

SALE / MAINTENANCE AGREEMENT



Full Legal Name _____
 Customer Name (Bill to) City of Avon
 DBA/Name Overflow _____
 Street Address 36080 Chester Road
 Box#/Routing _____
 City, State Avon, OH
 Zip Code 44011
 Tax ID# 34-6000165
 Customer Name (Install) Same as above
 DBA/Name Overflow (if req'd) _____
 Installed at Street Address _____
 Floor/Room/Routing _____
 City, State _____
 Zip Code _____
 County Installed In _____
 Customer Requested Install Date 02/18/2014

Check all that apply

- ☒ Tax Exempt (Sales Tax Exemption Certificate attached)
☐ Assoc./Coop. Name: _____
☐ Negotiated Contract #: _____ ☐ DSA Contract #: _____
☐ Attached Customer P.O. #: _____ Supplies: _____
 Sale/Install: _____ Maint.: _____
☒ State or Local Government Customer
☐ Replacement/Modification of Prior Xerox Agreement
 Agreement covering Xerox Equipment Serial# (or 95#): _____
 is hereby ☐ modified ☐ replaced Effective Date: ____/____/____
 Comments: _____
☐ Installation Sales Information Install. Sale Term: _____ months
 Int. Rate: % _____ Total Int. Payable: \$ _____
☐ Prepaid Invoice: _____ months
☐ Refin. of Prior Agrmt.: ☐ Xerox (95#): _____ ☐ 3rd Party Eq.
 Amt Refin: \$ _____ Int Rate: % _____ Total Int Payable: \$ _____
☐ Maintenance Information Maintenance Term: _____ months
☐ Supplies included in Base/Print Charges

Cash Sale/Installment Sale - Payment Information

Product (with serial number, if in place equipment)	Qty	Prev Install	Fin'l Interm	Warr # mo	List Price (Total)	Down Payment	Total Discount (Inc. Trade-In)	Net Price (Total)
301N63150-DocuShare 6.6 Standard Edition	1	☐	☐		\$ 3,000.00	\$	\$	\$ 3,000.00
301N30880-DocuShare CAL 10-User Pack	1	☐	☐		\$ 1,500.00	\$	\$	\$ 1,500.00
301N53220-SMARTdocument Travel wQuickCap	1	☐	☐		\$ 1,750.00	\$	\$	\$ 1,750.00
614N04167-DocuShare Std. Edition Support 1 YR	1	☐	☐		\$ 750.00	\$	\$	\$ 750.00
614N04167-CAL 10-User Support 1 YR		☐	☐		\$ 375.00	\$	\$	\$ 375.00
\$: INSTALLMENT SALE PAYMENT (excl. of applicable taxes)					Payment Frequency ☐ Monthly ☐ Other: _____ ☐ Advance ☐ Arrears			

Maintenance Agreement Price Information

Adjustment Period (Maintenance Agreement Only)

Periodic Base Charge	\$	Period A - Mos. Affected:	-	Period B - Mos. Affected:	-
Print Charge Meter 1:		Periodic Base Charge	\$	Periodic Base Charge	\$
Prints 1 -	\$	Print Charge Meter 1:		Print Charge Meter 1:	
Prints -	\$	Prints 1 -	\$	Prints 1 -	\$
Prints -	\$	Prints -	\$	Prints -	\$
Print Charge Meter 2:		Prints -	\$	Prints -	\$
Prints 1 -	\$	Print Charge Meter 2:		Print Charge Meter 2:	
Prints -	\$	Prints 1 -	\$	Prints 1 -	\$
Periodic Min.# of Prints		Prints -	\$	Prints -	\$
(based on Meter 1 Print Charges)		Periodic Min.# of Prints		Periodic Min.# of Prints	
		(based on Meter 1 Print Charges)		(based on Meter 1 Print Charges)	

Purchased Supplies ☐ Cash ☐ Fin'd

Reorder #	Qty	Description	Price
			\$
			\$
			\$
			\$
			\$
		Total Price =	\$

Application Software

Software Title	Initial License Fee	Annual Renewal Fee
	☐ Cash ☐ Finance	☐ Support Only
	\$	\$
	\$	\$
	\$	\$
	\$	\$
Total Initial License Fees =	\$	

