

**MHEC/Xerox North American Reseller Sales
Master Agreement
Effective July 1, 2008 through June 30, 2011
Contract Number WV240208**

Xerox Corporation (“Xerox”) a corporation with its principal office located at 45 Glover Ave, Norwalk, CT 06856, and the Midwestern Higher Education Commission (“MHEC”) located at 1300 South Second Street, Suite 130, Minneapolis, Minnesota, 55454, (referred to collectively as the “Parties”) enter into this MHEC/Xerox North American Reseller Sales Master Agreement (“Master Agreement”), subject to the terms and conditions herein, effective as of the 1st day of July, 2008 (“the Effective Date”).

1. Definitions

- **Announced Promotion Prices:** refers to prices that are offered nationally to a specific category of customers intended to include Eligible Organizations for defined time periods under defined terms and conditions.
- **Discount Price:** refers to the price offered in a nationally announced promotion.
- **Eligible Organizations:** This Master Agreement shall be made available to all Eligible Organizations. Eligible Organizations shall include:
 - all not-for-profit private and public institutions and/or systems of higher education (colleges, universities, community colleges, technical institutions and equivalent institutions) located in a Member State;
 - all state government agencies and the instrumentalities of the state governments of each Member State;
 - other not-for-profit institutions having affiliated interests in the instruction, research and/or service missions of Eligible Organizations as approved by MHEC.
 - Eligible Organizations that are institutions or systems of higher education or that are state agencies or instrumentalities of a state government located in a Member State that terminates its association with the Compact will no longer be eligible under this Master Agreement to purchase Xerox products and services pursuant to this Master Agreement. Termination by any Member State shall not prohibit or restrict Xerox from negotiating or contracting with such Member State or entity within such Member State outside the Compact. MHEC shall promptly notify Xerox in writing of the termination of any Member States’ membership in the Compact. If any Member State so terminates its membership in the Compact, such termination shall not effect the validity or enforceability of or constitute a default under any purchase order then in effect with any Participant. Similarly, MHEC shall promptly notify Xerox if other states join the Compact after which such states shall be deemed to be Member States for purposes of this Master Agreement.
 - all not-for-profit private and public institutions and/or systems of higher education (colleges, universities, community colleges, technical institutions and equivalent institutions) located in a WICHE member state;
 - all state government agencies and instrumentality’s of state governments of each WICHE member state;

- Eligible Organizations that are located in a WICHE member state that terminates its association with WICHE will no longer be eligible under this Master Agreement to purchase Xerox products and service pursuant to this Master Agreement. Termination by any such WICHE member state shall not prohibit or restrict Xerox from negotiating or contracting with such WICHE member state or entity within such WICHE member state outside of this Master Agreement. MHEC shall promptly notify Xerox in writing of the termination of any WICHE member state's membership in WICHE. If any WICHE member state so terminates its membership in WICHE, such termination shall not affect the validity or enforceability of or constitute a default under any purchase order then in effect with any Participant. Similarly, MHEC shall promptly notify Xerox if other states join WICHE after which such states shall be deemed to be WICHE member states for purposes of this Master Agreement.
- **Large Order Negotiated Prices:** refers to the price offered to specific Eligible Organizations under defined additional terms and conditions. Selection and pricing of large order negotiated prices shall be by mutual agreement of the Eligible Organization and Xerox. Large Order Negotiated Prices shall apply only to those items that meet the applicable additional terms and conditions negotiated by Xerox and the Eligible Organization.
- **Member State:** refers to any state that is a member, or an affiliate member, of the Midwestern Higher Education Compact. The current Member States are Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota and Wisconsin. MHEC shall promptly notify Xerox if any other states join the Compact and thereby become a Member State for purposes of this Master Agreement.
- **NARS:** refers to Xerox North American Reseller Sales.
- **Price Agreement:** refers to an indefinite quantity contract, which requires Xerox to furnish products or services to a Procuring Eligible Organization that issues a valid purchase order.
- **Procuring Eligible Organization:** refers to an Eligible Organization who desires to purchase under this Master Agreement and has executed a purchase order.
- **Products:** refers to all equipment (the "Equipment"), software, and supplies furnished under this Master Agreement.
- **Product List:** refers to the complete list of printers and the corresponding prices for those printers made available for purchase by Eligible Participants under this Master Agreement. The Product List contains an item number, item description and the maximum price for each printer. The Product List is set forth as Exhibit A and may be modified from time to time pursuant to the terms and conditions of this Master Agreement.
- **Supplies:** refers to all of the printer supply items offered by Xerox.
- **Supplies List:** refers to the complete list of supplies and the corresponding prices for those supplies made available for purchase by Eligible Participants under this Master Agreement. The Supplies List contains an item number, item description and the maximum price for each supply. The Supplies List is set forth as Exhibit B and may be modified from time to time pursuant to the terms and conditions of this Master Agreement.

