires, the masculine gender includes the feminine or neuter, and the singular number includes the plural, and whenever the word Lessor is used herein, it shall include all assignees of Lessor.

(h) Lessor Certifications. Lessor certifies that:

- (i) it has not given, offered to give, and does not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this MLA and/or any Schedules executed hereunder;
- (ii) to the best of its knowledge and belief, it is not currently delinquent in the payment of any franchise tax owed the State of Oklahoma and acknowledges this MLA may be terminated and payment withheld if this certification is inaccurate;
- (iii) neither it, nor anyone acting for it, has violated the antitrust laws of the United States or the State of Oklahoma, nor communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage;
- (iv) it has not received payment from the State of Oklahoma, Lessee or any of their employees for participating in the preparation of this MLA and the Schedule(s) hereunder;
- (v) to the best of its knowledge and belief, there are no suits or proceedings pending or threatened against or affecting it, which if determined adversely to it will have a material adverse effect on the ability to fulfill its obligations under the MLA;
- (vi) neither it nor its affiliates are suspended or debarred from doing business with the federal government as listed in the *Excluded Parties List System (EPLS)* maintained by the General Services Administration;
- (vii) neither it nor its affiliates, as of the effective date of the MLA, are listed in the prohibited vendors list authorized by Executive Order #13224, *"Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism"*, published by the United States Department of the Treasury, Office of Foreign Assets Control;
- (viii) to the extent applicable to the scope of this MLA, to the best of its knowledge and belief, it is in compliance with Subchapter Y, Chapter 361, Health and Safety Code related to the Computer Equipment Recycling Program and its rules, 30 TAC Chapter 328;



- (ix) it will comply with all applicable federal, state, and local laws, rules, regulations, ordinances and orders, as amended, including but not limited to being registered as a business entity licensed to do business in the State, have obtained a sales tax permit and be current on franchise tax payments to the State, as applicable;
- (x) Lessor represents and warrants that the provision of goods and services or other performance under the MLA will not constitute an actual or potential conflict of interest and certifies that it will not reasonably create the appearance of impropriety, and, if these facts change during the course of the MLA, Lessor certifies it shall disclose for itself and on behalf of subcontractors the actual or potential conflict of interest and any circumstances which create the appearance of impropriety;

During the term of the MLA, Lessor shall, for itself and on behalf of its permitted subcontractors, promptly disclose to the state of Oklahoma all changes that occur to the foregoing certifications, representations and warranties. Lessor covenants to fully cooperate in the development and execution of resulting documentation necessary to maintain an accurate record of the certifications, representations and warranties

- (i) Sovereign Immunity. Nothing herein shall be construed to waive the sovereign immunity of the State of Oklahoma.

### **30. Amendments.**

The terms and conditions of this MLA may be amended only by written instrument executed by the Lessor and the State of Oklahoma.

**APPENDIX H TO DIR CONTRACT NO. DIR-TSO-3043**  
**SERVICES AGREEMENT**

**THIS SERVICES AGREEMENT NO. \_\_\_\_\_** is made by and between Xerox Corporation ("**Xerox**"), a New York corporation with offices at 45 Glover Ave. Norwalk, CT 06856 and << Enter Customer's Legal Name >> ("**Customer**"), a << Enter State >> <<Enter type of organization>> with offices at << Enter Customer's Full Address >>.

**AGREEMENT STRUCTURE**

DIR Contract No. DIR-TSO-3043, as modified and adopted by the State of Oklahoma and Xerox, and this Services Agreement serve as an agreement to enable Xerox and Customer to contract with each other for a range of products and services to be provided to Customer. In the event of any conflict between the documents, DIR Contract No. DIR-TSO-3043, as adopted by the State of Oklahoma and Xerox will prevail. This Services Agreement is grouped into Modules. The "GEN" Module applies to all products and services provided hereunder, while the other Modules apply as appropriate to what Xerox is providing to Customer under the applicable Order.

**DEFINITIONS MODULE**

**DEF 1. – DEFINITIONS**

The following definitions (and those found elsewhere in this Services Agreement) apply unless otherwise specified in an Order.

- a. **Affiliate** means a legal entity that directly or indirectly controls, is controlled by, or is under common control with either party. An entity is considered to control another entity if it owns, directly or indirectly, more than 50% of the total voting securities or other such similar voting rights.
- b. **Services Agreement** means this Services Agreement. This Services Agreement may also be referred to in ordering and contracting documents as a "Services and Solutions Agreement" or "SSA."
- c. **Amortized Services** means certain services such as technical services and training, the Charges for which are amortized over the term of an Order.
- d. **Application Software** means Xerox-brand software that allows Equipment or Third Party Hardware to perform functions beyond those enabled by its Base Software.
- e. **Base Software** means software embedded, installed, or resident in Equipment that is necessary for operation of the Equipment in accordance with published specifications.
- f. **Cartridges** means copy/print cartridges and xerographic modules or fuser modules designated by Xerox as customer-replaceable units for the Equipment.

- g. **Charges** mean the fees payable by Customer for Services, Maintenance Services and/or Products as specified in this Services Agreement.
- h. **Confidential Information** means information identified as confidential and provided by the disclosing party to the receiving party.
- i. **Consumable Supplies** means black toner (excluding highlight color toner), black developer, copy Cartridges, and, if applicable, fuser agent required to make impressions. For full color Equipment, Consumable Supplies also includes color toner and developer. For Equipment identified as "Phaser," Consumable Supplies also may 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. Unless otherwise set forth in an Order, Consumable Supplies excludes paper and highlight color toner.
- j. **Customer Assets** means all hardware, equipment, fixtures, software, assets, networks, work space, facilities, services and other assets owned, leased, rented, licensed or controlled by Customer (including Existing Equipment and Existing Software) that Customer makes available to Xerox to enable Xerox to fulfill its obligations under an Order.
- k. **Customer Confidential Information** means Confidential Information belonging to Customer and includes, without limitation, Customer Content and Private Information.
- l. **Customer Content** means documents, materials or information that Customer provides in hard copy or electronic format to Xerox, containing information about Customer or its clients, in order for Xerox to provide Services, Maintenance Services, or Products.
- m. **Customer Facilities** means those facilities controlled by Customer where Xerox performs Services or provides Products.
- n. **Customer Intellectual Property** means all intellectual property and associated intellectual property rights including patent, trademark, service mark, copyright, trade dress, logo and trade secret rights which exist and belong to Customer as of the Effective Date or that may be created by Customer after the Effective Date, excluding Xerox Confidential Information.
- o. **Data** means data that the Xerox Tools and Xerox Client Tools automatically collect from all Equipment and Third Party Hardware that appears on Customer's network, or that are locally connected to another device on Customer's network, when such Tools are installed on Customer's network. Examples of Data include product registration, meter read, supply level, device configuration and settings, software version, and problem/fault code data.
- p. **Date of Installation** means: (a) for Equipment (or Third Party Hardware) installed by Xerox, the date Xerox determines the Equipment (or Third Party Hardware) to be operating satisfactorily as demonstrated by successful completion of diagnostic routines