Trade-In Allowance

Manufacturer	Model/ Serial #	Final Principal Payment #:	Allowance
			\$
			\$
			\$
			\$
		Total Allowance =	\$
Total Allowance Applied to:		☐ Trade-In Equip. Balance:	\$
		☐ Price of Replacement Equip.:	\$

K-16 Billing

Suspension
 (check 1 as required)
 Months affected
☐ June only
☐ July only
☐ August only
☐ June - July
☐ July - August

Additional Options (check all that apply)

- ☐ Run Length Plan ☐ Fixed Price Plan
☐ Per-Foot Pricing ☐ Quarterly Bill Plan
☐ Extended Service Hours:
 Description: _____ / \$ _____ mo.
☐ Std. Maint. Agrmt.: \$ _____ / year
☒ Attached Addenda: 51858-1(1)
☐ Other Addenda: _____

Agreement Presented By:

Xerox Name: Angela Battaglia Phone: 216-644-2300

FOR AUTHORIZED HQ INTERNAL USE ONLY:

Accepted: _____ Xerox Corporation

By: _____

(Signature of Authorized Signer)

Title: _____ Date: _____

Worksheet: _____ Unit: _____

www.xerox.com

CUSTOMER ACKNOWLEDGES RECEIPT OF THE TERMS OF THIS AGREEMENT (CONSISTING OF PAGES INCLUDING THIS FACE PAGE)

Auth. Signer Name: _____

(Please Print Name of Authorized Signer)

Signature: X _____ Date: _____

(Signature of Authorized Signer)

Auth. Signer Title: Bryan K. Jensen, Mayor Phone: 440-937-7803

E-Mail: bjensen@cityofavon.com

☒ Tax Exempt (*Must attach Sales Tax Exception Certificate)

SALE / MAINTENANCE AGREEMENT (Additional Products)



Full Legal Name

Customer Name (Bill to) City of Avon

DBA/Name Overflow

Date of Customer Signature on Attached Agreement

Customer Name (Install) Eric Clanin

DBA/Name Overflow (if req'd)

Installed at Street Address 36080 Chester road

Floor/Room/Rooming

City, State Avon, OH

Zip Code 44011

County Installed In Lorain

Customer Requested Install Date 02/18/2014

Check all that apply

☒ Attached Customer P.O. #: Supplies: _____

Sale/Install: _____ Maint.: _____

☐ Replacement/Modification of Prior Xerox Agreement

Agreement covering Xerox Equipment Serial# (or 95#): _____

is hereby ☐ modified ☐ replaced Effective Date: __ / __ / __

Comments: _____

☐ Installment Sales Information

Install. Sale Term: _____ months

Int. Rate: % _____ Total Int. Payable: \$ _____

☐ Prepaid Invoice: _____ months

☐ Refin. of Prior Agrmt. : ☐ Xerox (95#): _____ ☐ 3rd Party Eq.

Amt Refin: \$ _____ Int Rate: % _____ Total Int Payable: \$ _____

☐ Maintenance Information

Maintenance Term: _____ months

☐ Supplies included in Base/Print Charges

Cash Sale/Installment Sale - Payment Information

Product (with serial number, if in place equipment)	Qty	Prev Install	Fin'l Interm	Warr # mo	List Price (Total)	Down Payment	Total Discount (Inc. Trade-In)	Net Price (Total)
614N04167-SMARTdocument Travel Workflow	1	☐	☐		\$ 350.00	\$	\$	\$ 350.00
614N03252-Remote Professional Services and Training (Days each)	5	☐	☐		\$ 10,000.00	\$	\$	\$ 10,000.00
		☐	☐		\$	\$	\$	\$
		☐	☐		\$	\$	\$	\$
		☐	☐		\$	\$	\$	\$
\$: INSTALLMENT SALE PAYMENT (excl. of applicable taxes)						Payment Frequency ☐ Monthly ☐ Other: _____		
						Payment Mode ☐ Advance ☐ Arrears		

Maintenance Agreement Price Information

☐ Adjustment Period (Maintenance Agreement Only)

Periodic Base Charge	\$	Period A - Mos. Affected:	-	Period B - Mos. Affected:	-
Print Charge Meter 1:		Periodic Base Charge	\$	Periodic Base Charge	\$
Prints 1 -	\$	Print Charge Meter 1:		Print Charge Meter 1:	
Prints -	\$	Prints 1 -	\$	Prints 1 -	\$
Prints -	\$	Prints -	\$	Prints -	\$
Print Charge Meter 2:		Prints -	\$	Prints -	\$
Prints 1 -	\$	Print Charge Meter 2:		Print Charge Meter 2:	
Prints -	\$	Prints 1 -	\$	Prints 1 -	\$
Periodic Min.# of Prints (based on Meter 1 Print Charges)		Prints -	\$	Prints -	\$
		Periodic Min.# of Prints (based on Meter 1 Print Charges)		Periodic Min.# of Prints (based on Meter 1 Print Charges)	

☐ Purchased Supplies ☐ Cash ☐ Fin'd

Reorder #	Qty	Description	Price
			\$
			\$
			\$
			\$
Total Price =			\$

☐ Application Software

Software Title	Initial License Fee	Annual Renewal Fee
	☐ Cash ☐ Finance	☐ Support Only
	\$	\$
	\$	\$
	\$	\$
Total Initial License Fees =		\$

☐ Trade-In Allowance

Manufacturer	Model/ Serial #	Final Principal Payment #:	Allowance
			\$
			\$
			\$
Total Allowance Applied to:			\$
☐ Trade-In Equip. Balance:			\$
☐ Price of Replacement. Equip.:			\$

☐ K-16 Billing

Suspension

(check 1 as required)

Months affected

- ☐ June only
☐ July only
☐ August only
☐ June - July
☐ July - August

Additional Options (check all that apply)

- ☐ Run Length Plan ☐ Fixed Price Plan
☐ Per-Foot Pricing ☐ Quarterly Bill Plan

☐ Extended Service Hours:

Description: _____ / \$ _____ mo.

☐ Std. Maint. Agrmt.: \$ _____ / year

☐ Attached Addenda: _____

FOR AUTHORIZED HQ INTERNAL USE ONLY:

Worksheet:

Unit:

www.xerox.com

GENERAL TERMS: The following terms apply to all sale and maintenance transactions:

1. **PRODUCTS.** The term "Products" shall refer collectively to all equipment (the "Equipment"), software, and supplies ordered under this Agreement. You represent that the Products are being ordered for your own business use (rather than resale) and that they will not be used for personal, household or family purposes.

2. [RESERVED]

3. **PAYMENT, TAXES & CREDIT HISTORY.**

A. Invoices are payable upon receipt and you agree to pay Xerox each Net Price amount or Installment Sale Payment (as applicable), each Minimum Periodic Base Charge, all Print Charges and all other sums due as follows: (i) if the invoice displays a due date, payment is due and must be received by Xerox on or before said due date, or (ii) if the invoice does not display a due date, payment is due and must be received by Xerox no later than thirty (30) days after the invoice date. .

B. You shall be responsible for any and all applicable Taxes, which will be included in Xerox's invoice unless you provide proof of your tax exempt status. "Taxes" shall mean any tax, assessment or charge imposed or collected by any governmental entity or any political subdivision thereof, however designated or levied, imposed on this Agreement or the amounts payable to Xerox by you for the billing of Products, Print Charges, services and maintenance of any kind; Taxes include, but are not limited to, sales and use, rental, excise, gross receipts and occupational or privilege taxes, plus any interest and/or penalty thereon, but excluding any taxes on Xerox's net income. If a taxing authority determines that Xerox did not collect all applicable Taxes, you shall remain liable to Xerox for such additional Taxes.

C. You, to the extent required by applicable law, authorize Xerox (or its agent) to obtain credit reports, make such other credit inquiries as Xerox may deem necessary at any time, furnish payment history information to credit reporting agencies, and release to prospective assignees of this Agreement or any rights hereunder credit-related information Xerox has about you and this Agreement. Even if Products have been delivered, Xerox may, within sixty (60) days following its acceptance of this Agreement, revoke the Agreement if your credit approval is denied.