- **WICHE member state** refers to any state that is a member, or an affiliate member, of the Western Interstate Commission for Higher Education. For purposes of this Master Agreement the current member states are Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, , Utah, Washington, and Wyoming. MHEC shall promptly notify Xerox if any other states join WICHE and thereby become a WICHE member state for purposes of this Master Agreement.

2. Scope of Work

Xerox shall deliver printer products, services and supplies to Procuring Eligible Organizations in accordance with the terms of this Master Agreement. All Eligible Organizations are eligible to purchase under this Master Agreement, including those Eligible Organizations currently under a separate agreement with Xerox. This Master Agreement is a price agreement. Accordingly, Xerox shall provide products or services only upon the issuance and acceptance by Xerox of valid purchase orders. Purchase orders may be issued to purchase any products listed on the Product List or Supplies List. A Procuring Eligible Organization may purchase any quantity of products or services listed in Xerox's Product List and/or Supplies List at the prices stated therein. For large orders, Xerox and Eligible Organization may negotiate quantity discounts below the Product List price(s) and Supplies List price(s) for a given purchase order. Xerox may offer under this Master Agreement promotional price discounts that result in prices below those listed in either or both of the Xerox Product List and the Supplies List.

3. Purchasing Under Master Agreement

Each purchase order that is accepted by Xerox will become a part of the agreement as to the products listed on the purchase order only; no additional terms or conditions will be added to this agreement as a result of the acceptance of the purchase order. A purchase order (P.O.) from an Eligible Organization constitutes a binding contract. All commodities furnished will be subject to inspection and acceptance by the Procuring Eligible Organization after delivery. No substitutions or cancellations are permitted without approval of the Procuring Eligible Organization. Back orders, defaults in promised delivery, or failures to meet specifications in the purchase order authorize the Procuring Eligible Organization to cancel the purchase order, any portion of it, purchase elsewhere, and charge the full increase, if any, in cover and administrative handling to Xerox. Nothing in this section precludes any agreements for the use of electronic purchase orders.

Xerox will accept a purchasing card for order placement in addition to accepting a purchase order, without passing the processing fees for the purchase card back to the Procuring Eligible Organization.

4. Purchasing Options on the Master Agreement

Eligible Organizations have the ability to procure products on the Master Agreement in two ways:

- 1) Eligible Organizations can procure the products from the Xerox Direct Organization either from the website at www.xerox.direct.com/mhec or through the toll free service at 1-888-427-5107 ext 7709. The website has been specifically set up for MHEC Eligible Organizations and allows for the input of orders through the website.

- 2) Eligible Organizations can also procure the products through Xerox authorized resellers. Resellers are third party organizations that sell computer and network hardware and software. Title transfer is as determined by the Procuring Eligible Organization and the reseller.

5. Quantity Guarantee

This Master Agreement is not a purchase order, nor does it guarantee any purchases to be made by any Eligible Organization. The Master Agreement is not an exclusive agreement. MHEC and Eligible Organizations may obtain printers, supplies, other products and related services from other sources during the agreement term.

6. Order of Precedence

Where the terms and conditions of this Master Agreement are in conflict with an Eligible Organization's state and/or institutional laws or regulations, the Eligible Organization and Xerox may enter into an addendum to amend the terms and conditions of the Master Agreement to conform to the Eligible Organization's state and/or institutional laws or regulations. The terms and conditions of the addendum shall only be applicable between the Eligible Organization that entered into the addendum and Xerox.

In the event of any conflict among these documents, the following order of precedence shall apply:

- A. executed addendum between Eligible Organization and Xerox
- B. the terms and conditions of this Master Agreement
- C. exhibits to this Master Agreement
- D. the list of products and services contained in the purchase order

7. Payment Provisions

- A. **Acceptance.** A Procuring Eligible Organization shall determine whether all products delivered to it meet Xerox's published specifications. Payment shall be made thirty (30) days from the date of invoice. Unless otherwise agreed upon by the Procuring Eligible Organization and Xerox, within thirty (30) days from the date of delivery, the Procuring Eligible Organization shall accept or reject the products or services. Products will be invoiced upon shipment.
- B. **Payment of Invoice.** Invoices shall be submitted to the Procuring Eligible Organization. Payments shall be submitted to Xerox at the address shown on the invoice. Payment shall be tendered to Xerox within thirty (30) days of the date of the invoice. After the thirtieth day from the date of the invoice unless mutually agreed to, interest shall be paid on the unpaid balance due to Xerox at the rate of one and one-half percent per month. The Procuring Eligible Organization shall make a good-faith effort to pay within thirty (30) days after the date of the invoice.
- C. In the event an order is shipped incomplete (partial), the Procuring Eligible Organization must pay for each shipment as invoiced by Xerox unless the Procuring Eligible Organization has clearly specified "No Partial Shipments" on each purchase order.

D. **Payment of Taxes.** Unless the Procuring Eligible Organization provides a proof of tax exemption, taxes will be additive to the contracted price.

8. Title Passage

Title and risk of loss to products will pass to Procuring Eligible Organization upon delivery to the Procuring Eligible Organization for Products purchased from Xerox NARS organization.. Xerox agrees to assist the Procuring Eligible Organization with the processing of claims for such loss or damage and to expedite the processing of claims for such loss or damaged products. Xerox shall bear the risk of loss or damage with respect to returned products except for loss or damage directly attributable to the negligence of the Eligible Organization. Upon passage to Procuring Eligible Organization of title to the Equipment, Procuring Eligible Organization must comply with all applicable laws and regulations regarding the export of any commodity, technology and/or software.

Until Procuring Eligible Organization has paid for the products in full, Procuring Eligible Organization agrees that: (1) the product shall remain personal property; (2) Procuring Eligible Organization will not attach any of the product as a fixture to any real estate; (3) Procuring Eligible Organization will not pledge, sub-lease or part with possession of the product or file or permit to be filed any lien against the product; and (4) Procuring Eligible Organization will not make any permanent alterations to the product.

9. Shipment

Xerox will ship products at no additional charge via Xerox' standard ground shipping. Xerox will be able to deliver to the person specified on the purchase order in situations where the "deliver to" address has no receiving dock or agents. Such inside delivery may be subject to an additional charge by Xerox. Such inside delivery charge, if any, will be identified to the Procuring Eligible Organization prior to actual shipment.

10. Product Delivery

Xerox agrees to deliver products to Procuring Eligible Organizations within thirty (30) days after receipt of a valid purchase order. If delivery can not be made within thirty (30) calendar days, Xerox will notify Procuring Eligible Organization within ten (10) business days following order placement, and Procuring Eligible Organization, as its sole remedy, can cancel the order by written, electronic, or facsimile notification.

11. Price Guarantees

The Procuring Eligible Organizations shall pay the lower of the prices contained in the Product List/Supplies List or an announced promotion price or large order negotiated price.

12. Product List

- A. Xerox agrees to maintain the Product List in accordance with the following provisions:
- B. The Product List prices for all printers will conform to the Product List provided to MHEC and set forth as Exhibit A. Except as set forth in Paragraph 12, "Product List", the prices set forth in the Product List shall not increase during the initial twelve (12) months of the Master Agreement. Thereafter, prices are subject to change with thirty

(30) days prior written notice. The year-over-year price increase on the Product List, if any, will not exceed the year-over-year percentage increase as reflected in Xerox's published Price List.

- C. Should the list price of a printer on Xerox's published Price List decrease at any time during this Master Agreement, Xerox agrees to a similar price reduction on this Agreement's Product List for the same printer, prior to the Administrative Fee set forth in Paragraph 33 of this Master Agreement.
- D. Xerox may make product model changes, add new products, product upgrades or services to the Product List at any time and the pricing for the same shall incorporate, to the extent possible, similar or comparable price discount levels provided herein, as agreed by the Parties.
- E. Xerox agrees to delete obsolete and discontinued products from the Product List on a timely basis.
- F. Major product model changes shall be incorporated in the Product List as soon as possible after the announcement. In conjunction therewith or as soon thereafter as possible, the Parties shall negotiate a price discount level for the new product line as comparable as possible to the price discount level quoted herein for similar products.
- G. The Product List shall be maintained by Xerox on an Internet web site. Notification of specific changes to this list shall be provided to MHEC within 30 days of any modification.

13. Supplies List

Xerox agrees to maintain the Supplies List in accordance with the following provisions:

- A. The Supplies List prices for all supplies will conform to the Supplies List provided to MHEC and set forth as Exhibit B. Except as set forth in this Paragraph 13, "Supplies List", the prices set forth in the Supplies List shall not increase during the initial twelve months of this Master Agreement. Thereafter, prices are subject to change with 30-days prior written notice. The year-over-year price increase on the Supplies List, if any, will not exceed the year-over-year percentage increase as reflected in Xerox's published Supplies List.
- B. Should the list price of a supply on Xerox's published Supplies List decrease at any time during this Master Agreement, Xerox agrees to a similar price reduction on this Agreement's Supplies List for the same supply item.
- C. Xerox may add new supplies, incorporate supply upgrades, or add new services to the Supplies List at any time and the pricing for the same shall incorporate, to the extent possible, similar or comparable price discount levels provided herein, as agreed by the Parties.
- D. When major product model changes are incorporated in the Product List, in conjunction therewith or as soon thereafter as possible, the Parties shall negotiate a price discount level for any new supplies that go with the new product model. The negotiated price discount level for the new supplies shall be as comparable as possible to the price discount level quoted herein for similar supplies.

- E. The Supplies List shall be maintained by Xerox on an Internet web site. Xerox shall create a separate web page for MHEC where Eligible Organizations are able to purchase supplies at the Supplies List prices. Notification of specific changes to this list shall be provided to MHEC within 30 days of any modification.

14. Warranties

The products are covered under the warranties in effect at the time the products are delivered. The warranties for the Equipment and consumables, as well as any disclaimers applicable thereto, are shipped with the Equipment, and are also available at:

["http://www.officeprinting.xerox.com/services/warranty_terms.html"](http://www.officeprinting.xerox.com/services/warranty_terms.html)

Any warranty applicable to the Equipment shall commence upon installation and successful completion of all required diagnostic routines of the Equipment; provided, however, for customer-installable Equipment, any warranty applicable to the Equipment shall commence upon delivery.

15. Master Agreement Term

This Master Agreement will be formed upon execution by the Parties, and shall remain in effect for a term of three (3) years from the Effective Date. The Master Agreement may be mutually renewed for four (4) additional one-year terms unless terminated pursuant to the terms of this agreement.

16. Termination

- A. At any time MHEC may terminate this Master Agreement, in whole or in part, by giving Xerox thirty (30) days written notice; provided however, neither MHEC nor an Eligible Organization has the right to terminate a specific purchase order/purchase agreement for convenience after it has been issued if the equipment is ultimately accepted. At any time, Xerox may terminate this Master Agreement, in whole or in part, by giving MHEC thirty (30) days written notice. Such termination shall not relieve Xerox of any warranty or other service obligations incurred under the terms of this Master Agreement.
- B. Either Party may terminate this Master Agreement for cause based upon material breach of the Master Agreement by the other party, provided that the non-breaching party shall give the breaching party written notice specifying the breach and shall afford the breaching party a reasonable opportunity to correct the breach. If within thirty (30) days after receipt of a written notice the breaching party has not corrected the breach or, in the case of a breach which cannot be corrected in thirty (30) days, begun and proceeded in good faith to correct the breach, the non-breaching party may declare the breaching party in default and terminate the agreement effective immediately. The non-breaching party shall retain any and all remedies available to it under the law.
- C. In the event this Master Agreement expires or is terminated for any reason, an Eligible Organization shall retain its rights in all equipment and services accepted prior to the effective termination date or ordered before the effective termination date and ultimately accepted.

17. Non-Appropriation

This provision applies only to government and government educational customers. The terms of this Master Agreement and any purchase order issued for multiple years under this Master Agreement is contingent upon sufficient appropriations being made by the legislature or other appropriate governing entity. Notwithstanding any language to the contrary in this Master Agreement or in any purchase order or other document, Procuring Eligible Organization may terminate its obligations under this Master Agreement if sufficient appropriations are not made by the governing entity to pay amounts due for multiple year agreements. The Procuring Eligible Organization's decision as to whether sufficient appropriations are available shall be accepted by Xerox and shall be final and binding.

A Procuring Eligible Organization shall provide sixty (60) days notice, if possible, of its intent to terminate this contract for non-appropriation. The Procuring Eligible Organization shall send to Xerox a notice of its Governing Body's decision not to appropriate funds for the installment sale payments for the subsequent fiscal year. The notice shall also include a statement that the Procuring Eligible Organization was unsuccessful in finding another assignee within its own organization to continue the installment sale payments and that the equipment will not be replaced by a similar device during the ensuing fiscal year. The Procuring Eligible Organization also agrees to return the equipment to Xerox in a similar condition as when delivered, normal wear and tear expected. Such termination shall relieve the Procuring Eligible Organization, its officers and employees from any responsibility or liability for the payment of any future purchase orders. However, all outstanding invoices from Xerox will be paid by the Procuring Eligible Organization.

18. Patent, Copyright, Trademark and Trade Secret Indemnification

Xerox will indemnify, defend and hold MHEC and Eligible Organizations harmless from a claim that Xerox's Product infringes on another person's or company's patent, copyright, trade secret or any other proprietary right of a third party. Xerox will have no obligation under this section with respect to any claim of infringement resulting from an unauthorized modification of a Product by MHEC or Eligible Organizations or from any combination, operation, or use of the Products with systems other than those provided by Xerox to the extent that such a claim is caused by such modification, combination, operation, or use of the Products. Following notice of a claim or a threat of actual suit, Xerox will, at its own expense and option, (1) resolve the claim in a way that permits continued ownership and use of the affected Product; (2) provide a comparable replacement at no cost; or (3) accept return of the product, freight collect, and provide a reasonable depreciated refund.

19. Records and Audit

Xerox agrees to maintain detailed records pertaining to the price of services rendered and products delivered for a period of three (3) years or the term required by the Procuring Eligible Organization's state law from the date of acceptance of each purchase order. These records shall be subject to inspection by Procuring Eligible Organization and appropriate governmental authorities with Procuring Eligible Organization's state. The Procuring Eligible Organization shall have the right to audit billings either before or after payment. Payment under this Master

Agreement shall not foreclose the right of the Procuring Eligible Organization to recover excessive or illegal payments.

20. Independent Contractor

Xerox and its agents and employees are independent contractors and are not employees of MHEC or any Eligible Organization. Xerox has no authorization, express or implied to bind MHEC or any Eligible Organization to any agreements, settlements, liability or understanding whatsoever, and agrees not to perform any acts as agent of MHEC or any Eligible Organization, except as expressly set forth herein. Nothing in this Master Agreement is intended, or shall be deemed, or construed to constitute a partnership or a joint venture between the parties.

21. Indemnification

Xerox will indemnify, protect, save and hold harmless MHEC and Eligible Organizations, as well as the representatives, agents and employees of MHEC and Eligible Organizations, from any and all claims or causes of action related to a claim of personal injury or damage to property, including all attorneys' fees incurred by MHEC and/or Eligible Organizations, arising from the performance of the Master Agreement by Xerox, Xerox's agents, employees, or subcontractors. MHEC and/or Eligible Organization shall give Xerox written notice, by registered mail, promptly after it becomes aware of any claim to be indemnified hereunder, and, subject to any legally required approval, including approval of state's attorney general, or consistent with applicable law permits Xerox to control the defense of any such claim or action at Xerox's own expense. Notice shall be sent to "Corporate Risk, Xerox Corporation, 45 Glover Ave Norwalk, CT, 06856". MHEC and/or Eligible Organization agree that Xerox may employ attorneys of its own choice to appear and defend the claim or action and that MHEC and/or Eligible Organization shall do nothing to compromise the defense of such claim or action or any settlement thereof and shall provide Xerox with all reasonable assistance which Xerox may require.

22. Limitation of Liability

Xerox shall not be liable to MHEC or Eligible Organization for any direct damages in excess of \$10,000 or the amounts paid hereunder, whichever is greater. The foregoing limitation does not apply to Paragraphs 18 and 21 of this Master Agreement or to damages resulting from personal injury or property damage caused by Xerox's negligence. Xerox, MHEC nor any Eligible Organization shall be liable for any special, indirect, incidental, consequential or punitive damages arising out of or relating to this Master Agreement, whether the claim alleges tortious conduct (including negligence) or any other legal theory.

23. Amendments

Except as provided for in Paragraph 6, "Order of Preference"; Paragraph 12, "Product List"; and Paragraph 13, "Supplies List", this Master Agreement shall only be amended by written instrument executed by the Parties.

24. Scope of Agreement

This Master Agreement incorporates all of the agreements of the Parties concerning the subject matter of this agreement, and all prior agreements have been merged into this Master Agreement.

No prior agreements, verbal or otherwise, of the Parties or their agents shall be valid or enforceable unless embodied in this Master Agreement. This North American Reseller Sales Master Agreement does not supersede the (Xerox USSG Agreement) between Midwestern Higher Education Commission and Xerox Corporation dated July 1, 2008 nor the subject matter and equipment related to that Agreement.

25. Invalid Term or Condition

If any term or condition of this Master Agreement shall be held invalid or unenforceable, the remainder of this Master Agreement shall not be affected and shall be valid and enforceable.