and is available for Customer's use; and (b) for Equipment (or Third Party Hardware) designated as "Customer Installable," the Equipment (or Third Party Hardware) delivery date. For purposes of this provision, Customer will provide Xerox written notice of non-acceptance within ten business days of Equipment delivery, otherwise the Equipment will be deemed accepted on the delivery date.

- q. **Description of Services or DOS** means a document attached to an Order which references the applicable Services Contract number and specifies the Products and/or Services provided under such Order.
- r. **Diagnostic Software** means Xerox-proprietary software embedded in or loaded onto Equipment and used by Xerox to evaluate or maintain the Equipment.
- s. **DIR Contract** means the master contract, Oklahoma Contract for Products and Related Services, between the State of Oklahoma and Xerox (the "Oklahoma Contract"), which incorporates by reference, and modifies certain terms of, DIR Contract No. DIR-TSO-3043, entered into between Xerox and the Texas Department of Information Resources ("DIR"), including appendices, into which this Services Agreement is incorporated. References herein to "DIR Contract" and "DIR Contract No. DIR-TSO-3043" shall mean the Oklahoma Contract.
- t. **Documentation** means all manuals, brochures, specifications, information and software descriptions, and related materials customarily provided by Xerox to customers for use with certain Products or Services.
- u. **Effective Date** means the later of the date this Services Agreement is signed by Xerox and Customer.
- v. **Equipment** means Xerox-brand equipment.
- w. **Excluded Taxes** means (i) taxes on Xerox's income, capital, and employment, (ii) taxes for the privilege of doing business, and (iii) personal property tax on Equipment rented or leased to Customer under this Services Agreement.
- x. **Existing Equipment** means devices which are leased, rented or owned by the Customer outside of this Services Agreement, which are used to provide Services, and which remain subject to the terms and conditions of the agreements under which they were originally acquired.
- y. **Existing Software** means software licensed by the Customer outside of this Services Agreement and which is used to provide the Services and which remains subject to the terms and conditions of the agreements under which it was originally acquired.
- z. **Feature Releases** means new releases of Software that include new content or functionality.
- aa. **Force Majeure Event** as defined in accordance to Appendix A, Section 11C of DIR Contract No. DIR-TSO-3043.

- bb. Funds** means collectively Amortized Services and Third Party Funds.
- cc. Maintenance Releases or Updates** means new releases of Software that primarily incorporate coding compliance updates and error fixes and are designated as "Maintenance Releases" or "Updates."
- dd. Maintenance Services** means required maintenance of Equipment to keep the Equipment in good working order.
- ee. Module** means a specific set of terms and conditions contained in this Services Agreement that is identified as a "Module." The Modules under this Services Agreement are the DEF, GEN, SVC, EQP, EP, MS and SW Modules.
- ff. Monthly Minimum Charge or MMC** means the regular recurring Charge that is identified in an Order and which, along with any additional print/impression charges, covers the cost for the Services, Maintenance Services and/or Products. The MMC may also include lease buyout funds, Funds, monthly equipment component amounts, remaining Customer obligations from previous contracts, and amounts being financed or refinanced. One-time items are billed separately from the MMC.
- gg. Order** means a document that Xerox requires for processing of orders for Services, Maintenance Services and/or Products hereunder, which may specify the contracting parties and location(s) where the foregoing will be provided; Customer's requested shipment date; the Products that Customer will purchase, lease, rent or license; the Services and/or Maintenance Services that Xerox will provide; the applicable Charges and expenses; the term during which the Services, Maintenance Services and/or Products described therein shall be provided; the Xerox-provided contract number; and any applicable SLAs. An Order must reference the applicable Services Contract number, and may also be in the form of a Services and Solutions Order ("SSO"), a Xerox Order Services Agreement ("XOA") (which is used solely for an outright purchase by Customer under the EP module of this Services Agreement) or a Customer-issued PO. A Statement of Work may be part of an Order but cannot function as a stand-alone ordering document.
- hh. Output of Services** means electronic images created by scanning tangible documents containing Customer Content, all full or partial copies (tangible and intangible) of Customer Content, and all reports and other documentation, photographs, images, impressions, and other materials (tangible and intangible) created by Xerox and delivered to Customer under an Order, but shall not include Third Party Software, or Xerox Intellectual Property.
- ii. Privacy Laws** means laws relating to data privacy and data protection as applicable to Xerox's performance of the Services.
- jj. Private Information** means Protected Health Information ("PHI") as defined by the Health Insurance Portability and Accountability Act ("HIPAA"), Non-Public Personal Information ("NPI") as defined by the Gramm-Leach Bliley Act ("GLBA") and equivalent categories of protected health and financial information under applicable state Privacy Laws.

**kk. Products** means Software, Equipment, Third Party Products and/or Consumable Supplies supplied by Xerox and provided to Customer pursuant to an Order.

**ll. Purchase Order or PO** shall have the meaning set forth within the DIR Contract No. DIR-TSO-3043.

**mm. Purchased Equipment** means Equipment or Third Party Hardware that Xerox sells outright to Customer under the EP Module.

**nn. Remote Data** means data that is automatically collected by Xerox or transmitted to or from Xerox by Equipment or Third Party Products connected to Customer's network. Examples of Remote Data include product registration, meter read, supply level, equipment configuration and settings, software version, and problem/fault code data.

**oo. Remote Data Access** means electronic transmission of Remote Data to or from a secure offsite location.

**pp. Residuals** means general ideas, concepts, know-how, methods, processes, technologies, algorithms or techniques related to the Services, which are in non-tangible form and retained in the unaided memory of persons who have had access to Confidential Information.

**qq. Service Level Agreements or SLAs** means the levels of performance for the Services, if applicable, as set out in the applicable Order.

**rr. Services** means managed services (e.g. copy center and mailroom services), technical services, including, but not limited to, assessment, document management, and managed and centralized print services, as more fully described in the applicable Order. Xerox's standard back-office administrative and contract support functions performed by Xerox and/or its Affiliates, such as billing, contract management and order processing, are not Services, but are included in the pricing provided for the Services hereunder.

**ss. Services Contract** means the applicable terms and conditions of this Services Agreement, the first Order having a particular assigned Services Contract number, and each additional Order, if any, with the same Services Contract number.

**tt. Software** means Base Software and Application Software.

**uu. Statement of Work or SOW** shall have the meaning set forth in the DIR Contract No. DIR-TSO-3043.

**vv. Supplier Equipment** means devices which are supplied by Xerox to the Customer during the term of an Order. Supplier Equipment may be Equipment or Third Party Hardware.

**ww. Taxes** means any and all taxes of any kind or nature, however denominated, imposed or collected by any governmental entity, including but not limited to federal, state, provincial, or local net income, gross income, sales, use, transfer, registration, business and occupation, value added, excise, severance, stamp, premium, windfall profit, customs, duties, real property, personal property, capital stock, social security, unemployment, disability, payroll, license, employee or other withholding, or other tax, of any kind whatsoever, including any interest, penalties or additions to tax or additional amounts in respect of the foregoing. State of Oklahoma customers are exempt from taxes in accordance to Appendix A, Section 8E of DIR Contract No. DIR-TSO-3043.

**xx. Third Party Funds** means funds Xerox provides to Customer to acquire Third Party Hardware or to license Third Party Software and/or to retire debt on existing Third Party Hardware.

**yy. Third Party Hardware** means non-Xerox brand equipment.

**zz. Third Party Products** means, collectively, Third Party Hardware and Third Party Software.

**aaa. Third Party Software** means non-Xerox brand software.

**bbb. Transaction Taxes** means any and all Taxes that are required to be paid in respect of any transaction and resulting Charges under this Services Agreement and any transaction documents, including but not limited to sales, use, services, rental, excise, transactionally-based gross receipts, and privilege Taxes. State of Oklahoma customers are exempt from taxes in accordance to Appendix A, Section 8E of DIR Contract No. DIR-TSO-3043.

**ccc. XDM Customer Views** means a limited set of features such as printer error messages, basic printer status, troubleshoot (e.g., access printer web page, submit test page, reboot printer, retrieve audit logs) and upgrade printer (e.g., add upgrade file, delete upgrade file, run upgrade, delete upgrade task, restart upgrade task) that are available through the Xerox Tool known as Xerox Device Manager.

**ddd. Xerox Confidential Information** means Confidential Information belonging to Xerox and includes, without limitation, whether marked as such or not, any, Xerox Tools, Xerox Client Tools and Xerox Intellectual Property.

**eee. Xerox Client Tools** means certain proprietary software used to provide certain Services, and any modifications, enhancements, improvements thereto and derivative works thereof that are licensed to Customer in accordance with GEN 1.8(d).

**fff. Xerox Intellectual Property** means all intellectual property and associated intellectual property rights including patent, trademark, service mark, copyright, trade dress, logo and trade secret rights which exist and belong to Xerox as of the Effective Date or that may be created by Xerox after the Effective Date, including without limitation, Software, Data, Remote Data, Xerox Tools and Xerox Client Tools, and excluding Customer Confidential Information and Output of Services.

**ggg. Xerox Products** means Equipment, Software and Consumable Supplies acquired pursuant to this Services Agreement.

**hhh. Xerox Tools** means certain proprietary tools used by Xerox to provide certain Services, and any modifications, enhancements, improvements thereto and derivative works thereof.

## **GENERAL MODULE**

### **GEN 1. – GENERAL**

DIR Contract No. DIR-TSO-3043 and the terms and conditions in this General (GEN) Module apply to all Services, Maintenance Services, and Products acquired by Customer under this Services Agreement.

#### **GEN 1.1 – Services Agreement Structure**

- a. General Contract Structure.** The parties intend for this Services Agreement to serve as an agreement stating the terms and conditions governing services transactions entered into between Xerox and Customer under the DIR Contract No. DIR-TSO-3043. Xerox will provide, and Customer will procure, Services, Maintenance Services and/or Products in accordance with the terms and conditions stated in DIR Contract No. DIR-TSO-3043 (including its appendices), this Services Agreement, any Services Contract(s), and any applicable Orders.
- b. Orders and Services Contracts.**
  - i. Orders for Services, Maintenance Services, and/or Products are grouped into Services Contracts. Each separate Services Contract will be established when the first Order is placed that bears a new Services Contract number assigned by Xerox and Xerox accepts that Order. Each Services Contract will be assigned its own Services Contract number that will consist of this Services Agreement's number followed by a three digit extension. Each Services Contract constitutes a separate contract under this Services Agreement. Customer may add Services, Maintenance Services or Products to an existing Services Contract by submitting additional Orders referencing the applicable Services Contract number. Each Services Contract will consist of the terms and conditions of the DIR Contract No. DIR-TSO-3043, this Services Agreement, the first Order under the Services Contract number and each additional Order with the same Services Contract number.
  - ii. Orders may be submitted by hard copy or electronic means and those submitted electronically will be considered: (a) a "writing" or "in writing;" (b) "signed" by the Customer; (c) an "original" when printed from electronic records established and maintained in the ordinary course of business; and (d) valid and enforceable.

