

SERVICES AND SOLUTIONS AGREEMENT FOR XEROX PROVIDED EQUIPMENT AND TECHNICAL SERVICE

THIS SERVICES AND SOLUTIONS AGREEMENT FOR XEROX PROVIDED EQUIPMENT AND TECHNICAL SERVICE No. 7139535 ("SSA" or "Agreement") is between CITY OF FLAGSTAFF ("Customer") and Xerox Corporation ("Xerox").

This SSA applies only to Equipment and Services supplied by Xerox pursuant to an Order, including routine maintenance of such Equipment. This SSA does not apply to existing Customer equipment located on Customer property.

This SSA is supplemental to the Services Agreement for Copy and Center and Mailroom Services ("Copy Center Agreement") between the parties executed concurrently herewith. (The SSA and Copy Center Agreement are collectively referred to as the "Agreement"). In the event of any conflict between the Copy Center Agreement and the SSA, the Copy Center Agreement shall control, as set forth in Section 1 of the Copy Center Agreement.

1. **SCOPE AND STRUCTURE.** This SSA sets forth the terms and conditions under which Customer may establish one or more Services Contracts for the acquisition in the U.S. of Services, Maintenance Services and Deliverables from Xerox. Each Services Contract under this SSA constitutes a separate contract and will be assigned its own Services Contract Number consisting of the above SSA number followed by a three digit extension. Each Services Contract will be established when Customer submits and Xerox accepts the first Order with a new Services Contract Number. Customer may add Services, Maintenance Services or Deliverables to an existing Services Contract by issuing additional Orders referencing the applicable Services Contract Number. Each Services Contract will consist of the applicable terms and conditions of this SSA, the first Order and each additional Order with the same Services Contract Number. Xerox may provide Services and/or Products through its U.S. affiliates. Capitalized terms are defined in Section 25 unless defined where first used.
2. **ORDERS.**
 - a. Orders may consist of Services and Solutions Order (SSOs), Statements of Work (SOWs), and/or Purchase Orders (POs). Each Order must reference an applicable Services Contract Number. Unless otherwise provided in an SSO, terms and conditions of such SSO are applicable to all Orders constituting the applicable Services Contract. Customer POs are for order entry purposes only and will be subject solely to the terms and conditions of the applicable Services Contract, notwithstanding anything contained in any such PO at variance with or in addition to the applicable Services Contract.
 - b. Xerox may accept an Order either by its signature or by commencing performance. Xerox reserves the right to review and approve Customer's credit prior to acceptance of each Order. Customer authorizes Xerox (or its agent) to obtain credit reports from commercial credit reporting agencies.
 - c. Orders may be submitted by hard copy or, in the case of SSOs or POs, by electronic means, and those submitted electronically will be considered (i) a "writing" or "in writing"; (ii) "signed"; (iii) an "original" when printed from electronic records established and maintained in the ordinary course of business; and (iv) a valid and enforceable Order.
3. **TERM.**
 - a. This SSA is effective when signed by Xerox and, unless terminated by either party upon 90 days written notice, continues for 60 months. If this SSA expires or is terminated, each Services Contract will (i) remain in effect until the expiration or termination of all Orders constituting such Services Contract, and (ii) be governed by the terms and conditions of this SSA as if it were still in effect.
 - b. The term of each Order will be set forth in such Order. If an Order is terminated, the term of remaining Orders will continue unaltered.
 - c. Except as otherwise provided in an SOW or unless either party provides notice of termination at least 30 days before the end of its term, an Order will automatically renew on a month-to-month basis.
4. **PERSONNEL.** Xerox personnel engaged hereunder will comply with Customer's internal security and safety policies that (a) are provided to Xerox in writing, (b) are reasonable and customary, and (c) do not conflict with the applicable Services Contract. Customer will provide Xerox with reasonable prior written notice of such policies and any changes thereto. During the term of this SSA and for a period of 1 year thereafter, neither party will, directly or indirectly, actively solicit the employment of the other party's personnel (including their supervisors) and agents engaged under a Services Contract. Employment arising from inquiries received via advertisements in newspapers, job fairs, unsolicited resumes or applications for employment will not be considered active solicitation. The sole remedy for breach of this restriction is to receive payment, as liquidated damages and not as a penalty, from the breaching party equal to the individual's then current annual salary (or the fees paid to an agent in the previous 12 months), within 30 days of the start date of the individual. Xerox is an independent contractor hereunder.
5. [RESERVED]
6. **PRICING, PAYMENT, AND TAXES.**
 - a. **PRICING.** Pricing will be as shown in an Order. Services requested and performed outside Customer's standard working hours will be at Xerox's then-current overtime rate.
 - b. **PAYMENT.** Invoices are payable upon receipt and payment must be received within 30 days after the invoice date. For any payment not received within 10 days of its due date, Customer will pay a late charge equal to the greater of 5% of the amount due or \$25. Restrictive covenants will not reduce Customer's obligations. If the provision of Services, Products and/or Maintenance Services begins partially and/or early, Xerox will bill Customer on a pro rata basis, based on a 30-day billing month.

