

# Cost Per Image Agreement



Supplier Name-Address: MRC-5657 Copley Dr., San Diego, CA 92111

Owner: XEROX FINANCIAL SERVICES LLC – 201 Merritt 7, Norwalk, CT 06851 Agreement Number:

**CUSTOMER INFORMATION**

<b>CUSTOMER</b>	Full Legal Name: American Indian Model Schools			Phone: (510) 893-8701
	Billing Address: 171 12th Street		Contact Name: Tiffany Tung	
	City: Oakland	State: CA	Zip Code: 94607	Contact Email: tiffany.tung@aimsk12.org

<b>EQUIPMENT</b>	QTY	MODEL and DESCRIPTION	MONTHLY IMAGE ALLOWANCE*		EXCESS IMAGE CHARGE**	
			B&W	COLOR	B&W	COLOR
	1	Xerox PrimeLink B9100	0	-	\$.0039	-

Meter Billing Frequency (Monthly unless checked):  (Other) \* Included in Base Payment \*\* Plus applicable taxes

<b>TERM</b>	<b>BASE PAYMENT - (Monthly frequency unless otherwise noted)</b>	<b>Equipment Location (if different from Billing Address):</b>
Initial Term: 60 (in months)	Base Payment (plus applicable taxes): \$405.69 Frequency: <input checked="" type="checkbox"/> Monthly <input type="checkbox"/> Quarterly <input type="checkbox"/> Annually	

**CUSTOMER ACCEPTANCE**

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.

Authorized Signer X:	Date:	Federal Tax ID # (Required): 94-3309981
Print Name:	Title:	

**OWNER ACCEPTANCE**

Accepted By: Xerox Financial Services LLC	Name and Title:	Date:
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**TERMS & CONDITIONS**

**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 you irrevocably determine Equipment has been delivered, installed and operating satisfactorily. "Agreement" means this Cost Per Image Agreement, including any attached Equipment schedule. "Commencement Date" will be a date after the Acceptance Date, as set forth in our first invoice, for 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 (defined in section 3 hereof), attachments, accessories, replacements, replacement parts, substitutions, additions and repairs thereto. "Excess Charges" means the applicable excess image charges. "Interim Period" means the period, if any, between the Acceptance Date and the Commencement Date. "Interim Payment" means one thirtieth of the Base Payment multiplied by the number of days in the Interim Period. "Payment" means the Base Payment specified above, which may include an amount payable to Supplier under the Maintenance Agreement to account for the Monthly Image Allowances listed above, the Excess Charges (unless otherwise agreed by you, Supplier and XFS), Taxes and other charges you, Supplier and XFS agree will be invoiced by XFS. "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 origination, documentation, processing and other initial costs. "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(s) where XFS must file UCC-1 financing statements to perfect its interest in the Equipment.

**2. Agreement, Payments and Late Payments.** You agree and represent that the Equipment was selected, configured and negotiated by you based on your judgment and supplied by Supplier. At your request, XFS will acquire same from Supplier to lease to you hereunder and you agree to lease same from XFS. The Initial Term 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. You agree to pay us all sums due under each invoice via check, Automated Clearing House debit, Electronic Funds Transfer or direct debit from your bank account by the due date. **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 fee, not to 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 is not the licensor of such Software, and therefore has no right, title or interest in it 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 with the Supplier whether any Software Licenses are required, and entering into them with the Software Supplier(s) no later than 30 days after the Acceptance Date. **YOU AGREE THE EQUIPMENT IS FOR YOUR LAWFUL BUSINESS USE IN THE UNITED STATES, 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 hereunder shall continue unabated.

**5. End of Agreement Options.** 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 ("End Date"), either (a) purchase all, but not less than all, of the Equipment by paying its fair market value, as determined by XFS in its sole but reasonable discretion ("Determined FMV"), plus Taxes, or (b) return the Equipment within 30 days of the End Date, at your expense, fully insured, to a continental US location XFS shall specify. You cannot return Equipment more than 30 days prior to the End Date without our consent. If we consent, we may charge you, in addition to all undiscounted amounts due hereunder, an early termination fee. 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 as of 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. Purchase options 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. 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.

**6. 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 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.**

**7. Equipment Delivery and Maintenance.** You should arrange with Supplier to have the Equipment delivered to you 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 when you have received, inspected and irrevocably accepted the Equipment, and authorize XFS to fund Supplier for the Equipment. If you fail to accept the Equipment, you shall no longer have any obligations hereunder; however, you remain liable for any Equipment purchase order or other contract issued on your behalf directly with Supplier. Equipment may not be moved to another physical location without XFS's prior written consent, which shall not be unreasonably withheld or delayed. You agree that you will not take the Equipment out of service during the Term. 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 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 any Maintenance Agreement. XFS IS NOT LIABLE FOR ANY BREACH BY SUPPLIER OF ANY OF ITS OBLIGATIONS TO YOU, NOR WILL ANY OF YOUR OBLIGATIONS HEREUNDER BE MODIFIED, RELEASED OR EXCUSED BY ANY ALLEGED BREACH BY SUPPLIER.**



and for each successive 12 month period thereafter during the Term, XFS may increase your Base Payment and the Excess Charges by a maximum of fifteen percent (15%) of the then-current Base Payment therefor and you agree to pay such increased amounts.

**9. 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 as defined on the first page hereof in order to secure your performance hereunder. XFS is and shall remain the sole owner of the Equipment, except the Software. You authorize XFS to file 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 re-filing or amendment to XFS's financing statement against you becomes necessary.

**10. 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, which in the aggregate shall not exceed \$250. 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) hereunder. XFS's assignee will have the same rights that we have to the extent assigned, YOU AGREE NOT TO ASSERT AGAINST SUCH ASSIGNEE ANY CLAIMS, DEFENSES, COUNTERCLAIMS, RECOUPMENTS, 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 hereunder.

**11. 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 you, 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. Regardless of your tax-exempt status, XFS reserves the right to pass through, and you agree to pay, any such Taxes that are actually assessed by the applicable State on XFS as lessor of the Equipment For jurisdictions where certain taxes are calculated and paid at the time of agreement initiation, you authorize XFS to finance and adjust your Base Payment to include such Taxes over the Term. