

**COPIER LEASE & COST PER PRINT AGREEMENT  
OFFICETECH AND CITY OF KODIAK  
CONTRACT NO. 2019-006**

This Cost Per Print Agreement, as it may be amended or supplemented from time to time (the "**Agreement**") is entered into by the City of Kodiak, Alaska ("City") and OfficeTECH, Inc., an Alaska corporation and an authorized Xerox® Managed Print Services channel partner. "**Xerox**" means Xerox Corporation. The Agreement is entered into pursuant to the City's Request for Proposals for Document Production Equipment Lease Bid No. 2019-006 (RFP 2019-006) and Company's July 15, 2019 Proposal for City of Kodiak, submitted in response thereto. RFP 2019-006 is hereby incorporated into this Agreement by reference.

**1. SERVICES.** Company will provide the services ("Services") described herein and on one or more Print Service Schedules ("Schedules") for the devices identified on such Schedule ("Managed Devices"). The Tools (defined below) will be used to monitor the networked Managed Devices. The Tools provide automatic service and supplies alerts to the Help Desk (e.g. low toner) and are used for automated meter collection, new device discovery, and device data collection for reporting. The Tools periodically scan approved ranges of City's network for devices which may be eligible to be added as Managed Devices. Devices identified through this process may be added to the Schedules as Managed Devices and billed at rates for those specific products. City agrees to pay to Company the "Minimum Monthly Charges" set forth on Schedules, any excess print charges, and all other amounts stated herein.

**2. LEASE OF MANAGED DEVICES.** (a) Company shall, within 30 days of the execution of this Agreement, deliver and install the Managed Devices to the locations identified in RFP 2019-006.

(b) Company shall be responsible for removal of all packing material. Company shall be responsible for coordination with any prior vendor and removal of old machines. If Company fails to deliver and install the new equipment as ordered by the City or fails to remove the old equipment within the specified timeframes, the City may terminate this Agreement.

(c) Company shall arrange for hardware leasing through Xerox Financial Services LLC (XFS), City agrees to execute lease agreement with XFS ("XFS Lease"). XFS will invoice City on a monthly basis for hardware. Upon performance of the requirements of subsections (a) and (b) above, City agrees to execute a Delivery & Acceptance Certificate at Company's request (and confirm same via telephone and/or electronically) confirming that City has received and accepted the Managed Devices.

(d) City shall not move the Managed Devices to another location without first obtaining Company's written consent, which shall not be unreasonably withheld. City shall permit Company to inspect Managed Devices and any maintenance records relating thereto during normal business hours upon reasonable notice.

(e) Title and ownership to the Managed devices shall remain with Company.

**3. TERM AND TERMINATION.** (a) The term of this Agreement ("Term") will begin on the date City accepts delivery and installation of the Managed Devices and will continue for a period of sixty months unless earlier terminated in accordance with this section.

(b) The City may suspend or terminate this Agreement at any time upon written 30-day notice to the Company in the event of a material breach of contractual obligations. A default shall include, but is not limited to a "Failure to Perform". Failure to Perform means any of the following actions or inactions by the Company, which, if occurring, shall also constitute a material breach of this Agreement by Company:

- i. The Company provides material that does not meet the specifications of the Agreement.
- ii. The Company fails to adequately perform the services set forth in the specifications of the Agreement.
- iii. The Company fails to complete the work required or furnish the materials required within the time stipulated in the Agreement.
- iv. The Company fails to make progress in the performance of the Agreement and/or give the City reason to believe that the Company will not or cannot perform to the requirements of the Agreement. Company will implement no changes to price or interpretation of contract terms without the express advanced concurrence and consent of the City Manager or his/her designee.

(c) If, in the sole judgment of the City, Company's equipment, at any individual location, develops a history of unsatisfactory performance, City shall provide Company with a 30-day notice to allow Company to correct such unsatisfactory performance. If such unsatisfactory performance persists upon the expiration of the 30-day period, the City may demand removal of machine and exclude that machine from this Agreement.

(d) This Agreement shall automatically renew for additional thirty-day terms unless either party provides written notice of non-renewal at least 30 days, but not more than 90 days, before the end of the existing term.

**4. QUALITY ASSURANCE AND TECHNICAL SUPPORT.** (a) Company shall provide a representative to act as a single point of contact for all inquiries.

(b) Company shall establish a practice of maintaining routine visits to departments to provide services, which include, but are not limited to satisfaction inquiries, equipment requests, training, and complaint resolution.

(c) The Company shall provide training and demonstrations, at no additional cost, in conjunction with initial installation, and on an as-needed basis thereafter, as may be requested by authorized City personnel. Upon such request for training and/or demonstrations, Company shall respond in a reasonable time period. An operator's manual shall be provided with each copy machine.

(d) At no additional cost to the City, Company shall provide both telephone support and timely on-site support for network-related problems technicians that have computer network training. These technicians will not have direct access to the network or to computers, but departmental IT staff will be available to coordinate troubleshooting efforts.

(e) At no additional cost to the City, Company agrees to timely erasure of all data on hard drives from machines that are removed from City service. Data erasure shall be coordinated with the City IT Administrator and performed according to City specifications.

(f) The Help Desk is available during the Service Hours to receive, track, escalate, process and close service issues, remotely resolve certain issues, and process City requests for Services.

(g) Company will keep the Managed Devices in good working order.

(h) City shall assist Company with remote solve efforts, including talking with a Company service representative to detail the issue, attempt recommended actions to resolve

(i) Company shall respond on-site to verbal service calls within an average response time of four workday hours after notification of a malfunction. Workday hours are defined as those running from 8 a.m. to 5 p.m., Monday through Friday, except City holidays. Company shall adhere to a standard policy of calling back within two hours of the call for service to advise departmental personnel how and when the problem will be addressed. Calculation of response time starts when authorized City personnel report a malfunction to the Company. Response time for equipment installed at City facilities operating 24 hours per day shall be calculated on the workday hour basis. Company's repeated failure to meet the four hour response time obligation shall constitute a material breach of the Agreement.