- c. TAXES. Customer will be responsible for all Taxes. Taxes will be included in Xerox's invoice unless Customer provides proof of Customer's tax exempt status.
7. DEFAULT AND REMEDIES. Customer will be in default if Xerox does not receive any payment within 15 days after the date it is due, or if Customer breaches any other obligation under this SSA, any Services Contract, or any other agreement with Xerox. If Customer defaults, Xerox, in addition to its other remedies (including the cessation of Services), may require immediate payment of (a) all amounts then due, plus interest on all amounts due from the due date until paid at the rate of 1.5% per month, and (b) any applicable ETCs, as set forth in the applicable SSO, are as follows: the monthly equipment component (MEC) of \$218 for a WC7775P-Work Centre 7775 and \$360 for a D95CP Copier/Printer x the number of months remaining.
8. CONFIDENTIAL INFORMATION. Each party will make reasonable efforts not to disclose the other party's Confidential Information to any third party, except as may be required by law, unless such Confidential Information: (a) was in the public domain before, at the time of, or after the date of disclosure through no fault of the non-disclosing party; (b) was rightfully in the non-disclosing party's possession or the possession of any third party free of any obligation of confidentiality; or (c) was developed by the non-disclosing party's employees or agents independently of and without reference to any of the other party's Confidential Information. Confidentiality obligations set forth herein will expire 1 year after expiration or termination of this SSA or the last effective Services Contract hereunder, whichever is later; provided however, confidentiality obligations with respect to Xerox Work, Xerox Tools and Xerox Client Tools will not expire unless (a), (b) or (c) above become applicable thereto. The parties do not intend for Customer to disclose confidential technical information hereunder, including, but not limited to, computer programs, source code, and algorithms. Customer will only disclose the same pursuant to a separate written agreement. Upon expiration or termination of this SSA or the last effective Services Contract hereunder, whichever is later, each party will return to the other or, if requested, destroy, all Confidential Information of the other in its possession or control, except such Confidential Information as may be reasonably necessary to exercise rights that survive termination of this SSA.
9. INTELLECTUAL PROPERTY. Customer represents and warrants that (a) it owns the Customer Content and Customer Assets or otherwise has the right to authorize Xerox to use same to perform Services, and (b) Customer Content will not contain content that (i) is libelous, defamatory or obscene, (ii) violates any applicable laws, regulations, or (iii) infringes any third party rights. Customer acknowledges and agrees that Xerox does not undertake any obligation or duty whatsoever to determine whether Customer Content may be duplicated without violating a third party's copyright. Xerox, its employees, agents and/or licensors will at all times retain all rights to Xerox Work, Xerox Client Tools and Xerox Tools and, except as expressly set forth herein, no rights to Xerox Work, Xerox Client Tools or Xerox Tools are granted to Customer. If required for royalty reporting purposes, Xerox may disclose Customer's name and address to the third party licensor of certain Xerox Tools. Xerox Tools will be installed and operated only by Xerox. 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, but Customer will have no rights to use, access or operate the Xerox Tools. 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. If Xerox Client Tools are included as part of the Services, they may be used by Customer only in conjunction with such Services. Customer agrees not to decompile or reverse engineer any Xerox Work, Xerox Client Tools or Xerox Tools. Xerox grants Customer a non-exclusive, perpetual fully paid-up, worldwide right to use, display and reproduce Xerox Work and Documentation only as required for use of the Services and Deliverables for Customer's customary business purposes, and not for resale, license and/or distribution outside of Customer's organization. Customer may not sublicense any rights granted to Customer hereunder, but may authorize a third party ("Designee") to use such rights, solely for Customer's benefit and Customer's internal business purposes. Any Designee operating or maintaining the delivered solution must be subject to written confidentiality obligations with respect to Confidential Information that are no less restrictive than those set forth in this SSA. Output of Services is Customer's sole and exclusive property and Xerox will have no rights therein, except as may be required for Xerox to perform Services. Assessments are provided for Customer's internal business use only, and not for resale, license and/or distribution outside of Customer's organization and the implementation of Assessments may not be performed by any third party. Except as expressly set forth in this Section, no other rights or licenses are granted to Customer. Any rights or licenses that are granted to Customer will immediately terminate if Customer defaults with respect to any of Customer's obligations related to such rights or licenses. Xerox reserves the right to terminate such rights or licenses if Customer defaults under any other obligation under a Services Contract.
10. CUSTOMER RESPONSIBILITIES.
- a. Customer will (i) provide the Customer Assets that Xerox needs to perform the Services and (ii) grant sufficient rights to enable Xerox and its agents to use all Customer Assets and Customer Content.
- b. Upon Xerox's request, Customer will provide contact information for Equipment such as name and address of Customer contact and IP and physical addresses/locations of Equipment.
- c. Customer will enable Remote Data Access via a method prescribed by Xerox, and Customer will provide reasonable assistance to allow Xerox to provide Remote Data Access. Unless Xerox deems Equipment incapable of Remote Data Access, Customer will ensure that Remote Data Access is maintained at all times Services are being performed.
- d. During the term of an Order, Customer will permit access to Customer personnel that Xerox needs to perform the Services.
- e. Equipment prices include standard delivery charges for all Equipment and, for Equipment for which Xerox retains ownership, standard removal charges. Non-standard delivery or removal charges will be at Customer's expense and