26. Enforcement of Agreement

A party's failure to require strict performance of any provision of this Master Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Master Agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

27. Web Site Maintenance

Xerox agrees to maintain and support Internet website(s) for access to the Product List, product descriptions, product specifications, Supplies List, supplies descriptions and other aids in accordance with instructions provided by MHEC. In addition, Xerox will provide electronic commerce assistance for the electronic submission of purchase orders, purchase order tracking and reporting.

28. Equal opportunity Compliance

Xerox agrees to abide by all applicable laws, regulations, and executive orders pertaining to equal employment opportunity, including federal laws and the laws of the state in which its primary place of business is located. In accordance with such laws, regulations, and executive orders, Xerox agrees that no person in the United States shall, on the grounds of race, color, religion, national origin, sex, age, veteran status or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed by Xerox under this Master Agreement. If Xerox is found to be not in compliance with these requirements during the life of this Master Agreement, Xerox agrees to take appropriate steps to correct these deficiencies.

29. Applicable Law

As between Eligible Organization and Xerox, this Master Agreement will be construed in accordance with, and its performance governed by the laws of the state in which the Eligible Organization resides. Venue for all legal proceedings arising out of this Master Agreement, or breach thereof, shall be in a state or federal court with competent jurisdiction located in the state of the Eligible Organization.

As between MHEC and Xerox this Master Agreement will be construed in accordance and its performance governed by the laws of the state of Minnesota. Venue for all legal proceedings

arising out of this Master Agreement, or breach thereof, shall be in a state or federal court with competent jurisdiction located in the State of Minnesota.

As between Eligible Organization, MHEC, and Xerox this Master Agreement will be construed in accordance and its performance governed by the laws of the state in which the Eligible Organization resides. Venue for all legal proceedings arising out of this Master Agreement, or breach thereof, shall be in a state or federal court with competent jurisdiction located in the state of the Eligible Organization.

30. Conflict of Interest

Xerox warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Master Agreement.

31. Assignment

Xerox reserves the right to assign this Agreement in whole or part for the purpose of securitizing a set of assets, without the end-users permission. However, each assignee shall have all of the rights, but none of the service or performance obligations included in this Agreement. The Eligible Participants shall continue to look to Xerox for all contractual and service responsibilities included hereunder. This section shall not be construed as prohibiting Xerox's right to assign its obligations and responsibilities to subcontractors to provide some of the services hereunder. Notwithstanding the foregoing acknowledgement, Xerox remains solely liable for all performance required and provided under the terms and conditions of the Master Agreement.

32. Survival

Certain paragraphs of this Master Agreement including but not limited to Patent, Copyright, Trademark, and Trade Secret Indemnification; Indemnification; and Limitation of Liability shall survive the expiration of this Master Agreement. Software licenses, warranty and service agreements that were entered into under terms and conditions of this Master Agreement shall survive this Master Agreement.

33. Notification

Whenever under the terms of this Master Agreement any notice is required or permitted to be given by one Party to the other, such notice shall be given in writing and shall be deemed to have been sufficiently given for all purposes hereof if given by facsimile or mail, postage prepaid, to the Parties at the addresses set forth below, or at such other address as the Parties may direct in writing from time to time:

To MHEC:

MHEC
1300 South Second Street
Suite 130
Minneapolis, Minnesota 55454-1079
Attn: Grant Crawford
Facsimile: 612-626-8290

To Xerox:

Xerox Corporation
520 Maryville Center Dr
Suite 520
St. Louis, MO 63141
Attn: James Zacher
Facsimile: 314-542-8456

With copy to:
Xerox Corporation
26600 SW Parkway Ave
M/S 7060-633
Wilsonville, OR 97070
Attn: Alison Petralia
Facsimile: 503-582-6099

To Eligible Organization:

Notices shall be sent to Eligible Organization's business address. The term "business address" shall mean the "Bill to" address set forth in an invoice submitted to Eligible Organization.

34. Administrative Reporting and Fees

On a quarterly basis, Xerox will, in a timely manner, make available to MHEC reports and information generated by this Master Agreement, including but not limited to state-by-state and institution-by-institution information on sales volume and volume savings. The information and reports shall be accompanied with a check payable to the Midwestern Higher Education Commission for an amount equal to two percent (2%) of the gross equipment and software sales for that quarter period (the "Fee"). There will be no administrative fee added to any service, supply, or technical support components. MHEC, from time to time and at its sole discretion, may change the percentage of the Fee it will receive as a result of this Master Agreement. Any change in the fee will also require a change in the Product List price.