4. [RESERVED]

5. **WARRANTY DISCLAIMER & WAIVERS.** XEROX DISCLAIMS, AND YOU WAIVE, THE IMPLIED WARRANTIES OF NON-INFRINGEMENT. SEE SECTION 6 FOR REMEDIES. XEROX ALSO DISCLAIMS AND YOU WAIVE THE IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE. REMEDIES TO BE COVERED BY USER SUPPORT.

6. **INTELLECTUAL PROPERTY INDEMNITY.** Xerox, at its expense, will defend you from, and pay any settlement agreed to by Xerox or any final judgment for, any claim that a Xerox-brand Product infringes a third party's U.S. intellectual property rights provided you promptly notify Xerox of the alleged infringement and permit Xerox to direct the defense. Xerox is not responsible for any non-Xerox litigation expenses or settlements unless it preapproves them in writing. To avoid infringement, Xerox may modify or substitute an equivalent Xerox-brand Product, refund the price paid for the Xerox-brand Product, or obtain any necessary licenses. Xerox is not liable for any infringement-related liabilities outside the scope of this Section including, but not limited to, infringement based upon a Xerox-brand Product being modified to your specifications or being used or sold with products not provided by Xerox.

7. **LIMITATION OF LIABILITY.** Xerox shall not be liable to you for any direct damages in excess of \$50,000 or the amounts paid hereunder, whichever is greater, and neither party shall be liable to the other for any special, indirect, incidental, consequential or punitive damages arising out of or relating to this Agreement, whether the claim alleges tortious conduct (including negligence) or any other legal theory. The above-stated limitation of liability shall not be applicable to any specific indemnification obligations set forth in this Agreement. Any action you take against Xerox must be commenced within two (2) years after the event that caused it.

8. **ASSIGNMENT.**

A. If you wish to assign any rights or obligations under this Agreement, you shall provide a written notice to Xerox of such request for consent, with said notice including the name of the proposed assignee. Your request to assign this Agreement will be granted by Xerox if: (1) you are not in default under this Agreement or any other agreement with Xerox; (2) the proposed assignee agrees to the Section of this Agreement titled "PAYMENT, TAXES & CREDIT HISTORY" as applicable to it, for the purposes of the proposed assignment; (3) the proposed assignee meets Xerox's then current credit criteria for similar transactions as determined by Xerox in its sole discretion; and, (4) you and the Xerox Form# 51858t&c (05/2005)

proposed assignee execute a writing, in a form acceptable to Xerox, confirming said assignment. Assignment by you requires the written consent of Xerox and may not be accomplished by operation of law.

B. Xerox may assign this Agreement, in whole or in part, to a parent, subsidiary or affiliate of Xerox, or to a person or entity for the purposes of securitizing a pool of assets or as part of a third party financial transaction without prior notice to you; provided, however, any proposed assignment to a person or entity not identified previously in this sentence shall require your prior written consent. In the event of an assignment permitted by the preceding sentence, Xerox, without notice to you, may release information it has about you related to this Agreement. Each successive assignee of Xerox shall have all of the rights but none of the obligations of Xerox hereunder. You shall continue to look to Xerox for performance of Xerox's obligations, including the provision of Basic Services, and you hereby waive and release any assignees of Xerox from any such claim relating to or arising from the performance of Xerox's obligations hereunder. In the event of an assignment by Xerox, you shall remit payments due in accordance with remittance instructions of the assignee.

9. [RESERVED]

10. **REPRESENTATIONS, WARRANTIES & COVENANTS.** Each party represents that, as of the date of this Agreement, it has the lawful power and authority to enter into this Agreement, the individuals signing this Agreement are duly authorized to do so on its behalf and, by entering this Agreement, it will not violate any law or other agreement to which it is a party. You are not aware of anything that will have a material negative effect on your ability to satisfy your payment obligations under this Agreement and all financial information you have provided, or will provide, to Xerox is true and accurate and provides a good representation of your financial condition. Each party agrees that it will promptly notify the other party in writing of a change in ownership, if it relocates its principal place of business or changes the name of its business.

11. **NOTICES.** Notices must be in writing and will be deemed given five (5) days after mailing, or two (2) days after sending by nationally recognized overnight courier, to the other party's business address, or to such other address designated by either party to the other by written notice given pursuant to this sentence. The term "business address" shall mean, for you, the "Bill to" address listed on the first page of this Agreement and, for Xerox, our inquiry address set forth on the most recent invoice to you.