must be disclosed to and approved by Customer in advance. Delivery and removal charges are included in the prices set forth in the Copy Center Agreement, unless otherwise agreed to by the parties.

f. Customer will legally dispose of all hazardous wastes generated from its performance under this Agreement.

11. EARLY TERMINATION.

a. Equipment. Equipment included in an Order is being provided for the entire term of the Order. If, prior to the expiration of an Order, Customer terminates Equipment or requires Equipment to be removed or replaced, or Xerox terminates the applicable Order due to Customer's default, Customer will pay all amounts due as of the termination date and the ETCs set forth in the applicable SSO.

b. Services. Unless otherwise set forth in an SOW, Customer may terminate or reduce any Services upon 90 days prior written notice without incurring ETCs.

12. INDEMNIFICATION.

a. Except as specifically set forth below with regard to intellectual property, Xerox's indemnification obligations shall be as set forth in the Copy Center Agreement.

b. Xerox, at its expense, if promptly notified by Customer and given the right to control the defense, will defend Customer from, and pay any settlement agreed to by Xerox or any ultimate judgment for, any claim not identified in (i)-(vi) below or subject to 12.c. below that any Services or Deliverables (excluding Third Party Products) infringe a third party's U.S. intellectual property rights. Excluded herein are claims arising from or relating to: (i) Services performed using Customer Assets, Customer Content or other materials provided to Xerox by Customer for which Customer failed to provide sufficient rights to Xerox; (ii) Services performed, or Deliverables provided, to Customer's direction, specification or design, (iii) infringement resulting from or caused by Customer's misuse or unauthorized modification of systems or products; (iv) use of Services or Deliverables in combination with other products, services or data streams not provided by Xerox if such combination forms the basis of such claim; (v) Customer's failure to use corrections or enhancements to the Services or Deliverables provided by Xerox; and (vi) breach of Customer's representations and warranties in Section 9(b). If the use of the Services or Deliverables (excluding Third Party Products) are enjoined as a result of a claim under this Section, or in the reasonable opinion of Xerox are likely to be the subject of such a claim, Xerox will, at its option and sole expense, exercise any or all of following remedies: (w) obtain for Customer the right to continue to use such Services or Deliverables; (x) modify such Services or Deliverables so they are non-infringing; (y) replace such Services or Deliverables with non-infringing ones; or (z) terminate and/or accept the return of such Deliverables and refund to Customer any amount paid, less the reasonable rental value for the period such Deliverable was available to Customer.