35. MHEC Not Liable For Eligible Participants

MHEC is not liable to Xerox for the failure of any Eligible Organization to make any payment or to otherwise fully perform pursuant to the terms and conditions of a purchase order and/or the Master Agreement.

36. Announcements and Publicity

Any announcements and publicity given to MHEC resulting from this Master Agreement must receive the prior approval of MHEC. Xerox will not make any representations of MHEC's opinion or position as to the quality of effectiveness of the products, supplies and/or services that are the subject of this Master Agreement without the prior written consent of MHEC.

37. Marketing

Xerox will assist MHEC in developing and implementing appropriate marketing strategies including seminars, printed materials and a full service, on-line MHEC web site to receive information on products, supplies, services and prices and to place orders.

38. Future Program Offerings

Where applicable, Xerox and MHEC agree from time to time to mutually work towards the exploration, development and implementation of additional product and service program offerings for Eligible Organizations.

39. Oversight Committee

An Oversight Committee comprised of representatives of Eligible Organizations shall be appointed by MHEC to assist and support MHEC and Xerox in developing and refining the implementation of this Master Agreement. This shall include, but not be limited to, assistance with marketing strategies, representing the interests of Eligible Organizations in assuring quality and timely products and services; and to advise Xerox on the effectiveness of its implementation progression. There will be an annual meeting between Xerox and MHEC (and perhaps members of the Oversight Committee) to perform a contract health check; items such as those above.

Sale Terms.

40. Equipment Return Policy.

Printers are covered by the Xerox Total Satisfaction Guarantee, which states that Xerox will replace the equipment, at Xerox's expenses, with an identical model or at the option of Xerox, with a machine with comparable features and capabilities if a Procuring Eligible Organization is not satisfied with the equipment's performance. This guarantee will be effective for three years following initial Equipment delivery, unless the Equipment is financed by Xerox for more than three years, in which event it will be effective during the entire term of Xerox financing. This Guarantee applies only to Equipment which has been continuously maintained by Xerox or its authorized representatives under a Xerox express warranty or Xerox Maintenance plan, and is not applicable to Equipment damaged or destroyed due to an Act of God. Customer equipment returns for any other reason will be subject to a prorated portion of the equipment's outright sale price.

Software Terms

41. Software and Firmware.

If the Equipment includes computer programs (in software and/or firmware form) distributed by Xerox, each said computer program is subject to a written license agreement with Xerox, a copy which is usually packaged with the computer program. Title to the computer programs shall be and remain with Xerox or others from whom Xerox has obtained a license right. A perpetual and transferable right-to-use license for this included firmware and software is included in the purchase price of the Equipment per the terms and conditions of the software license agreement included with products or referenced in the product documentation.

42. Enhancements or Upgrades.

Software or firmware enhancements or upgrades are not provided under this Agreement, but may be available free or for purchase separately upon their release.

43. Updates.

Software and firmware updates may be required to correct performance problems and will be provided under this Agreement where deemed applicable by Xerox. Xerox will only maintain support for Software and firmware releases that are at the latest and next to latest revision levels."

Service Terms

Following the expiration of the applicable warranty, Procuring Eligible Organizations may procure a Xerox Service Agreement. The terms and conditions of Xerox Service Agreements are set forth at http://www.office.xerox.com/services/warranty_terms.html#Terms. These service provisions do not apply if the end-user maintains the equipment themselves through their own self-service or acquires a third party to maintain the equipment.

General Terms

44. Credit History.

As part of this transaction, the Procuring Eligible Organization authorizes Xerox (or its agent) to obtain credit reports (including in connection with credit analysis or subsequent review, collection or enforcement of its obligations hereunder), make such other credit inquiries as Xerox may deem necessary, furnish payment history information to credit reporting agencies, and release to prospective assignees of this Agreement or any rights hereunder information Xerox has about the Procuring Eligible Organization and this Agreement. Even if Products have been delivered, Xerox may, within sixty (60) days following its acceptance of this Agreement, revoke the Agreement if the Procuring Eligible Organization's credit approval is denied.