12. **FORCE MAJEURE.** Xerox shall not be liable to you during any period in which its performance is delayed or prevented, in whole or in part, by a circumstance beyond its reasonable control, which circumstances include, but are not limited to, the following: act of God (e.g., flood, earthquake, wind); fire; war; act of a public enemy or terrorist; act of sabotage; strike or other labor dispute; riot; misadventure of the sea; inability to secure materials and / or transportation; or, a restriction imposed by legislation, an order or a rule or regulation of a governmental entity. If such a circumstance occurs, Xerox shall undertake reasonable action to notify you of the same.

13. **MISCELLANEOUS.** This Agreement shall be construed under the laws of the State of Ohio (without regard to conflict-of-law principles). You agree to the jurisdiction and venue of the federal and state courts in Lorain County, Ohio. If a court finds any term of this Agreement to be unenforceable, the remaining terms of this Agreement shall remain in effect. Both parties may retain a reproduction (e.g., electronic image, photocopy, facsimile) of this Agreement which shall be admissible in any action to enforce it. Xerox may accept this Agreement either by its authorized signature or by commencing performance (e.g., Equipment delivery, initiating Basic Services, entering the Maintenance Agreement into billing systems, etc.). All changes to this Agreement must be made in a writing signed by both parties; accordingly, any terms on your ordering documents shall be of no force or effect. We both intend to comply with applicable laws. In no event will Xerox charge or collect any amounts in excess of those allowed by applicable law. Any part of this Agreement that would, but for this Section, be read under any circumstances to allow for a charge higher than that allowed under any applicable legal limit, is limited and modified by this Section to limit the amounts chargeable under this Agreement to the maximum amount allowed under the legal limit. If, in any circumstances, any amount in excess of that allowed by law is charged or received, any such charge will be deemed limited by the amount legally allowed and any amount received by Xerox in excess of that legally allowed will be applied by us to the payment of amounts legally owed under this Agreement, or refunded to you.:

14. **COMMENCEMENT, TITLE, RISK, AND RELOCATION.**

A. The term for this Agreement and any warranty applicable to the Equipment shall commence upon installation of the Equipment; provided, however, for customer-installable Equipment, the term for this Agreement and any express warranty period applicable to the Equipment shall commence upon equipment delivery date.

B. Title and risk of loss to Equipment will pass to you upon shipment from a Xerox controlled facility. Upon passage to you of title to the Equipment, you must comply with all applicable laws and regulations regarding the export of any commodity, technology and/or software. Until you have paid for the Equipment in full, you agree that: (1) it shall remain personal property; (2) you will not attach any of it as a fixture to any real estate; (3) you will not pledge, sub-lease or part with possession of it or file or permit to be filed any lien against it; and, (4) you will not make any permanent alterations to it.

C. Until you have paid for the Equipment in full, you must provide Xerox prior written notice of all Equipment relocations and, upon your request, Xerox may arrange to relocate the Equipment at your expense. While Equipment is being relocated, you are responsible for all payments required under this Agreement to Xerox. All parts/materials replaced, including as part of an upgrade, will become Xerox's property.

15. [RESERVED]

16. [RESERVED]

17. [RESERVED]

18. [RESERVED]

MAINTENANCE TERMS: The following additional terms apply only to maintenance transactions:

19. [RESERVED]

20. **COMMENCEMENT & EXPIRATION.** Maintenance Agreements will commence at the end of any warranty period and expire on the last day of the 12th, 24th, 36th, 48th or 60th full calendar month thereafter, as applicable.

21. [RESERVED]

22. **RENEWAL.** Unless either party provides notice at least thirty (30) days before the end of the term of its intention not to renew this Agreement, it will renew automatically for successive terms of the same number of months, terms and conditions and billing frequency as the original Agreement. Pricing for this renewal term shall be at Xerox's then-current published pricing.

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

23. **SOFTWARE LICENSE.** The following terms apply to copyrighted software and the accompanying documentation, including, but not limited to, operating system software, provided with or within the Xerox-brand Equipment acquired hereunder ("Base Software") as well as software specifically set out as "Application Software" on the face of this Agreement. This license does not apply to any Diagnostic Software nor to any software / documentation accompanied by a clickwrap or shrinkwrap license agreement or otherwise made subject to a separate license agreement.