c. Customer, at its expense, if promptly notified by Xerox and given the right to control the defense, will defend Xerox from, and pay any settlement agreed to by Customer or any ultimate judgment for, all third party claims arising out of or related to Section 12.b(i)-(vi).

d. The indemnifying party is not responsible for any litigation expenses of the indemnified party or any settlements unless it pre-approves them in writing.

13. LIMITATION OF LIABILITY. Xerox will not be liable to Customer, in the aggregate, for any direct damages in excess of the amounts paid by Customer to Xerox during the 12 months prior to the claim or \$50,000, whichever is greater; and neither party will be liable to the other for any special, indirect, incidental, consequential or punitive damages arising out of or relating to this SSA or any Order hereunder, whether the claim alleges tortious conduct (including negligence) or any other legal theory. This limitation of liability is not applicable: (a) to any specific indemnification obligations set forth in this SSA; including liability for bodily injury or personal injury or (b) where either party has (i) exceeded the rights to the other party's intellectual property granted to it under this SSA, or (ii) misappropriated or infringed the other party's intellectual property under this SSA.

14. ASSIGNMENT. Customer may not assign any of its rights or obligations hereunder. Xerox may assign this SSA and any Orders hereunder, in whole or in part, with written notice to Customer and may release information Xerox has about Customer to an assignee. Each successive assignee of Xerox will have all of the rights but none of the obligations of Xerox pursuant to this SSA. Customer will continue to look to Xerox for performance of Xerox's obligations hereunder and Customer hereby waives and releases any assignees of Xerox from any such claim. Customer will not assert any defense, counterclaim or setoff that Customer may have or claim against Xerox against any assignee of Xerox.

15. FORCE MAJEURE. Except for payment obligations, neither party will be liable to the other for its failure to perform any of its obligations hereunder during any period in which such performance is delayed by circumstances beyond its reasonable control. The affected party will notify the other party of each such circumstance.

16. MAINTENANCE SERVICES.

a. 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. Except for Equipment identified as "No Svc," Maintenance Services will be provided for the Equipment during Xerox's standard working hours in areas open for repair service. Maintenance Services excludes repairs due to: (v) misuse, neglect or abuse; (w) failure of the installation site or the PC or workstation used with the Equipment to comply with Xerox's published specifications; (x) use of options, accessories or products not serviced by Xerox; (y) non-Xerox alterations, relocation, service or supplies; or (z) failure to perform operator maintenance procedures identified in operator manuals. Replacement parts may be new, reprocessed or recovered and all replaced parts

become Xerox's property. Xerox will, as Customer's exclusive remedy for Xerox's failure to provide Maintenance Services, replace the Equipment with an identical model or, at Xerox's option, another model with comparable features and capabilities. Notwithstanding anything to the contrary herein, Xerox will have no obligation to replace Equipment beyond its end of service date. There will be no additional charge for the replacement Equipment during the initial Term. Unless the applicable Order requires Xerox to provide meter readings, Customer will provide them using the method and frequency identified by Xerox. If Customer does not provide a meter reading for Equipment not capable of Remote Data Access, or for which Remote Data Access is interrupted, Xerox may reasonably estimate the reading and bill Customer accordingly.