(j) All equipment must be repaired or replaced within twenty-four consecutive hours of the initial call for service or during the first Workday following such call. Company's repeated failure to comply with this obligation shall constitute a material breach of the Agreement. When repair time exceeds or is expected to exceed twenty-four consecutive hours, Company shall replace any such unrepaired machine with a reasonably comparable loaner machine that allows continued machine operations. Reasonably comparable shall, at the very least, mean a machine with a speed that is no less than 50 copies per minute from the machine being temporarily replaced. After five business days wherein a loaned machine has been placed, such locations must be provided with a loaner machine that provides equal or better performance and features to the original equipment being temporarily replaced. Company's repeated failure to comply with this obligation shall constitute a material breach of the Agreement. Managed Devices that develop a trend of requiring an excessive number of service calls (defined as four service calls in a month or six service calls within a 90-day period) must be replaced with comparable equipment of equal or greater capability at no additional charge. Company agrees that the City Manager, or his/her designee, shall be the final authority for determining whether a machine has been subject to an excessive number of service calls. Company's repeated failure to comply with this obligation shall constitute a material breach of the Agreement.

(l) Replacement parts may be new or used and all removed, replaced parts become Company's property.

(m) Repairs due to the following are not included in the fees set forth on a Schedule: (i) misuse, neglect, abuse; (ii) failure of the City's PC to comply with the OEM's published specifications; (iii) relocation, alterations, or use of options, accessories, service or supplies not provided by Company; (iv) failure to perform any City Responsibilities identified in the section titled "City Responsibilities"; or (v) acts or omissions of City or any party not affiliated with Company or Xerox.

**5. SUPPLIES.** (a) Company shall provide, at no additional cost to the City, all consumable supplies ("Supplies"), except paper, throughout the term of this Agreement, including shipping charges. Supplies include, but are not limited to toner, developer, ink/copy cartridges, fusers, drums, image units, transfer belts, and staples.

(b) At the time of Managed Device installation, Company shall deliver supplies for not less than an estimated two-month period for each Managed Device and shall maintain City's two month's usage reserve of toner and staples for each Managed Device.

(c) Supplies may be ordered through the Tools.

(d) Company shall deliver ordered Supplies within five days after notification of order.

(e) Supplies are Company's property until used by City, and City will use them only with the Managed Devices. Selling, transferring, bartering or otherwise conveying Supplies to anyone is strictly prohibited and is subject to civil and criminal penalties. Upon request, City will provide an inventory of Supplies in its possession. Upon expiration or termination of the Agreement City will, at Company's option and expense, return any unused Supplies to Company, permit access to its facilities to permit collection, or dispose of them, at Company's expense, as directed in writing by Company.

(f) To prevent excessive shipment of Supplies, when Supplies are ordered for Managed Devices, Company will: (i) check the current consumables level, if available, to validate a low consumables condition; and (ii) check the metered impression volume since the last Supplies shipment to determine if impression volume exceeds the expected yield. If impression volume exceeds the expected yield, the parties shall work in good faith to determine the cause of the unexpected yield. Should such yield be caused by City's failure to perform City Responsibilities, Company the actual number of prints/copies shall be adjusted by the proportional disparity in expected and actual yield and print/copy fees shall apply accordingly.

(g) Company may not provide Supplies if a current meter read is not received for a Managed Device.

## **6. CITY RESPONSIBILITIES.** City will:

(a) Notify Company if City wishes to relocate a Managed Device, and Company will advise City if Services are available at the new location.

(b) Assure that networked Managed Devices are Simple Network Management Protocol ("SNMP") enabled and can route SNMP over the network.

(c) Provide a dedicated PC (or server) that is connected to City's network at all times ("City PC"); and allow Company to install, use, access, update and maintain the Tools on the City PC. The Tools cannot be installed on a PC where other SNMP-based applications or other Xerox Tools are installed, because they may interfere with the Tools.

(d) Ensure that proper virus protection is installed, maintained, and enabled on any servers, desktop workstations, laptop computers and other hardware attached to the City's network and output environment, as well as on any server or computer hosting the Tools or

any data on the City's network. Neither Company nor Xerox is responsible for the disruption of Services or loss of functionality of the Tools caused by any of the foregoing. If the Tools become inoperable due to City implemented changes to its network, Company will work with City to remotely re-install Tools.

(e) Assist in implementation of the Tools by providing relevant network information such as the IP address ranges or subnets on which Managed Devices reside.

(f) Distribute Supplies within City's site and install them in Managed Devices only when supplies within the device are depleted, clear of paper jams, and resolve any network or City PC issues.

(g) Replace Managed Device cartridges and CRUs. City Replaceable Units ("CRUs") are those items that an operator can install without service assistance.

(h) City agrees to work with Company to remotely solve any issues before a service technician is dispatched to perform on-site repair services.

(i) Provide reasonable access to City's facilities and personnel as required for the performance of the Services.

(j) Ensure that Managed Devices are readily accessible to the Company authorized service representative.

(k) Request Break Fix Services from the Help Desk for Managed Devices that are not compatible with the Tools.

(l) Grant or transfer to Company sufficient rights to use software owned, licensed or otherwise controlled by City, as required, solely for the purpose of providing the Services.

(m) Company will is not liable for delays or services failures, including but not limited to implementation delays if City does not perform or facilitate completion of its designated responsibilities.