A. Xerox grants you a non-exclusive, non-transferable license to use the Base Software within the United States, its territories, and possessions (the "United States") only on or with the Equipment with which (or within which) it was delivered. For Application Software, Xerox grants you a non-exclusive, non-transferable license to use this software within the United States on any single unit of equipment for as long as you are current in the payment of any indicated software license fees (including any Annual Renewal Fees). You have no other rights to the Base or Application Software and, in particular, may not: (1) distribute, copy, modify, create derivatives of, decompile, or reverse engineer this software; (2) activate any software delivered with or within the Equipment in an unactivated state; or, (3) allow others to engage in same. Title to the Base and Application Software and all copyrights and other intellectual property rights in it shall at all times reside solely with Xerox and/or its licensors (who shall be considered third-party beneficiaries of this Agreement's software and limitation of liability provisions). Base and Application Software may contain, or be modified to contain, computer code capable of automatically disabling proper operation or functioning of the Equipment. Such disabling code may be activated if: (i) Xerox is denied reasonable access to the Base or Application Software to periodically reset such code; (ii) you are notified of a default under any term of this Agreement; or, (iii) your license is terminated or expires.

B. Xerox may terminate your license for any Base Software (1) immediately if you no longer use or possess the Equipment or are a lessor of the Equipment and your first lessee no longer uses or possesses it, or (2) upon the termination of any agreement under which you have rented or leased the Equipment.

C. If you transfer possession of the Equipment, Xerox will offer the transferee a license to use the Base Software within the United States on or with it, subject to Xerox's then-applicable terms and license fees, if any, and provided the transfer is not in violation of Xerox's rights.

D. Xerox warrants that the Base and Application Software will perform in material conformity with its user documentation for a ninety (90) day period from the date it is delivered or, for software installed by Xerox, the date of software installation. Neither Xerox nor its licensors warrant that the Base or Application Software will be free from errors or that its operation will be uninterrupted.

E. Notwithstanding anything to the contrary set forth in this Agreement, if you enter into a maintenance agreement for Equipment, such maintenance agreement does not include a license for Base Software. If you do not have a license for Base Software for Equipment, you may enter into a separate license agreement with Xerox for such Base Software.

24. **SOFTWARE SUPPORT.** During the period that Xerox (or a designated servicer) provides Basic Services for the Software but in no event longer than five (5) years after Xerox stops taking orders from customers for their acquisition of the Software, Xerox (or a designated servicer) will also provide software support for the Base Software under the following terms. For Application Software licensed pursuant to this Agreement, Xerox will provide this same level of support provided you are current in the payment of all Initial License and Annual Renewal Fees (or, for programs not requiring Annual Renewal Fees, the payment of the Initial License Fee and the annual "Support Only" Fees):

A. Xerox will assure that Base and Application Software performs in material conformity with its user documentation and will maintain a toll-free hotline during standard business hours to answer related questions.

B. Xerox may make available new releases of the Base or Application Software that primarily incorporate coding error fixes and are designated as "Maintenance Releases". Maintenance Releases are provided at no charge and must be implemented within six (6) months after being made available to you. Each new Maintenance Release shall be considered Base or Application Software governed by these Software Terms. New releases of the Base or Applications Software that are not Maintenance Releases, if any, may be subject to additional license fees at Xerox's then-current pricing and shall be considered Base or Application Software governed by these Software Terms (unless otherwise noted). Xerox will not be in breach of its software support obligations hereunder if, in order to implement, in whole or in part, a new release of Base or Application Software provided or made available to you by Xerox, you must procure, at your expense, additional hardware and/or software from Xerox or any other entity. You agree to return or destroy all prior releases.

C. Xerox will use reasonable efforts, either directly and/or with its vendors, to resolve coding errors or provide workarounds or patches, provided you report problems as specified by Xerox.

D. Xerox shall not be obligated (1) to support any Base or Application software that is two or more releases older than Xerox's most current release, or (2) to remedy coding errors if you have modified the Base or Application Software.