- b. **CARTRIDGES.** 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 in the U.S. Failure to use such Cartridges will void any warranty applicable to such Equipment. Cartridges packed with Equipment and/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, Cartridge(s) 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. Equipment configuration that permits use of non-newly manufactured original Xerox Cartridges may be available from Xerox at an additional charge.
 - c. **PC/WORKSTATION REQUIREMENTS.** For Equipment requiring connection to a PC or workstation, Customer must use a PC or workstation that either (i) has been provided by Xerox, or (ii) meets Xerox's published specifications.
17. **CONSUMABLE SUPPLIES INCLUDED.** If specified in an Order or the Copy Center Agreement, Xerox will provide Consumable Supplies for Equipment. Consumable Supplies are Xerox's property until used by Customer, and Customer will (a) use them only with the Equipment included in the applicable Order, (b) return all Cartridges to Xerox as provided herein, and (c) at the end of the term of the applicable Order, return any unused Consumable Supplies to Xerox at Xerox's expense using Xerox-supplied shipping labels or destroy them in a manner permitted by applicable law. Should Customer's use of Consumable Supplies exceed Xerox's published yields by more than 10%, Xerox will notify Customer of such excess usage. If such excess usage does not cease within 30 days after such notice, Xerox may charge Customer for such excess usage. If Xerox provides paper under a Services Contract, upon 30 days notice, Xerox may adjust paper pricing or either party may terminate the provision of paper.
18. **EQUIPMENT STATUS.** Unless Customer is acquiring Previously Installed Equipment, Equipment supplied by Xerox in its performance of this Agreement will be either: (a) "Newly Manufactured", which may contain some recycled components that are reconditioned; (b) "Factory Produced New Model", which is manufactured and newly serialized at a Xerox factory, adds functions and features to a product previously disassembled to a Xerox predetermined standard, and contains both new components and recycled components that are reconditioned; or (c) "Remanufactured", which has been factory produced following disassembly to a Xerox predetermined standard and contains both new components and recycled components that are reconditioned. Xerox makes no representations as to the manufactured status of Third Party Hardware.
19. **TITLE, RISK OF LOSS AND PROTECTION OF XEROX'S RIGHTS.** Title to Equipment and Third Party Hardware will remain with Xerox unless purchased by Customer. Risk of loss for the Products will pass to Customer upon delivery; provided, however that Customer will not be liable for loss or damage to the extent arising from Xerox's actions in the performance of its obligations under this Agreement. Customer will keep the Products insured against loss and the policy will name Xerox as Loss Payee; provided that Xerox gives Customer's Risk Manager sufficient information for insurance purposes. Customer hereby authorizes Xerox or its agents to file financing statements necessary to protect Xerox's rights to Equipment and Third Party Hardware.
20. **WARRANTIES AND DISCLAIMERS.**
- a. **SERVICES WARRANTY.** Xerox warrants to Customer that the Services will be performed in a skillful and workmanlike manner. If the Services do not comply with the service levels in an applicable SOW, Customer will notify Xerox in writing detailing its concerns. 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 ("Plan"). As Customer's exclusive remedy for such non-compliance, Xerox will either modify the Services to comply with the applicable service levels 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.
 - b. **THIRD PARTY PRODUCT WARRANTY.** For Third Party Products selected solely by Xerox for an Order, Xerox warrants they will operate substantially in conformance with applicable service levels in the SOW and to perform the Services set forth in the Copy Center Agreement. If, within a reasonable time after provision of such Third Party Products, they cannot be brought into substantial conformance with all required services levels, and such non-conformance is a result of Xerox's use of such Third Party Products, Customer's exclusive remedy for Xerox to provide a refund of any fees paid for the non-conforming Third Party Products upon their return to Xerox.
 - c. **WARRANTY DISCLAIMER.** EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION, XEROX MAKES NO OTHER WARRANTIES, WHETHER EXPRESSED OR IMPLIED; AND XEROX DISCLAIMS ALL OTHER WARRANTIES, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE AND MERCHANTABILITY, AND ANY WARRANTIES RELATING TO DESIGN, PERFORMANCE, FUNCTIONALITY, OR COMPATIBILITY WITH CUSTOMER'S SYSTEMS.
 - d. The warranties set forth in this SSA are expressly conditioned upon the use of the Services and Deliverables for the purposes for which they were intended or designed, and do not apply to Services or Deliverables subjected to misuse, accident, alteration or modification by Customer or any third party (except as specifically authorized in writing