**7. PRINT CHARGES; ANNUAL ADJUSTMENTS; LATE FEES AND TAXES.** Each month, City agrees to pay Company, on a net 30 basis from receipt of valid invoices, all Minimum Monthly Charges, excess print charges and all other amounts due under this Agreement (including all applicable taxes). **City agrees to pay the Minimum Monthly Charges each month even if City does not make the number of prints included with the Minimum Monthly Charge. On an annual basis, City may carry over a credit from any month during which City makes fewer than the minimum number of prints.** If Company does not receive payment in full on or before its due date, City shall pay (i) a fee equal to the greater of 1.5% of the amount that is late or \$25, plus (ii) interest on the part of the payment that is late in the amount of 1.5% per month from the due date to the date paid. City is responsible for all taxes (including, without limitation, sales, use and personal property taxes, and excluding only taxes based on Company's income), levies, assessments, license and registration fees and other governmental charges relating to this Agreement (collectively, "**Taxes**"). Company may periodically bill City for, and City agrees to promptly pay any Taxes. City authorizes Company to pay any Taxes when and as they may become due, and City agrees to reimburse Company promptly upon demand for the full amount paid by Company.

**8. XEROX CLIENT TOOLS & XEROX TOOLS.** Company will use certain Xerox software tools that are installed on City's network ("Xerox Client Tools"), and/or certain other proprietary Xerox software ("Xerox Tools"), to perform Company's obligations under this Agreement. Xerox Client Tools and Xerox Tools (collectively, "Tools") are Xerox trade secrets. Xerox Client Tools and any related documentation are licensed under a separate clickwrap or shrinkwrap license agreement that City must accept at the time of installation. Xerox Tools are operated and used only by Company and Xerox, and City has no right to use, access or operate the Xerox Tools. City shall not decompile or reverse engineer the Tools. The Tools will be removed by Company at the expiration or termination of this Agreement. Xerox Client Tools facilitate performance of the Services through automatic collection and transmission of data to a secure off-site location. Examples of automatically transmitted data include product registration, meter read, supply level, equipment configuration and settings, software version, and problem/fault code data. All such data will be transmitted in a secure manner. The automatic data transmission capability does not allow Company or Xerox to read, view or download the content of any of City's documents residing on or passing through the Managed Devices or City's information management systems. If a meter reading is not generated by Xerox Client Tools or, upon request, City fails to provide a meter reading, Company may estimate the reading and bill City accordingly.

**9. INTELLECTUAL PROPERTY INDEMNITY.** Company and Xerox will defend, and pay any settlement agreed to by Xerox or any final judgment for, any claim that the Tools infringe a third party's U.S. intellectual property rights. City must promptly notify Company and Xerox of any alleged infringement and permit Xerox to direct the defense. Neither Company nor Xerox is responsible for any non-litigation expenses or settlements unless Xerox and Company pre-approve them in writing. To avoid infringement, Xerox may modify or substitute an equivalent tool, or obtain any necessary licenses. Xerox is not liable for any infringement based upon a modification of the Tools to City's specifications or the Tools being used by City in a manner not permitted by this Agreement.

**10. WARRANTIES; LIMITATION OF LIABILITY.** (a) Company represents and warrants that the lease of the Managed Devices and provision of the Services satisfies the requirements of RFP 2019-006. Should there be any material discrepancy between the terms set forth in this Agreement and the requirements of RFP 2019-006, the requirements of RFP 2019-006 shall control.

(b) To render Company's counter-proposal for the XFS Lease and separate Cost-Per-Print Agreement responsive to the requirements of RFP 2019-006, Company agrees to defend, indemnify, and hold harmless City from any liability arising from the XFS Lease if and to the extent that such liability, or the event giving rise thereto, would not have arisen or resulted in liability under the requirements of RFP 2019-006.

(c) The Services will be performed in a skillful and workmanlike manner.

(d) Except for claims arising out of subsections (a) or (b) of this section, any liability for any cause whatsoever shall be limited to amounts paid by City under this Agreement. This limitation shall apply regardless of the form of action, whether contract or tort, including without limitation negligence actions, provided, however, that this limitation shall not apply to damages resulting from personal injury caused by Company's negligence. In no event shall Company be liable to City for any special, indirect, incidental, consequential, exemplary or punitive damages in any way arising out of or relating to this Agreement.

11. **ASSIGNMENT.** NO PARTY SHALL SELL, ASSIGN, OR OTHERWISE TRANSFER (collectively, "TRANSFER") THIS AGREEMENT, IN WHOLE OR IN PART, WITHOUT THE PRIOR WRITTEN CONSENT OF THE OTHER PARTY. Any attempted assignment or delegation without the prior written consent shall be void.

12. **DEFAULT.** City will be in default hereunder if City fails to pay any amount within 15 days of the due date as set forth in an invoice issued under this Agreement or if City fails to perform any other obligation under this Agreement. In the event of either party's default of breach, the non-breaching party may: (a) terminate this Agreement, (b) require payment, on demand, an amount equal to the sum of all amounts then due and past due, and/or (c) exercise any other remedy available under law.

13. **NOTICES.** Notices must be in writing and will be deemed given five days after mailing, or two days after sending by nationally recognized overnight courier, to the other party's business address as appears below, or to such other address designated by either party to the other by written notice given pursuant to this sentence.

14. **APPLICABLE LAW; VENUE; ATTORNEY FEES.** Any action related to this Agreement shall be governed by the laws of the State of Alaska without regard to choice of law principles, and any litigation hereunder shall take place in the state or federal courts located in Alaska. Each term hereof shall be interpreted to the maximum extent possible so as to be enforceable under applicable law. The prevailing party in any suit arising out of this Agreement shall be entitled to recover its full reasonable attorney fees and costs.