45. Breach & Remedies and Late Charges & Collection Expenses.

- A. **Late Charges.** If any payment is not received by Xerox on or before the date it is due, Xerox may charge the Procuring Eligible Organization, and the Procuring Eligible Organization agrees to pay, a late charge to cover Xerox's costs of collection equal to \$25.00 or 1.25% on any unpaid balance, whichever is greater (not to exceed the maximum amount permitted by law).
- B. **Breach and Remedies.** The Procuring Eligible Organization will be in default under this Agreement if Xerox does not receive any payment within fifteen (15) days after the date it is due or if the Procuring Eligible Organization breaches any other obligation hereunder. If the Procuring Eligible Organization defaults, Xerox, in addition to its other remedies (including the cessation of Total Satisfaction Services), may require immediate payment, as liquidated damages for loss of bargain and not as a penalty, of (a) all amounts then due, plus interest on all amounts due from the due date until paid at the rate of one and one-half percent (1.5%) per month (not to exceed the maximum amount permitted by law); (b) the remaining Installment Sale Payments in the Agreement's term less any unearned finance charges (as reflected on Xerox's books and records) if the Equipment is being purchased on an installment basis; (c) the lesser of the remaining Minimum Periodic Base Charge in the Agreement's term or six (6) such payments for one-year agreements (and twelve (12) such payments for multi-year agreements) if this Agreement includes maintenance; and, (d) all applicable Taxes. Xerox's decision to waive or forgive a particular default shall not prevent Xerox from declaring any other default. In addition, if the Procuring Eligible Organization defaults under this Agreement, it agrees to pay all of the costs Xerox incurs to enforce its rights against the Procuring Eligible Organization, including reasonable attorneys' fees and actual costs.

46. Force Majeure.

Xerox shall not be liable to the Procuring Eligible Organization during any period in which its performance is delayed or prevented, in whole or in part, by a circumstance beyond its reasonable control, which circumstances include, but are not limited to, the following: act of God (e.g., flood, earthquake, wind); fire; war; act of a public enemy or terrorist; act of sabotage; epidemic; strike or other labor dispute; riot; piracy or other misadventure of the sea; embargo; inability to secure materials and / or transportation; or, a restriction imposed by legislation, an order or a rule or regulation of a governmental entity. If such a circumstance occurs, Xerox shall undertake reasonable action to notify the Procuring Eligible Organization of the same. A Procuring Eligible Organization may cancel a maintenance agreement, without penalty, if the Force Majeure situation is not resolved within 60 days.

47. Sovereign Immunity.

Notwithstanding anything to the contrary in this Agreement or purchase order under this Agreement, this Agreement shall not be construed to deprive a Eligible Organization of its sovereign immunity, or of any legal requirements, prohibitions, protections, exclusions or limitations of liability applying to this Agreement or afforded by Eligible Organization's State to the Eligible Organization.

48. Miscellaneous.

All parties to this Agreement may retain a reproduction (e.g., electronic image, photocopy, facsimile) of this Agreement which shall be considered an original and shall be admissible in any action to enforce this Agreement. Xerox may accept this Agreement either by its authorized signature or a signed purchase order. Except as provided for in this Agreement, all changes to this Agreement must be made in writing signed by both parties; accordingly any additional terms on the Procuring Eligible Organization's ordering documents shall be of no force or effect. The following sentences control every other part of this Agreement and all other documents now or later pertaining to this Agreement. We both intend to comply with applicable laws. In no event will Xerox charge or collect any amounts in excess of those allowed by applicable law. Any part of this Agreement that would, but for this Section, be read under any circumstances to allow for a charge higher than that allowed under any applicable legal limit, is limited and modified by this Section to limit the amounts chargeable under this Agreement to the maximum amount allowed under the legal limit. If, in any circumstances, any amount in excess of that allowed by law is charged or received, any such charge will be deemed limited by the amount legally allowed and any amount received by Xerox in excess of that legally allowed will be applied by us to the payment of amounts legally owed under this Agreement, or refunded to Procuring Eligible Organization.

The parties, by their representatives signing below, agree with the terms of this Agreement and further certify that their respective signatories are duly authorized to execute this Agreement.

**Midwestern Higher Education
Commission**

Signature: 

Name: **Larry Isaak**

Title: **President**

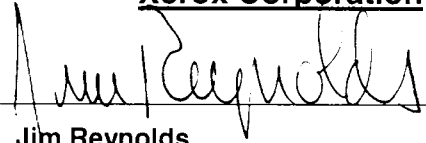
Midwest Higher Education Compact

Address: **1300 South Second Street, Suite 130**

Minneapolis, Minnesota, 55454

Date: _____

Xerox Corporation



Jim Reynolds

Vice President, Major Accounts

Xerox Corporation, NARS

26600 SW Parkway Ave

Wilsonville OR 97070-1000

Attachments:

Exhibit A: Product Price List

Exhibit B: Supply Price List

Exhibit C: Warranty Price List