#### **GEN 1.2 – RESERVED**



**GEN 1.3 – RESERVED**

**GEN 1.4 – RESERVED**

**GEN 1.5 – RESERVED**

**GEN 1.6 – Customer Responsibilities**

Customer agrees to perform its responsibilities under this Services Agreement in support of the Services, Maintenance Services, or Products in a timely manner. Customer agrees:

- a. that Products acquired hereunder are ordered for Customer's own internal business use (rather than resale, license and/or distribution outside of Customer's organization) and will not be used for personal, household or family purposes;
- b. to (1) provide Xerox and its agents with timely and sufficient access, without charge, to Customer Facilities required by Xerox to perform Services and Maintenance Services and/or provide Products, and (2) ensure that Customer Facilities are suitable for the Services, Maintenance Services and/or Products, safe for Xerox personnel, and fully comply with all applicable laws and regulations, including without limitation any federal, state and local building, fire and safety codes;
- c. to acquire or continue maintenance, repair and software support services, without charge to Xerox, for all Customer Assets that Customer permits Xerox to use or access;
- d. to maintain the manufacturer's maintenance agreement for any Third Party Products;
- e. to provide Xerox with access to appropriate members of Customer personnel, as reasonably requested by Xerox, in order for Xerox to perform the Services and Maintenance Services and/or provide Products;
- f. to respond to and provide such documentation, data and other information as Xerox reasonably requests in order for Xerox to perform the Services and Maintenance Services and/or provide Products;
- g. to contract for the minimum types and quantities of Equipment and Consumable Supplies required by Xerox to perform the Services and Maintenance Services;
- h. that, as between Xerox and Customer, Customer alone is responsible for backing up its Customer Content and Xerox shall not be responsible for Customer's failure to do so;
- i. that as between Xerox and Customer, Customer alone is responsible for determining whether Customer Content provided to Xerox (i) is libelous, defamatory or obscene, or (ii) may be duplicated, scanned or imaged without violating a third party's intellectual property rights; and
- j. to provide contact information for Equipment such as name and address of Customer contact.

## GEN 1.7 – Warranties

### a. Xerox Warranties.

i. Services Warranty. Xerox warrants to the Customer that the Services will be performed in a professional and workmanlike manner by Xerox personnel with appropriate training, experience and skills in accordance with the applicable Order. If the Services do not comply with the SLAs or other requirements set forth in the applicable Order, Customer will notify Xerox in writing detailing its concerns and, within 10 days following Xerox's receipt of such notice, Xerox and Customer will meet, clarify the Customer's concern(s) and begin to develop a corrective action plan. In the event of Xerox's non-compliance with this warranty, Xerox will either modify the Services to comply with the applicable SLAs or other requirements or re-do the work at no additional charge within 60 days of finalizing the plan or another time period agreed to in writing by the parties.

ii. Equipment Warranty. Any Equipment warranty to which Customer is entitled shall commence upon the Date of Installation. Use by Customer of consumables not approved by Xerox that affect the performance of the Equipment may invalidate any applicable warranty.

iii. Third Party Product Warranty. Where Xerox in its sole discretion selects and supplies Third Party Products, Xerox warrants they will operate substantially in conformance with applicable SLAs or other requirements in the Order. Breach of this warranty entitles customer to return the Third Party Product to Xerox and then receive a refund of any fees paid for such non-conforming Third Party Product, less a reasonable usage fee. If Customer requests a specific Third Party Product, Xerox will pass-through as permitted any third party warranties.

iv. Exclusions. Xerox shall not be responsible for any delay or failure to perform the Services or provide Products, including achieving any associated SLAs or other requirements in the applicable SOWs, DOSs or Orders, to the extent that such delay or failure is caused by:

(a) Customer's failure or delay in performing its responsibilities under this Services Agreement;

(b) reasons outside Xerox's reasonable control, including Customer Assets, Customer Content, or delays or failures by Customer's agents, suppliers or providers of maintenance and repair services for Customer Assets; or

(c) unauthorized modifications to Equipment, Third Party Hardware or the Output of Services.

The warranties set forth in this Services Agreement are expressly conditioned upon the use of the Services, Products and Output of Services for their intended purposes in the systems environment for which they were designed and shall not apply to any Services, Products or Output of Services which have been subject to misuse, accident or alteration or modification by Customer or any third party.

#### **GEN 1.8 – Intellectual Property Ownership**

- a. **Customer Intellectual Property.** Customer grants to Xerox a non-exclusive, royalty-free, fully-paid up, worldwide license to use Customer Intellectual Property, Customer Content and Output of Services only for purposes of, and only to the extent required for, providing Services, Maintenance Services or Products under this Services Agreement. Xerox agrees not to decompile or reverse engineer any Customer Intellectual Property. Except as expressly set forth in this Services Agreement, no rights to any Customer Intellectual Property are granted to Xerox.
- b. **Ownership of Output of Services and License to Xerox Intellectual Property.** If XDM Customer Views are to be provided under an SOW, Xerox grants Customer a limited license to access and use the XDM Customer Views only for the purpose of receiving Services under the SOW. Customer agrees not to decompile or reverse engineer any Xerox Intellectual Property. Except as expressly set forth in this Services Agreement, no rights to any Xerox Intellectual Property are granted to Customer.
- c. **Xerox Tools.** Xerox Tools may be used by Xerox to provide certain Services. Xerox and its licensors will at all times retain all right, title and interest in and to Xerox Tools including without limitation, all intellectual property rights therein, and, except as expressly set forth herein, no rights to use, access or operate the Xerox Tools are granted to Customer. Xerox Tools will be **installed** and operated only by Xerox or its authorized agents. Customer will not decompile or reverse engineer any Xerox Tools, or allow others to engage in same. Customer 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. Xerox may remove Xerox Tools at any time in Xerox's sole discretion, provided that the removal of Xerox Tools will not affect Xerox's obligations to perform Services, and Customer shall reasonably facilitate such removal.
- d. **Xerox Client Tools.** Xerox grants to Customer a non-exclusive, non-transferable, non-assignable (by operation of law or otherwise) license to install, use and access the Xerox Client Tools only for the purpose of receiving the Services for which they were provided. Customer may not: (i) **distribute**, copy, modify, create derivatives of, decompile, or reverse engineer the Xerox Client Tools, except as permitted by applicable law; or, (ii) allow others to engage in same. Title to the Xerox Client Tools and all intellectual property rights therein shall, at all times, reside solely with Xerox and its licensors. Certain Xerox Client Tools may be subject to mandatory third party flow-down terms and conditions, which will be provided separately.
- e. **Data Collection and Use.** Data collected by the Xerox Tools is transmitted by a Xerox Tool to a remotely hosted server that hosts other Xerox Tools. The automatic data

transmission capability will not allow Xerox to read, view or download any Customer documents or other information residing on or passing through the Equipment or Third Party Hardware or Customer's information management systems.