by Xerox). In no event will Xerox be responsible for any failure to perform Services caused by: (i) Customer Assets, Customer Content, or services, maintenance, design implementation, supplies or data streams provided by Customer, Customer's agent or service provider to Xerox for use hereunder, (ii) Customer's failure to contract for the minimum types and quantities of Products required by Xerox to perform the Services, or (iii) Customer's failure to perform its obligations under Section 10.a. or b.

21. SOFTWARE TERMS.

- a. **SOFTWARE LICENSE.** Xerox grants Customer a non-exclusive, non-transferable license to use in the U.S.: (i) Base Software only with the Equipment with which it was delivered; and (ii) Application Software only on any single unit of Equipment for as long as Customer is current in the payment of all applicable software license fees. Customer has no other rights to Software. The Base Software license will terminate; (y) if Customer no longer uses or possesses the Equipment; or (z) upon the expiration of any Order under which Customer has rented or leased the Equipment (unless Customer has exercised an option to purchase the Equipment). Neither Xerox nor its licensors warrant that Software will be free from errors or that its operation will be uninterrupted. The foregoing terms do not apply to Diagnostic Software or to software/documentation accompanied by a clickwrap or shrinkwrap license agreement or otherwise made subject to a separate license agreement. Third Party Software is subject to license and support terms provided by the vendor thereof.
 - b. **SOFTWARE SUPPORT.** For Base Software, Software Support will be provided during the initial term of the applicable Order and any renewal period, but not longer than 5 years after Xerox stops taking customer orders for the subject Equipment model. For Application Software, Software Support will be provided as long as Customer is current in the payment of all applicable software license and support fees. 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 user documentation; (ii) provide available workarounds or patches to resolve Software performance problems; and (iii) resolve coding errors for the current Release and the previous Release for a period of 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. Maintenance Releases or Updates that Xerox may make available will be provided at no charge and must be implemented within 6 months. Feature Releases will be subject to additional license fees at Xerox's then-current pricing. Each Release will be considered Software governed by the provisions of this Section 21 (unless otherwise noted). Implementation of a Release may require Customer to procure, at Customer's expense, additional hardware and/or software from Xerox or another entity. Upon installation of a Release, Customer will return or destroy all prior Releases. Xerox may annually increase Software license and support fees for Application Software. For State and Local Government Customers, this adjustment will take place at the commencement of each of Customer's annual contract cycles.
 - c. **DISABLING CODE.** Software may contain code capable of automatically disabling the Equipment. Disabling code may be activated if: (i) Xerox is denied access to periodically reset such code; (ii) Customer is notified of a default under a Services Contract; or (iii) Customer's license is terminated or expires.
 - d. **DIAGNOSTIC SOFTWARE.** Diagnostic Software is a valuable trade secret of Xerox. Xerox does not grant Customer any right to use Diagnostic Software. 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.
 - e. **TITLE AND RIGHTS.** Title and all intellectual property rights to Software and Diagnostic Software will reside solely with Xerox and/or its licensors (who will be considered third-party beneficiaries of Section 21.a). 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 or Diagnostic Software; (ii) activate Software delivered with the Equipment in an inactivated state; or (iii) access or disclose Diagnostic Software for any purpose.
22. **REMOTE SERVICES.** Certain models of Equipment are supported and serviced using Remote Data provided through Remote Data Access. Remote Data Access also enables Xerox to transmit to Customer Releases for Software and remotely diagnose and modify Equipment to repair or correct malfunctions. Remote Data will be transmitted to and from Customer in a secure manner specified by Xerox. Remote Data Access will not allow Xerox to read, view or download any Customer data, documents or other information residing on or passing through the Equipment or Customer's information management systems. Customer grants the right to Xerox, without charge, to conduct Remote Data Access for the purposes described above.
23. **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.
24. **MISCELLANEOUS.** 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. In any action to enforce this SSA or any Services Contract hereunder, the parties agree to the jurisdiction and venue of the federal or state courts in Coconino County, Arizona and to waive their right to a jury trial. If a court finds any term of this SSA or any Services Contract to be unenforceable, the remaining terms of this SSA and the Services Contract will remain in effect. The delay or failure by either Party to enforce any right or remedy under this SSA or any Services Contract will not constitute a waiver or forgiveness of such right or remedy. Either party may retain a reproduction (e.g., electronic image, photocopy, facsimile) of this SSA or any Order, which will be admissible in any action to enforce it. Except for documentation of Equipment replaced by Xerox for reasons