15. **MISCELLANEOUS.** This Agreement may be executed in counterparts, all of which together shall constitute the same document. City agrees that a facsimile or other copy containing the signatures of both parties shall be as enforceable as the original executed Agreement. The failure of either party to enforce at any time any provision of this Agreement shall not be construed to be a waiver of such provision or the right thereafter to enforce each and every provision hereof. No waiver by either party, either express or implied, or any breach of these terms or conditions shall be construed as a waiver of any other term or condition. The provisions of this Agreement that by their nature continue in effect shall survive the termination or expiration of this Agreement. The Agreement represents the final and only agreement between City and Company and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements. The Agreement can be changed only by a written agreement between the parties. ***City hereby represents to Company that this Agreement is legally binding and enforceable against City in accordance with its terms.***

IN WITNESS WHEREOF, the parties executed this instrument.

City of Kodiak  
710 Mill Bay Road  
Kodiak, AK 99615

*Mike Tvenge*

\_\_\_\_\_  
Mike Tvenge – City Manager      Date

OfficeTECH, INC.  
3709 Spenard Rd, Suite 200  
Anchorage, AK, 99503

*Julie Olsen*  
\_\_\_\_\_  
Julie Olsen – President

*10/22/19*  
\_\_\_\_\_  
Date

# Lease Agreement



Supplier Name-Address: OfficeTECH - 3709 Spenard Rd., Ste. 200 Anchorage, AK 99503			
Owner: <b>XEROX FINANCIAL SERVICES LLC</b> - 45 Glover Avenue, Norwalk, CT 06856		Agreement Number:	
<b>CUSTOMER INFORMATION</b>			
Full Legal Name: City of Kodiak			Phone: (907) 486-8650
Billing Address: 710 Mill Bay Rd		Contact Name: Mike Tvenge	
City: Kodiak	State: AK	Zip Code: 99615	Contact Email: mtvenge@city.kodiak.ak.us
<b>EQUIPMENT</b>			
Quantity	Model and Description	Quantity	Model and Description
1	Please see attached Schedule "A"		
Equipment Location (if different from Billing Address):			
<b>TERM</b>		<b>LEASE PAYMENT - (Monthly frequency unless otherwise noted)</b>	
Initial Term: (in months)	60	Lease Payment (plus applicable taxes):	\$ 826.40
		Frequency:	<input checked="" type="checkbox"/> Monthly <input type="checkbox"/> Quarterly <input type="checkbox"/> Annually
		<input checked="" type="checkbox"/> Fair Market Value Purchase Option, ("FMV") <input type="checkbox"/> \$1 Purchase Option	
<b>CUSTOMER ACCEPTANCE</b>			
<b>BY YOUR SIGNATURE BELOW, YOU ACKNOWLEDGE THAT YOU ARE ENTERING INTO A NON-CANCELLABLE AGREEMENT AND THAT YOU HAVE READ AND AGREED TO ALL APPLICABLE TERMS AND CONDITIONS SET FORTH ON PAGES 1 AND 2 HEREOF.</b>			
Authorized Signer X: <i>Mike Tvenge</i>		Date: <i>10-17-19</i>	Federal Tax ID # (Required): <i>92-6000083</i>
Print Name: <i>Mike Tvenge</i>		Title: <i>City Manager</i>	
<b>OWNER ACCEPTANCE</b>			
Accepted By:	Xerox Financial Services LLC	Name and Title:	Date:
<b>TERMS &amp; CONDITIONS</b>			

**1. Definitions.** The words "you" and "your" mean the legal entity identified in "Customer Information" above, and "XFS," "we," "us," "Owner" and "our" mean Xerox Financial Services LLC. "Party" means you or XFS, and "Parties" means both you and XFS. "Supplier" means the entity identified as "Supplier" above. "Acceptance Date" means the date (a) Supplier determines Equipment installed by Supplier is operating satisfactorily and is available for your use, or (b) Equipment identified by Supplier as being installable by you is delivered to your premises. "Agreement" means this Lease Agreement, including any attached Equipment schedule. "Commencement Date" will be a date after the Acceptance Date, as set forth in our first invoice, for the purpose of facilitating an orderly transition and to provide a uniform billing cycle. "Discount Rate" means 3% per annum. "Equipment" means the items identified in "Equipment" above and in any attached Equipment schedule, plus any Software, attachments, accessories, replacement parts, substitutions, additions and repairs thereto. "Interim Period" means the period, if any, between the Acceptance Date and the Commencement Date. "Interim Payment" means one thirtieth of the Lease Payment multiplied by the number of days in the Interim Period. "Payment" means the Lease Payment specified above and other charges you, Supplier and XFS agree will be invoiced by XFS on a monthly basis, plus Taxes. "Maintenance Agreement" means a separate agreement between you and Supplier for maintenance and support purposes. "Origination Fee" means a one-time fee of \$125 billed on your first invoice which you agree to pay, covering the origination, documentation, processing and certain other initial costs for the Agreement. "Term" means the Interim Period, if any, together with the Initial Term plus any subsequent renewal or extension terms. "UCC" means the Uniform Commercial Code of the State of Connecticut.

**2. Agreement, Payments and Late Payments.** You agree and represent all Equipment was selected, configured and negotiated by you based upon your own judgment and has been, or is being, supplied by Supplier. At your request, XFS has acquired, or will acquire, the same to lease to you under this Agreement and you agree to lease the same from XFS. The Initial Term, which is indicated above, commences on the Commencement Date. You agree to pay XFS the first Payment plus any applicable Interim Payment no later than 30 days after the Commencement Date; each subsequent Payment shall be payable on the same date of each month thereafter, whether or not XFS invoices you. **If any Payment is not paid in full within 5 days after its due date, you will pay a late charge of the greater of 10% of the amount due or \$25, not to exceed the maximum amount permitted by law.** For each dishonored or returned Payment, you will be assessed the applicable returned item fee, which shall not exceed \$35. Restrictive covenants on any method of payment will be ineffective.