**GEN 1.9 – RESERVED**

**GEN 1.10 – RESERVED**

**GEN 1.11 – Term and Termination**

Orders executed pursuant to this Services Agreement shall commence on the Effective Date and shall continue for the term and renewal options specified in the Order. Any termination will be handled in accordance to Appendix A, Section 11B of DIR Contract No. DIR-TSO-3043. Upon termination, Customer shall permit Xerox to enter Customer Facilities for purposes of removing the Products, Xerox Tools and/or Xerox Client Tools. Each Order hereunder shall have its own term, which shall be stated in the Order. In the event the Services Agreement expires or is terminated, each Services Contract in effect at such time shall remain in full force and effect until the expiration or termination of all Orders constituting such Services Contract (including any extensions or renewals thereof) and shall at all times be governed by, and be subject to, DIR Contract No. DIR-TSO-3043 and the terms and conditions of this Services Agreement. Termination of any Order shall not affect this Services Agreement or any other Orders then in effect. Notwithstanding any other provision in the Services Agreement to the contrary, should an Order be terminated prior to expiration for any reason other than Customer's unavailability of funds, or due to 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, Customer agrees to pay to Xerox, in addition to any other amounts then due in the normal course under said Order, an amount equal to the remaining principal balance of the Funds.

**GEN 1.12 – RESERVED**

**GEN 1.13 – Data Protection/Privacy**

- a. To the extent that Privacy Laws are applicable to Customer and Xerox in connection with the performance of Services, each party agrees to comply with the applicable provisions of such Privacy Laws.
- b. Xerox has adopted reasonable physical, technical and organizational safeguards designed to prevent accidental, unauthorized or unlawful loss, disclosure, access, transfer or use of Private Information. Xerox will promptly notify Customer in the event of any known unauthorized or unlawful loss, disclosure, access, transfer or use of Private Information.

**GEN 1.14 – RESERVED**

**GEN 1.15 – RESERVED**

**GEN 1.16 - RESERVED**

#### **GEN 1.17 – RESERVED**

#### **GEN 1.18 – RESERVED**

#### **GEN 1.19 – Compliance with Laws and Policies**

Xerox and Customer shall comply with all applicable laws and regulations in the performance of their respective obligations under this Services Agreement. Xerox agrees to comply with Customer's internal policies regarding security and safety at Customer Facilities. Customer agrees to provide Xerox with reasonable prior written notice of such policies and any changes to such policies; further, Xerox will comply with oral directions of Customer staff who have responsibility for the site. If a change in Customer policy results in incremental costs to Xerox, Xerox may, upon providing notice to Customer, pass such costs on to Customer with Customer approval, which approval may be granted or withheld at Customer's sole discretion.

#### **GEN 1.20 – Miscellaneous**

- a. Copies of Agreement.** Except as required by law, both parties agree that any reproduction of this Agreement made by reliable means (for example, photocopy or facsimile) shall be considered an original. Xerox may retain a hardcopy, electronic image, photocopy or facsimile of this Agreement and each Order hereunder, which shall be considered an original and shall be admissible in any action to enforce said Agreement or Order.
- b. Communication Authorization.** Customer authorizes Xerox or its agents to communicate with Customer by any electronic means (including cellular phone, email, automatic dialing and recorded messages) using any phone number (including cellular) or electronic address that Customer provides to Xerox.
- c. Limitation on Charges.** In no event will Xerox charge or collect any amounts in excess of those allowed by applicable law. Any part of an Order that would, but for this Section, be construed to allow for a charge higher than that allowed under any applicable law, is limited and modified by this Section to limit the amounts chargeable under such Order to the maximum amount allowed by law. If, in any circumstances, an amount in excess of that allowed by law is charged or received, such charge will be deemed limited to the amount legally allowed and the amount received by Xerox in excess of that legally allowed will be applied to the payment of amounts owed or will be refunded to Customer.

### **SERVICES MODULE**

#### **SVC 1 – TERMS AND CONDITIONS SPECIFIC TO SERVICES**

In addition to the terms and conditions of DIR Contract No. DIR-TSO-3043 and in the General (GEN) Module, the following terms and conditions apply to Xerox's performance of Services.

##### **SVC 1.1 – Scope of Services**

Subject to the terms and conditions of DIR Contract No. DIR-TSO-3043 and this Agreement, Services will be performed by Xerox and/or its Affiliates in accordance with the requirements set forth in an Order. If Customer fails to perform or is delayed in performing any of its responsibilities under this Agreement, such failure or delay may prevent Xerox from being able to perform any part of the Services or Xerox-related activities. Xerox shall be entitled to an extension or revision of the applicable term of the Order (which may include setting a new expected date for commencement of Services) or to an equitable adjustment in performance metrics associated with such failure or delay.

#### **SVC 1.2 – Charges for Services**

Charges for Services are set forth in the applicable Order. Charges are based upon the pricing exhibits contained within the DIR Contract, as well as information exchanged between Customer and Xerox, which is assumed to be complete and accurate, and also depend upon other factors such as the timely performance by Customer of its responsibilities. If: (a) such information should prove to be incomplete or inaccurate in any material respect; or (b) there is a failure or delay by the Customer in performing its responsibilities under this Agreement or an Order which results in Xerox incurring a loss or additional cost or expense, then the charges shall be adjusted to reflect proportionately the impact of such materially incomplete or inaccurate information or such failure or delay. Charges that are indicated in an Order as being fixed are not subject to an annual percentage escalation for the initial term of such Order. If Xerox provides Services partially or early (for example, prior to the start of the initial term of an Order), Xerox will bill Customer on a pro rata basis, based on a thirty (30) day month, and the terms and conditions of this Agreement will apply.