other than trade-in, all changes to this SSA or any Order will be made in an amendment signed by both parties. Customer represents that: (a) it has the lawful power and authority to enter into this SSA, (b) the person signing this SSA or any Order is duly authorized to do so, (c) entering into this SSA will not violate any law or other agreement to which it is a party, (d) it is not aware of anything that will have a material negative effect on its ability to satisfy its payment obligations under this SSA or any Services Contract, and (e) all financial information it has provided, or will provide, to Xerox is true and accurate and provides a good representation of Customer's financial condition. Each party will promptly notify the other, in writing, of any change in ownership, or if it relocates its principal place of business or changes the name of its business. The following four clauses will control over every other provision in a Services Contract: (w) Customer and Xerox will comply with all laws applicable to the performance of its obligations hereunder, (x) in no event will Xerox charge or collect any amounts in excess of those allowed by applicable law, (y) any part of a Services Contract 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 Services Contract to the maximum amount allowed by law, and (z) 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 refunded to Customer.

25. DEFINITIONS.

- a. "Application Software" means software and accompanying documentation identified in an Order as "Application Software."
- b. "Assessments" means assessment and recommendation reports created by Xerox in the performance of assessment Services.
- c. "Base Software" means software and accompanying documentation provided with Equipment.
- d. "Cartridges" means Equipment components designated by Xerox as customer replaceable units, including copy/print cartridges and xerographic modules or fuser modules.
- e. "Confidential Information" means this SSA, Orders and certain business information identified as confidential that each party may disclose to the other. Customer Content is considered Customer Confidential Information. Xerox Work, Xerox Tools and Xerox Client Tools are considered Xerox Confidential Information.
- f. "Consumable Supplies" means black toner (excluding highlight color toner), black developer, Cartridges and, if applicable, fuser agent. For full-color Equipment Orders that include Consumable Supplies, Consumable Supplies also includes, as applicable, color toner and developer. For Equipment identified as "Phaser", Consumable Supplies may also include, if applicable, black solid ink, color solid ink, imaging units, waste cartridges, transfer rolls, transfer belts, transfer units, belt cleaner, maintenance kits, print Cartridges, drum Cartridges, waste trays and cleaning kits.
- g. "Customer Assets" means all hardware, software and or workspace owned, leased, rented, licensed and/or controlled by Customer, and any services used by Customer that Xerox needs to use or access to enable Xerox to perform the Services.
- h. "Customer Content" means documents, materials and data provided in hard copy or electronic format by Customer to Xerox containing information about Customer and/or Customer's clients.
- i. "Deliverables" means Products, Output of Services, Assessments and Documentation.
- j. "Developments" means items created by Xerox and its employees, agents, and/or licensors, including, but not limited to, computer programs, code, reports, operations and procedures manuals, forms, design or other works of authorship or materials, in the course of performing Services.
- k. "Diagnostic Software" means software used by Xerox to evaluate or maintain the Equipment.
- l. "Documentation" means all manuals, brochures, specifications, information and software descriptions, in electronic, printed, and/or camera-ready form, and related materials customarily provided by Xerox for Customer's use as part of the Services.
- m. "Eligible Affiliate" means any domestic entity which controls, is controlled by, or is under common control with Customer. Control (including the terms controls, controlled by and under common control with) means direct or indirect power to direct the management and policies of an entity.
- n. "Equipment" means Xerox-brand equipment.
- o. "ETCs" means early termination charges paid by Customer in the event of early termination, for loss of bargain and not as a penalty, as more fully defined in this SSA and the applicable SSO.
- p. "Feature Releases" means new releases of Software that include new content or functionality.
- q. "Maintenance Releases" or "Updates" means new releases of Software that primarily incorporate compliance updates and coding error fixes.
- r. "Maintenance Services" means the services provided by Xerox (or a designated servicer) to keep the Equipment in good working order; including Customer-implemented remedies identified at Xerox.com and telephone support provided by Xerox to Customer.
- t. "MMC" means the Monthly Minimum Charge identified in an Order which, along with any Additional Impression Charges, covers the cost for the Services, Products and Maintenance Services. The MMC may also include lease buyout funds, Third Party Funds, supplemental funds, monthly equipment component amounts, remaining Customer obligations from previous contracts, amounts being financed or refinanced, and Amortized Services. One-time items are billed separately from the MMC.
- t. "Order" means any (i) SSO, (ii) SOW which references an applicable Services Contract Number and is signed by Customer and Xerox, or (iii) PO.