**3. Equipment and Software.** To the extent that the Equipment includes intangible property or associated services such as software licenses, such intangible property shall be referred to as "Software." You acknowledge and agree that XFS has no right, title or interest in the Software and you will comply throughout the Term with any license and/or other agreement ("Software License") with the supplier of the Software ("Software Supplier"). You are responsible for determining whether any Software Licenses are required, and entering into them with the Software Supplier(s) no later than the Acceptance Date. You agree the Equipment is for your lawful business use in the United States (including its possessions and territories), will not be used for personal, household or family purposes, and is not being acquired for resale. You will not attach the Equipment as a fixture to real estate or make any permanent alterations to it.

**4. Non-Cancellable Agreement.** THIS AGREEMENT CANNOT BE CANCELLED OR TERMINATED BY YOU PRIOR TO THE END OF THE INITIAL TERM. YOUR OBLIGATION TO MAKE ALL PAYMENTS IS ABSOLUTE AND UNCONDITIONAL AND NOT SUBJECT TO DELAY, REDUCTION, SET-OFF, DEFENSE, COUNTERCLAIM OR RECOUPMENT FOR ANY REASON WHATSOEVER, IRRESPECTIVE OF THE PERFORMANCE OF THE EQUIPMENT, SUPPLIER, ANY THIRD PARTY OR XFS. Any pursued claim by you against XFS for alleged breach of our obligations hereunder shall be asserted solely in a separate action; provided, however, that your obligations under this Agreement shall continue unabated.

**5. End of Agreement Options.** If a \$1 Purchase Option is applicable, you will be deemed to have exercised your option to purchase the Equipment as of the Acceptance Date. If an FMV purchase option is designated on the first page hereof, if you are not in default and if you provide no greater than 150 days and no less than 60 days' prior written notice to XFS, you may, at the end of the Initial Term or any renewal term, either (a) purchase all, but not less than all, of the Equipment "AS IS, WHERE IS" and "WITH ALL FAULTS" by paying its fair market value, as determined by XFS in its sole but reasonable discretion, ("Determined FMV"), plus Taxes, or (b) de-install and return the Equipment within 30 days of the end of the then applicable term, at your expense, fully insured, to a continental US location XFS specifies. If you have not elected one of the above options, this Agreement shall renew for successive 3-month terms. Either party may terminate the Agreement at the end of any 3-month renewal term on 30 days' prior written notice and by taking one of the actions identified in (a) or (b) in the preceding sentence of this section. Any FMV purchase option shall be exercised with respect to each item of Equipment on the day immediately following the date of expiration of the Term of such item, and by the delivery at such time by you to XFS of payment, in form acceptable to XFS, of the amount of the applicable purchase price thereof. Upon payment of the applicable amount, XFS shall transfer our interest in the Equipment to you on an "AS IS, WHERE IS," "WITH ALL FAULTS" basis, without representation or warranty of any kind or nature whatsoever.

**6. Equipment Delivery and Maintenance.** Equipment will be delivered to you by Supplier at the location(s) specified herein, and you agree to execute a Delivery & Acceptance Certificate at XFS's request (and confirm same via telephone and/or electronically) confirming that you have received, inspected and accepted the Equipment, and that XFS is authorized to fund the Supplier for the Equipment. If you fail to accept the Equipment, this Agreement shall terminate; however, you assume all responsibility for any Equipment purchase order or other contract issued on your behalf directly with Supplier. Equipment may not be moved to another location without first obtaining XFS's written consent, which shall not be unreasonably withheld. You shall permit XFS or its agent to inspect Equipment and any maintenance records relating thereto during your normal business hours upon reasonable notice. You represent you have entered into a Maintenance Agreement with Supplier to maintain the Equipment in good working order in accordance with the manufacturer's maintenance guidelines and to provide you with Equipment supplies. **You acknowledge that XFS is acting solely as an administrator for Supplier with respect to the billing and collecting of the charges under the Maintenance Agreement (if applicable).** IN NO EVENT WILL XFS BE LIABLE TO YOU FOR ANY BREACH BY SUPPLIER OF ANY OF ITS OBLIGATIONS TO YOU, NOR WILL ANY OF YOUR OBLIGATIONS UNDER THIS AGREEMENT BE MODIFIED, RELEASED OR EXCUSED BY ANY ALLEGED BREACH BY SUPPLIER.

**7. Equipment Ownership, Labeling and UCC Filing.** If and to the extent a court deems this Agreement to be a security agreement under the UCC, and otherwise for precautionary purposes only, you grant XFS a first priority security interest in your interest in the Equipment and all proceeds thereof in order to secure your performance under this Agreement. Unless a \$1 Purchase Option is applicable, XFS is and shall remain the sole owner of the Equipment, except the Software. XFS may label the Equipment to identify our ownership interest in it. You authorize XFS to file by any permissible means a UCC financing statement to show, and to do all other acts to protect, our interest in the Equipment. You agree to pay any filing fees and administrative costs for the filing of such financing statements. You agree to keep the Equipment free from any liens or encumbrances and to promptly notify XFS if there is any change in your organization such that a refiling or amendment to XFS's UCC financing statement against you becomes necessary.

**8. Equipment Return.** If the Equipment is returned to XFS, it shall be in the same condition as when delivered to you, except for ordinary wear and tear and, if not in such condition, you will be liable for all expenses XFS incurs to return the Equipment to such "ordinary wear and tear" condition. **IT IS SOLELY YOUR RESPONSIBILITY TO SECURE ANY SENSITIVE DATA AND PERMANENTLY DELETE SUCH DATA FROM THE INTERNAL MEDIA STORAGE PRIOR TO RETURNING THE EQUIPMENT TO XFS. YOU SHALL HOLD XFS HARMLESS FROM YOUR FAILURE TO SECURE AND PERMANENTLY DELETE ALL SUCH CUSTOMER DATA AS OUTLINED IN THIS SECTION.**