#### **SVC 1.3 – Use of Subcontractors**

Xerox may, when it reasonably deems it appropriate to do so, request approval from Customer to subcontract any portion of the Services, which approval shall not be unreasonably withheld, conditioned, or delayed. In the event Customer grants such approval, Xerox shall remain responsible for any Services performed by subcontractors retained by Xerox to the same extent as if such Services were performed by Xerox.

#### **SVC 1.4 – Services Scope Changes**

Except as otherwise set forth in an Order, either party may propose to modify the then-existing Services that are described in an Order, or to add new Services under a Services Contract. If Xerox determines such changes are feasible, Xerox will prepare and propose to Customer an Order incorporating the requested changes and any related impact to the Charges or terms. Once Customer executes and Xerox accepts the Order, Xerox will promptly proceed with the new and/or revised Services in accordance with the terms of DIR Contract No. DIR-TSO-3043, the Order and this Agreement.

#### **SVC 1.5 – Early Termination of Services and Labor**

Except as otherwise set forth in a Services Contract, upon thirty (30) days prior written notice, Customer may terminate or reduce any Services or labor provided pursuant to an Order without incurring early termination charges.

## **EQUIPMENT MODULE**

### **EQP 1 – TERMS AND CONDITIONS SPECIFIC TO EQUIPMENT & THIRD PARTY HARDWARE**

In addition to the terms and conditions in DIR Contract No. DIR-TSO-3043 and the General (GEN) Module, the following terms and conditions apply to Equipment and Third Party Hardware provided to Customer.

#### **EQP 1.1 – Term and Date of Installation**

The term for each unit of Equipment shall be the term stated on the applicable Order, with the commencement date based upon the actual Date of Installation. If the Date of Installation, for a unit of Equipment is prior to the applicable Order start date, Xerox will bill the Customer for such Equipment on a pro rata basis, based on a thirty (30) day month, and the terms and conditions of this Agreement and the applicable Services Contract will apply as of the Date of Installation.

#### **EQP 1.2 – Delivery and Removal and Suitability of Customer Facilities**

Xerox will be responsible for all standard delivery charges for Equipment and Third Party Hardware and, for Equipment or Third Party Hardware for which Xerox holds title, standard removal charges. Nonstandard delivery or removal charges (including removal prior to the end of the term for any Equipment) will be at Customer's pre-approved expense. The suitability of Customer Facilities for installation of Equipment or Third Party Hardware, including compliance with state and local building, fire and safety codes and any non-standard state or local installation requirements, is Customer's responsibility.

#### **EQP 1.3 – RESERVED**

#### **EQP 1.4 – Consumable Supplies**

If specified in an Order, Xerox will provide Consumable Supplies for related Equipment. Consumable Supplies are Xerox's property until used in the Equipment for which they are provided. Upon expiration or termination of the applicable Order, Customer will either return any unused Consumable Supplies to Xerox at Xerox's expense when using Xerox-supplied shipping labels, or destroy them in a manner permitted by applicable law. Xerox reserves the right to charge Customer for any Consumable Supplies usage that exceeds Xerox's published yields by more than ten percent (10%). In such a case, Xerox will notify Customer of the excess usage. If such excess usage does not cease within thirty (30) days after notice, Xerox may charge Customer for the excess usage. If Xerox provides paper under a Services Contract, upon thirty (30) days' notice, Xerox may adjust paper pricing or either party may terminate the provision of paper.

#### **EQP 1.5 – Use and Relocation**

For any Equipment or Third Party Hardware provided by Xerox, with the exception of Purchased Equipment for which Customer has paid in full, Customer agrees that: (a) the Equipment or Third

Party Hardware shall remain personal property; (b) Customer will not attach any of the Equipment or Third Party Hardware as a fixture to any real estate; (c) Customer will not pledge, sub-lease or part with possession of the Equipment or Third Party Hardware or file or permit to be filed any lien against the Equipment or Third Party Hardware; and (d) Customer will not make any permanent alterations to the Equipment or Third Party Hardware. While Equipment or Third Party Hardware is subject to an Order, Customer must provide Xerox prior written notice of all Equipment or Third Party Hardware relocations and Xerox may arrange to relocate the Equipment or Third Party Hardware at Customer's pre-approved expense. While Equipment or Third Party Hardware is being relocated, Customer remains responsible for making all payments to Xerox required under the applicable Order. All parts or materials replaced, including as part of an upgrade, will become Xerox's property. Equipment or Third Party Hardware cannot be relocated outside of the U.S. until Customer has paid in full for the Equipment or Third Party Hardware and has received title thereto. Notwithstanding anything to the contrary in the foregoing, to the extent the Equipment contains any Software, any relocation of such Equipment is subject to the terms and conditions set forth in the Software License Module of this Agreement.

#### **EQP 1.6 – Supplier Equipment Provided**

In the event Xerox leases Supplier Equipment to Customer, the State of Oklahoma Master Lease Agreement terms shall apply unless otherwise specified in an Order or applicable Schedule to Master Lease Agreement:

- a. Early Termination.** Equipment is provided for a minimum order term (as specified in the applicable Order per EQP 1.1 above). If Equipment is terminated for any reason before the end of its minimum order term, the termination charges set forth in the applicable Order or Services Contract for such Equipment shall apply.

#### **EQP 1.7 – 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. Upon request, Xerox will provide additional information to Customer regarding the security features available for particular Equipment models.

#### **EQP 1.8 – Remote Services for Equipment**

Unless otherwise agreed to in writing by Customer and Xerox and approved in writing by the State of Oklahoma's Chief Security Officer, Xerox shall turn off and disable Remote Services capability on all equipment purchased, leased, or rented by any and all Oklahoma Customers. Xerox acknowledges and agrees that it shall comply in all respects with the State of Oklahoma Information Security Policy, Procedures, Guidelines, currently available at [http://www.ok.gov/OSF/documents/StateOfOklahomaInfoSecPPG\\_osf\\_12012008.pdf](http://www.ok.gov/OSF/documents/StateOfOklahomaInfoSecPPG_osf_12012008.pdf), as well as any and all other security rules, policies, procedures, and guidelines promulgated by the State of Oklahoma from time to time. Xerox further acknowledges and agrees that no offshore services are provided for under this Agreement.