- u. "Output of Services" means electronic images created by scanning tangible documents containing Customer Content, or the content of any reports and other materials, created by Xerox specific to and for Customer per the applicable Order, but does not include software.
- v. "PO" means a Customer-issued purchase order accepted by Xerox that references an applicable Services Contract Number.
- w. "Pre-existing Work" means items used or incorporated into the Services or Deliverables, or developed or acquired by Xerox independent of performing the Services.
- x. "Products" means, collectively, Consumable Supplies, Equipment, Software and Third Party Products.
- y. "Releases" means, collectively, Maintenance Releases, Updates and Feature Releases.
- z. "Remote Data" means data that is automatically collected by Xerox or transmitted to or from Xerox by Equipment 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. Remote Data may be used by Xerox for billing, report generation, supplies replenishment, support services, recommending additional products and services and product improvement/development purposes.
- aa. "Remote Data Access" means electronic transmission of Remote Data to or from a secure offsite location.
- bb. "Services" means managed services (e.g. copy center and mailroom services), consultative services, and/or professional services, including, but not limited to, assessment, document management, imaging and language translation services.
- cc. "Services Contract" means this SSA together with one or more Orders designated by the same Services Contract Number.
- dd. "Services Contract Number" means a 10 digit number assigned by Xerox to each Services Contract.
- ee. "Software" means Application Software and Base Software.
- ff. "Software Support" means the support and maintenance of software provided by Xerox (or a designated servicer).
- gg. "SSO" means a Services and Solutions Order issued by Xerox pursuant to this SSA.
- hh. "SOW" means a statement of work describing Services and Deliverables which (i) is incorporated by reference into an SSO, or (ii) references an applicable Services Contract Number and is signed by Customer and Xerox.
- ii. "Taxes" means all taxes, fees or charges of any kind (including interest and penalties) assessed by any governmental entity on this SSA or any Order hereunder or the amounts payable to Xerox under this SSA or any Order. Taxes do not include personal property taxes in jurisdictions where Xerox is required to pay personal property taxes, or taxes on Xerox's income.
- jj. "Third Party Funds" is defined in Section 11.c.
- kk. "Third Party Hardware" means non-Xerox brand equipment.
- ll. "Third Party Products" means, collectively, Third Party Hardware and Third Party Software.
- mm. "Third Party Software" means non-Xerox brand software.
- nn. "U.S." means the United States and its territories and possessions.
- oo. "Xerox Client Tools" means certain Xerox proprietary tools (including any modifications, enhancements, improvements and derivative works) that are owned by Xerox and are licensed to Customer for its use under an accompanying click wrap license agreement.
- pp. "Xerox Tools" means certain Xerox proprietary tools (including any modifications, enhancements, improvements and derivative works) used by Xerox to provide certain Services.
- qq. "Xerox Work" means, collectively, Developments and Pre-Existing Work.

FLAGSTAFF, CITY OF

XEROX CORPORATION

Signature

Signature

Name (please print)

Name

Title

Title

Address

Address

Date

Date