**9. Assignment.** YOU MAY NOT ASSIGN, SELL, PLEDGE, TRANSFER, SUBLEASE OR PART WITH POSSESSION OF THE EQUIPMENT, THIS AGREEMENT OR ANY OF YOUR RIGHTS OR OBLIGATIONS UNDER THIS AGREEMENT (COLLECTIVELY "ASSIGNMENT") WITHOUT XFS'S PRIOR WRITTEN CONSENT, WHICH SHALL NOT BE UNREASONABLY WITHHELD, BUT SUBJECT TO THE SOLE EXERCISE OF XFS'S REASONABLE CREDIT DISCRETION AND EXECUTION OF ANY NECESSARY ASSIGNMENT DOCUMENTATION. IF XFS AGREES TO AN ASSIGNMENT, YOU AGREE TO PAY THE APPLICABLE ASSIGNMENT FEE AND REIMBURSE XFS FOR ANY COSTS WE INCUR IN CONNECTION WITH THAT ASSIGNMENT. XFS MAY SELL, ASSIGN OR TRANSFER ALL OR ANY PART OF THE EQUIPMENT, THIS AGREEMENT AND/OR ANY OF OUR RIGHTS (BUT NONE OF OUR OBLIGATIONS EXCEPT FOR INVOICING AND TAX ADMINISTRATION) UNDER THIS AGREEMENT. XFS'S ASSIGNEE WILL HAVE THE SAME RIGHTS THAT WE HAVE TO THE EXTENT ASSIGNED, AND YOU AGREE NOT TO ASSERT AGAINST SUCH ASSIGNEE ANY CLAIMS, DEFENSES, COUNTERCLAIMS, RECOURPMENTS, OR SET-OFFS THAT YOU MAY HAVE AGAINST XFS, AND YOU AGREE TO REMIT PAYMENTS TO SUCH ASSIGNEE IF SO DESIGNATED. XFS AGREES AND ACKNOWLEDGES THAT ANY ASSIGNMENT BY US WILL NOT MATERIALLY CHANGE YOUR OBLIGATIONS UNDER THIS AGREEMENT.

**10. Taxes.** You will be responsible for, indemnify and hold XFS harmless from, all applicable taxes, fees or charges (including sales, use, personal property and transfer taxes (other than net income taxes), plus interest and penalties) assessed by any governmental entity on the Equipment, this Agreement, or the amounts payable hereunder (collectively, "Taxes"), which will be included in XFS's invoices to you unless you timely provide continuing proof of your tax exempt status. For jurisdictions where certain taxes are calculated and paid at the time of agreement initiation, you authorize XFS to finance and adjust your Lease Payment to include such Taxes over the Initial Term. Unless and until XFS notifies you in writing to the contrary, the following shall apply to personal property taxes and returns. If an FMV purchase option is applicable, XFS will file all personal property tax returns covering the Equipment, pay the personal property taxes levied or assessed thereon, and collect from your account all personal property taxes on the Equipment. If a \$1 purchase option is applicable you will file all personal property tax returns covering the Equipment, pay the personal property taxes levied or assessed thereon, and provide us proof thereof upon our request. XFS MAKES NO WARRANTY, EXPRESS OR IMPLIED, REGARDING THE TAX OR ACCOUNTING TREATMENT OF THIS AGREEMENT.

**11. Equipment Warranty Information and Disclaimers.** XFS HAS NO INVOLVEMENT IN THE SALE, MANUFACTURE, CONFIGURATION, DELIVERY, INSTALLATION, USE OR MAINTENANCE OF THE EQUIPMENT. XFS DISCLAIMS, AND YOU WAIVE SOLELY AGAINST XFS, ALL EQUIPMENT WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR PARTICULAR PURPOSE, AND XFS MAKES NO REPRESENTATIONS OF ANY KIND OR TYPE, INCLUDING, BUT NOT LIMITED TO, THE EQUIPMENT'S SUITABILITY, FUNCTIONALITY, DURABILITY, OR CONDITION. Since you have selected the Equipment and Supplier, you acknowledge that you are aware of the name of the manufacturer of each item of Equipment, Supplier's contact information, and agree that you will contact manufacturer and/or Supplier for a description of any warranty rights you may have under the Equipment supply contract, sales order, or otherwise. Provided you are not in default hereunder, XFS hereby assigns to you any warranty rights we may have against Supplier or manufacturer with respect to the Equipment. If the Equipment is returned to XFS, such rights are deemed reassigned by you to XFS. **IF THE EQUIPMENT IS NOT PROPERLY INSTALLED, DOES NOT OPERATE AS WARRANTED, BECOMES OBSOLETE, OR IS UNSATISFACTORY FOR ANY REASON WHATSOEVER, YOU SHALL MAKE ALL RELATED CLAIMS SOLELY AGAINST MANUFACTURER OR SUPPLIER AND NOT AGAINST XFS, AND YOU SHALL NEVERTHELESS CONTINUE TO PAY ALL PAYMENTS AND OTHER SUMS PAYABLE UNDER THIS AGREEMENT.**

**12. Liability and Indemnification.** XFS IS NOT RESPONSIBLE FOR ANY LOSSES, DAMAGES, EXPENSES OR INJURIES OF ANY KIND OR TYPE, INCLUDING, BUT NOT LIMITED TO, ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES (COLLECTIVELY, "CLAIMS"), TO YOU OR ANY THIRD PARTY CAUSED BY THE EQUIPMENT OR ITS USE, EXCEPT THOSE CLAIMS ARISING DIRECTLY AND PROXIMATELY FROM XFS'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. In addition, except for Claims arising directly and proximately from XFS's gross negligence or willful misconduct, you assume the risk of liability for, and hereby agree to indemnify and hold safe and harmless, and covenant to defend, XFS, its employees, officers and agents from and against: (a) any and all Claims (including legal expenses of every kind and nature) arising out of the manufacture, purchase, shipment and delivery of the Equipment to you, acceptance or rejection, ownership, leasing, possession, operation, use, return or other disposition of the Equipment, including, without limitation, any liabilities that may arise from patent or latent defects in the Equipment (whether or not discoverable by you), any claims based on absolute/strict tort liability or warranty and any claims based on patent, trademark or copyright infringement; and (b) any and all loss or damage of or to the Equipment.