Xerox shall maintain strict physical security of all data and records entrusted to it. If certain functions are subcontracted in accordance with the terms expressed in this Agreement, Xerox shall ensure that the sub-contractor maintains strict physical security of all data and records transmitted to Xerox. Xerox shall never turn State of Oklahoma data or records over to a third party unless specifically authorized to do so by the State of Oklahoma. All requests for State of Oklahoma data or records (whether from litigants, State of Oklahoma employees, the press, open records or FOIA requests, or subpoenas) shall be referred to the State of Oklahoma.

Xerox agrees to use and disclose protected health information in compliance with the Standards for Privacy of Individually Identifiable Health Information (Privacy Rule) (45 CFR Parts 160 and 164) under the Health Insurance Portability and Accountability Act (HIPAA) of 1996. The definitions set forth in the Privacy Rule (45 CFR §§ 160.103 and 164.501) are incorporated by reference in this Agreement.

## **EQUIPMENT PURCHASE MODULE**

### **EP 1 – TERMS AND CONDITIONS SPECIFIC TO EQUIPMENT PURCHASE**

In addition to the terms and conditions in DIR Contract No. DIR-TSO-3043 and the General (GEN) Module, the following terms and conditions apply to the acquisition of Purchased Equipment:

#### **EP 1.1 – Order**

Orders for an outright purchase of Equipment shall include the unique Xerox-provided contract number and the number of this Agreement on all applicable ordering documents.

#### **EP 1.2 – Title**

Title to Purchased Equipment will pass to Customer upon delivery to the applicable Customer Facilities and acceptance by Customer.

#### **EP 1.3 – Default**

To the extent permitted by applicable law, if Customer defaults under a XOA for Purchased Equipment, Xerox, in addition to its other remedies (including the cessation of Maintenance Services if applicable), may require immediate payment of all amounts then due.

#### **EP 1.4 – Maintenance Services for Purchased Equipment**

If Customer elects to receive Maintenance Services for Purchased Equipment, Customer shall do so under a separate Order under the Agreement for such Maintenance Services.

#### **EP 1.5 – Agreement Provision Exclusions**

The following Agreement provisions do not apply to Orders for an outright purchase of Equipment: GEN 1.1 b.ii ; GEN 1.6 b – j; GEN 1.7 a.1; GEN 1.11; EQP 1.4; EQP 1.6.

## **MAINTENANCE SERVICES MODULE**

### **MS 1 – TERMS AND CONDITIONS SPECIFIC TO MAINTENANCE SERVICES**

In addition to the terms and conditions in DIR Contract No. DIR-TSO-3043, the General (GEN) Module, and except as otherwise set forth in an Order, the following terms and conditions apply to provision of Maintenance Services.

#### **MS 1.1 – Maintenance Services**

As part of an Order for (a) stand-alone Maintenance Services related to Purchased Equipment, or (b) Maintenance Services related to Equipment to which Xerox does not hold title, or as a mandatory part of an Order for Equipment (other than Purchased Equipment) that includes Maintenance Services, Xerox or a designated service provider will provide the following Maintenance Services for Equipment. If Customer is acquiring Equipment for which Xerox does not offer Maintenance Services, such Equipment will be designated as “No Svc.”

The provision of Maintenance Services is contingent upon Customer facilitating timely and efficient resolution of Equipment issues by: (i) utilizing Customer-implemented remedies provided by Xerox; (ii) replacing Cartridges; and (iii) providing information to and implementing recommendations provided by Xerox telephone support personnel in those instances where Xerox is not providing on-site Equipment support personnel. If an Equipment issue is not resolved after completion of (i) through (iii) above, Xerox will provide on-site support as provided in the applicable Order.

#### **MS 1.2 – Repairs and Parts**

a. Xerox will make repairs and adjustments necessary to keep the Equipment in good working order and operating in accordance with its written specifications (including such repairs or adjustments required during initial installation). Maintenance Services shall cover repairs and adjustments required as a result of normal wear and tear or defects in materials or workmanship. Parts required for repair may be new, reconditioned, reprocessed or recovered.

b. If Xerox is providing Maintenance Services for Equipment that uses Cartridges, Customer will use only unmodified Cartridges purchased directly from Xerox or its authorized resellers. Failure to use such Cartridges will void any warranty applicable to such Equipment. Cartridges packed with Equipment or furnished by Xerox as Consumable Supplies will meet Xerox’s new Cartridge performance standards and may be new, remanufactured or reprocessed and contain new and/or reprocessed components. To enhance print quality, Cartridges for many models of Equipment have been designed to cease functioning at a predetermined point. 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.

#### **MS 1.3 – Hours and Exclusions**

Unless otherwise set forth in an Order, Maintenance Services will be provided in areas accessible for repair services during Xerox's standard working hours. 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 other products not serviced by Xerox; (d) non-Xerox alterations, relocation, service or supplies; and (e) failure to perform operator maintenance procedures identified in operator manuals. Customer agrees to furnish all referenced parts, tools, and supplies needed to perform those procedures that are described in the applicable manuals and instructions.

#### **MS 1.4 – Installation Site and Meter Readings**

In order to receive Maintenance Services for Equipment requiring connection to a PC or workstation, Customer must utilize a PC or workstation that either (a) has been provided by Xerox or (b) meets Xerox's published specifications. The Equipment installation site must conform to Xerox's published requirements. If applicable, unless otherwise set forth in an Order, Customer agrees to provide meter readings in the manner prescribed by Xerox; provided, however, in no event shall Xerox prescribe meter readings by remote access unless pursuant to Section EQP 1.8 of this Agreement. If Customer does not provide Xerox with meter readings as required, for Equipment not capable of Remote Data Access, or if Remote Data Access is interrupted, Xerox may estimate them and bill Customer accordingly.