E. For Application Software, Xerox may annually increase the Annual Renewal and Support-Only Fees, each such increase not to exceed 10%. (For state and local-government customers, this adjustment shall take place at the commencement of each of your annual contract cycles.)

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

GOVERNMENTAL TERMS: The following additional terms apply only to state and local government customers:

25. **REPRESENTATIONS & WARRANTIES, FUNDING, TAX TREATMENT & PAYMENT.**

A. **REPRESENTATIONS & WARRANTIES.** You hereby represent and warrant, as of the date of this Agreement, that: (1) you are a State or a fully constituted political subdivision or agency of the State in which you are located and are authorized to enter into, and carry out, your obligations under this Agreement and any other documents required to be delivered in connection with the Agreement (collectively, the "Documents"); (2) the Documents have been duly authorized, executed and delivered by you in accordance with all applicable laws, rules, ordinances and regulations (including, but not limited to, all applicable laws governing open meetings, public bidding and appropriations required in

connection with this Agreement and the acquisition of the Equipment) and are valid, legal, binding agreements, enforceable in accordance with their terms and the person(s) signing the Documents have the authority to do so, are acting with the full authorization of your governing body and hold the offices indicated below their signatures, each of which are genuine; (3) the Equipment is essential to the immediate performance of a governmental or proprietary function by you within the scope of your authority and shall be used during the term hereof only by you and only to perform such function; and, (4) your obligations to remit payments under this Agreement constitute a current expense and not a debt under applicable state law and no provision of this Agreement constitutes a pledge of your tax or general revenues and any provision that is so construed by a court of competent jurisdiction is void from the inception of this Agreement.

B. FUNDING. You represent and warrant that all payments due and to become due during your current fiscal year are within the fiscal budget of such year and are included within an unrestricted and unencumbered appropriation currently available for the purchase/maintenance of the Equipment, and that it is your intent to use the Equipment for the entire term and to make all payments required under this Agreement. In the event that (1) through no action initiated by you your legislative body does not appropriate funds for the continuation of this Agreement for any fiscal year after the first fiscal year and has no funds to do so from other sources and (2) you have made a reasonable but unsuccessful effort to find a creditworthy assignee acceptable to Xerox in its sole discretion within your general organization who can continue this Agreement, this Agreement may be terminated. To effect this termination, you shall, thirty (30) days prior to the beginning of the fiscal year for which your legislative body does not appropriate funds for such upcoming fiscal year, send Xerox written notice stating that your legislative body failed to appropriate funds and that you have made the required effort to find an assignee. Your notice must be accompanied by payment of all sums then owed through the current year to Xerox under this Agreement and must certify that the canceled Equipment is not being replaced by equipment performing similar functions during the ensuing fiscal year. In addition, you agree at your expense to return the Equipment in good condition to a location designated by Xerox and that, when returned, the Equipment will be free of all liens and encumbrances. You will then be released from your obligations to make any further payments to Xerox beyond those due for the current fiscal year (with Xerox retaining all sums paid to date).

C. TAX TREATMENT. This Agreement has been accepted on the basis of your representation that Xerox may claim any interest paid by you as exempt from federal income tax under Section 103(c) of the Code. You agree to comply with the information reporting requirements of Section 149(e) of the Code. Such compliance shall include, but not be limited to, the execution of 8038-G or 8038-GC Information Returns. You hereby appoint Xerox as your agent to maintain, and Xerox agrees to maintain, or cause to be maintained, a complete and accurate record of all assignments of this Agreement in form sufficient to comply with the book entry requirements of Section 149(a) of the Code and the regulations prescribed thereunder from time to time. Should Xerox lose the benefit of this exemption as a result of your failure to comply with or be covered by Section 103(c) or its regulations, then, subject to the availability of funds and upon demand by Xerox, you shall pay Xerox an amount equal to its loss in this regard. At the time of execution of this Agreement, you shall provide Xerox with a properly prepared and executed copy of US Treasury Form 8038 or 8038-GC.

D. PAYMENT. Your payment is due within thirty (30) days of our invoice date.

26. ATTACHED ADDENDA. If this option has been selected, you acknowledge that one or more specified addenda (as indicated) have been provided to you. These addenda, which provide additional terms relevant to the transactions covered hereunder, are hereby fully integrated into this Agreement.

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