**13. Default and Remedies.** You will be in default under this Agreement if XFS does not receive any Payment within 10 days after its due date, or you breach any other obligation under this Agreement or any other agreement with XFS. If you default, and such default continues for 10 days after XFS provides notice to you, XFS may, in addition to other remedies (including disabling or repossessing the Equipment and/or requesting Supplier to cease performing under the Maintenance Agreement), require you to promptly return the Equipment as provided in Sections 5 and 6 hereof, and require immediate payment, as liquidated damages for loss of bargain and not as a penalty, of the sum of: (a) all amounts then past due, plus interest from the due date until paid at the rate of 1.5% per month; (b) the Payments remaining in the Term (including the fixed maintenance component thereof, if permitted under the Maintenance Agreement), discounted at the Discount Rate to the date of default, and (c) Taxes. In addition, if you do not return the Equipment as required above, you agree to pay XFS the Determined FMV, discounted at the Discount Rate to the date of default. You agree to pay all reasonable costs, including attorneys' fees and disbursements, incurred by XFS to enforce this Agreement.

**14. Risk of Loss and Insurance.** You assume and agree to bear the entire risk of loss, theft, destruction or other impairment of the Equipment upon delivery. You, at your own expense, (i) shall keep Equipment insured against loss or damage at a minimum of full replacement value thereof, and (ii) shall carry public liability insurance against bodily injury, including death, and against property damage in the amount of at least \$2 million (collectively, "Required Insurance"). All such Equipment loss/damage insurance shall be with lender's loss payable to "XFS, its successors and/or assigns, as their interests may appear," and shall be with companies reasonably acceptable to XFS. In addition, XFS shall be similarly named as an additional insured on all public liability insurance policies. The Required Insurance shall provide for 30 days' prior notice to XFS of cancellation. **YOU MUST PROVIDE XFS OR OUR DESIGNEES WITH SATISFACTORY WRITTEN EVIDENCE OF REQUIRED INSURANCE WITHIN 30 DAYS OF THE ACCEPTANCE DATE AND ANY SUBSEQUENT WRITTEN REQUEST BY XFS OR OUR DESIGNEES. IF YOU DO NOT DO SO, THEN IN LIEU OF OTHER REMEDIES FOR DEFAULT, XFS IN OUR DISCRETION AND AT OUR SOLE OPTION MAY (BUT IS NOT REQUIRED TO) OBTAIN INSURANCE FROM AN INSURER OF XFS'S CHOOSING, WHICH MAY BE AN XFS AFFILIATE, IN SUCH FORMS AND AMOUNTS AS XFS DEEMS REASONABLE TO PROTECT XFS'S INTERESTS (COLLECTIVELY "EQUIPMENT INSURANCE"). EQUIPMENT INSURANCE WILL COVER THE EQUIPMENT AND XFS; IT WILL NOT NAME YOU AS AN INSURED AND MAY NOT COVER ALL OF YOUR INTEREST IN THE EQUIPMENT AND WILL BE SUBJECT TO CANCELLATION AT ANY TIME. YOU AGREE TO PAY XFS PERIODIC CHARGES FOR EQUIPMENT INSURANCE (COLLECTIVELY "INSURANCE CHARGES") THAT INCLUDE: AN INSURANCE PREMIUM THAT MAY BE HIGHER THAN IF YOU MAINTAINED THE REQUIRED INSURANCE SEPARATELY; A FINANCE CHARGE OF UP TO 1.5% PER MONTH ON ANY ADVANCES MADE BY XFS OR OUR AGENTS; AND COMMISSIONS, BILLING AND PROCESSING FEES; ANY OR ALL OF WHICH MAY GENERATE A PROFIT TO XFS OR OUR AGENTS. XFS MAY ADD INSURANCE CHARGES TO EACH PAYMENT. XFS SHALL DISCONTINUE BILLING OR DEBITING INSURANCE CHARGES FOR EQUIPMENT INSURANCE UPON RECEIPT AND REVIEW OF SATISFACTORY EVIDENCE OF REQUIRED INSURANCE. You must promptly notify XFS of any loss or damage to Equipment which makes any item of Equipment unfit for continued or repairable use. You hereby irrevocably appoint XFS as your attorney-in-fact to execute and endorse all checks or drafts in your name to collect under any such Required Insurance. Insurance proceeds from Required Insurance or Equipment Insurance received shall be applied, at XFS's option, to (x) restore the Equipment so that it is in the same condition as when delivered to you (normal wear and tear excepted), or (y) if the Equipment is not restorable, to replace it with like-kind condition Equipment from the same manufacturer, or (z) pay to XFS the greater of (i) the total unpaid Payments for the entire Term hereof (discounted to present value at the Discount Rate) plus, if an FMV purchase option is designated on the first page hereof, XFS's residual interest in such Equipment (herein agreed to be 20% of the Equipment's original cost to XFS ) plus any other amounts due to XFS hereunder, or (ii) the Determined FMV immediately prior to the loss or damage. **NO LOSS OR DAMAGE TO EQUIPMENT, OR XFS'S RECEIPT OF INSURANCE PROCEEDS, SHALL RELIEVE YOU OF ANY OF YOUR REMAINING OBLIGATIONS UNDER THIS AGREEMENT. Notwithstanding procurement of Equipment Insurance or Required Insurance, you remain primarily liable for performance under this Section in the event the applicable insurance carrier fails or refuses to pay any claim. YOU AGREE (I) AT XFS'S SOLE ELECTION TO ARBITRATE ANY DISPUTE WITH XFS, OUR AGENTS OR ASSIGNS REGARDING THE EQUIPMENT INSURANCE AND/OR INSURANCE CHARGES UNDER THE RULES OF THE AMERICAN ARBITRATION ASSOCIATION IN FAIRFIELD COUNTY, CT, (II) THAT IF XFS MAKES THE FOREGOING ELECTION ARBITRATION (NOT A COURT) SHALL BE THE EXCLUSIVE REMEDY FOR SUCH DISPUTES; AND (III) THAT CLASS ARBITRATION IS NOT PERMITTED. This arbitration option does not apply to any other provision of this Agreement.****