#### **MS 1.5 – Remedy**

If Xerox is unable to maintain the Equipment as described above, Xerox will replace the Equipment with an identical product or, at Xerox's option, another model with comparable features and capabilities. If replacement Equipment is provided pursuant to this Section, there shall be no additional charge for its provision by Xerox during the initial term of the Order and it shall be subject to the terms and conditions of this Agreement and the applicable Order(s). Customer's use of non-Xerox approved consumables that affect the performance of the Equipment may invalidate this remedy.

#### **MS 1.6 – End of Service**

Xerox has no obligation to maintain or replace Equipment beyond the "End of Service" for that particular model of Equipment. End of Service ("EOS") means the date announced by Xerox after which Xerox will no longer offer Maintenance Services for a particular Equipment model. An EOS Equipment List is available upon request.

### **SOFTWARE LICENSE MODULE**

#### **SW 1 – TERMS AND CONDITIONS SPECIFIC TO SOFTWARE**

In addition to the terms and conditions in the DIR Contract No. DIR-TSO-3043 and the General (GEN) Module, the following terms and conditions apply to the license and use of Software and its associated Documentation.

##### **SW 1.1 – Software License**

Xerox may provide Software to Customer pursuant to an Order hereunder. The following license applies to Software provided hereunder, unless such Software is accompanied by a click-wrap or shrink-wrap license agreement or otherwise provided subject to a separate license agreement.

- a. Xerox grants Customer a non-exclusive, non-transferable, non-assignable (by operation of law or otherwise) license to use in the U.S.: (i) Base Software only on or with the Equipment with which (or within which) it was delivered; and (ii) Application Software only on any single unit of Equipment, subject to Customer remaining current in the payment of any indicated applicable Software license fees (including any annual renewal fees). Customer has no other rights to the Software. Customer will not and will not allow its employees, agents, contractors or vendors to: (i) distribute, copy, modify, create derivatives of, decompile, or reverse engineer Software except as permitted by applicable law; (ii) activate Software delivered with or within the Equipment in an unactivated state; or, (iii) access or disclose Diagnostic Software for any purpose. Title to Software and all copyrights and other intellectual property rights in Software will reside solely with Xerox and its licensors (who will be considered third party beneficiaries of this Agreement's software and limitation of liability provisions).
- b. The Base Software license will terminate: (i) if Customer no longer uses or possesses the Equipment with which the Base Software was provided; or (ii) upon the expiration or termination of any Order under which Customer has acquired the Equipment with which the Base Software was provided (unless Customer has exercised an option to purchase the Equipment, where available).
- c. Software may contain code to prevent its unlicensed use and/or transfer. If you do not permit Xerox periodic access to such Software, this code may impair the Equipment's and/or Software's functionality.
- d. Xerox does not warrant that the Software will be free from errors or that its operation will be uninterrupted.

## **SW 1.2 – Software Support**

Software support will be provided by Xerox or a designated service provider as follows. For Base Software, Software support will be provided during the initial term of the applicable Order and any renewal period, but not longer than five (5) years after Xerox stops taking orders for the subject model of Equipment. For Application Software, Software support will be provided as long as Customer is current in the payment of all applicable software license, annual renewal and "support only" fees.

- 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. Xerox, either directly or with its vendors, will make reasonable efforts to: (i) assure that Software performs in material conformity with its Documentation; (ii) provide available workarounds or patches to resolve Software performance problems; and (iii) resolve coding errors for (1) the current release and (2) 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.

b. Xerox may make available new releases of the Software that are designated as “**Maintenance Releases**” or “**Updates**.” Maintenance Releases or Updates are provided at no charge and must be implemented within six (6) months after being made available to Customer. Each Maintenance Release or Update shall be considered Software governed by these terms. Feature Releases will be subject to additional license fees at Xerox’s then-current pricing and shall be considered Software governed by these terms and conditions (unless otherwise noted in an Order). Implementation of a Maintenance Release, Update or Feature Release may require Customer to procure, at its expense, additional hardware and/or software from Xerox or another entity. Upon installation of a Maintenance Release, Update or Feature Release, Customer will return or destroy all prior Maintenance Releases, Updates or Feature Releases.

c. Xerox may annually increase Software license fees and support fees for Application Software upon DIR approval. Xerox shall notify the State of Oklahoma and Customer in writing of such increase prior to the effective date of such increase.


### **SW 1.3 – Diagnostic Software**

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 Xerox’s licensors. Xerox does not grant Customer a license or right to use the Diagnostic Software. Customer will not use, reproduce, distribute, or disclose the Diagnostic Software for any purpose (or allow third parties to do so). Customer will allow Xerox reasonable access to the Equipment during Customer’s normal business hours to remove or disable Diagnostic Software if Customer is no longer receiving Maintenance Services from Xerox.

[Signature Page Follows]

**IN WITNESS WHEREOF**, the parties have executed this Agreement on the dates set forth below intending it to become effective on the Effective Date and thereby agreeing to its terms.

The State of Oklahoma by and through the Office of Management and Enterprise Services

  
\_\_\_\_\_  
Signature

James L. Reese II  
\_\_\_\_\_  
Name (please print)

Chief Information Officer  
\_\_\_\_\_  
Title

3115 N Lincoln Blvd, Oklahoma City 73105  
\_\_\_\_\_  
Address

11-13-15  
\_\_\_\_\_  
Date

XEROX CORPORATION

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name (please print)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Address

\_\_\_\_\_  
Date

**IN WITNESS WHEREOF**, the parties have executed this Agreement on the dates set forth below intending it to become effective on the Effective Date and thereby agreeing to its terms.

<<ENTER CUSTOMER NAME>>

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name (please print)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Address

\_\_\_\_\_  
Date

XEROX CORPORATION

\_\_\_\_\_  
*Marie E. Nelson*  
Signature

\_\_\_\_\_  
*Marie E. Nelson*  
Name (please print)

\_\_\_\_\_  
*Industry Vice President, Public Sector*  
Title

\_\_\_\_\_  
*6836 Austin Center Blvd, Ste 300, Austin, TX 78731*  
Address

\_\_\_\_\_  
*10-29-15*  
Date