**15. Finance Lease and Customer Waivers.** The parties agree this Agreement is a "finance lease" under UCC Article 2A. You waive, solely against XFS, its successors and assigns, all rights and remedies conferred on a lessee under Article 2A (Sections 508-522) of the UCC, (C.G.S.A. §§42a-2A-724-737), and any rights you now or later may have which require XFS to sell, rent or otherwise use Equipment to reduce our damages including our realization of the remaining value of the Equipment, or which may otherwise limit or modify any of our rights or remedies.

**16. Authorization of Signer and Credit Review.** You represent that you may lawfully enter into, and perform, this Agreement, that the individual signing this Agreement on your behalf has all necessary authority to do so, and that all financial information you provide accurately represents your financial condition. You agree to furnish financial information that XFS may request now, including your tax identification number, and you authorize XFS to obtain credit reports on you in the future should you default or fail to make prompt payments under this Agreement.

**17. Original and Sole Controlling Document. No Modifications Unless in Writing.** This Agreement constitutes the entire agreement between the Parties as to the subjects addressed herein, and representations or statements not included herein are not part of this Agreement and are not binding on the Parties. You agree that an executed copy of this Agreement that is signed by your authorized representative and by XFS's authorized representative (an original manual signature or such signature reproduced by means of a reliable electronic form, such as electronic transmission of a facsimile or electronic signature) shall be marked "original" by XFS and shall constitute the only original document for all purposes. All other copies shall be duplicates. To the extent this Agreement constitutes chattel paper (as defined in the UCC), no security interest in this Agreement may be created except by the possession or transfer of the copy marked "original" by XFS. IF A PURCHASE ORDER OR OTHER DOCUMENT IS ISSUED BY YOU, NONE OF ITS TERMS AND CONDITIONS SHALL BE BINDING ON XFS, AS THE TERMS AND CONDITIONS OF THIS AGREEMENT EXCLUSIVELY GOVERN THE TRANSACTION DOCUMENTED HEREIN. SUPPLIER AND ITS REPRESENTATIVES ARE NOT OUR AGENTS AND ARE NOT AUTHORIZED TO MODIFY OR NEGOTIATE THE TERMS OF THIS AGREEMENT. THIS AGREEMENT MAY NOT BE AMENDED OR SUPPLEMENTED EXCEPT IN A WRITTEN AGREEMENT SIGNED BY AUTHORIZED REPRESENTATIVES OF THE PARTIES AND NO PROVISIONS CAN BE WAIVED EXCEPT IN A WRITING SIGNED BY XFS. XFS's failure to object to terms contained in any communication from you will not be a waiver or modification of the terms of this Agreement. You authorize XFS to insert or correct missing information on this Agreement, including but not limited to your proper legal name, agreement/numbers, serial numbers and other Equipment information, so long as there is no material impact to your financial obligations.

**18. Governing Law, Jurisdiction, Venue and JURY TRIAL WAIVER.** THIS AGREEMENT IS GOVERNED BY, AND SHALL BE CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF CONNECTICUT (WITHOUT REGARD TO CONFLICT OF LAW PRINCIPLES THAT WOULD OTHERWISE REQUIRE APPLICATION OF LAWS OF ANOTHER JURISDICTION). THE JURISDICTION AND VENUE OF ANY ACTION TO ENFORCE THIS AGREEMENT, OR OTHERWISE RELATING TO THIS AGREEMENT, SHALL BE IN A FEDERAL OR STATE COURT IN FAIRFIELD COUNTY, CONNECTICUT OR, EXCLUSIVELY AT XFS'S OPTION, IN ANY OTHER FEDERAL OR STATE COURT WHERE THE EQUIPMENT IS LOCATED OR WHERE XFS'S OR YOUR PRINCIPAL PLACES OF BUSINESS ARE LOCATED, AND YOU HEREBY WAIVE ANY RIGHT TO TRANSFER VENUE. **THE PARTIES HEREBY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION RELATED TO OR ARISING OUT OF THIS AGREEMENT.**

**19. Miscellaneous.** Your obligations under the "Taxes" and "Liability" Sections commence upon execution, and survive the expiration or earlier termination, of this Agreement. Notices under this Agreement must be in writing. Notices to you will be sent to the "Billing Address" provided on the first page hereof, and notices to XFS shall be sent to our address provided on the first page hereof. Notices will be deemed given 5 days after mailing by first class mail or 2 days after sending by nationally recognized overnight courier. Invoices are not considered notices and are not governed by the notice terms hereof. You authorize XFS to communicate with you by any electronic means (including cellular phone, email, automatic dialing and recorded messages) using any phone number (including cellular) or electronic address you provide to us. If a court finds any term of this Agreement unenforceable, the remaining terms will remain in effect. The failure by either Party to exercise any right or remedy will not constitute a waiver of such right or remedy. If more than one party has signed this Agreement as Customer, each such party agrees that its liability is joint and several. The following four sentences control over every other part of this Agreement. Both Parties will comply with applicable laws. XFS will not charge or collect any amounts in excess of those allowed by applicable law. Any part of this Agreement that would, but for the last four sentences of this Section, be read under any circumstances to allow for a charge higher than that allowed under any applicable legal limit, is 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 XFS 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.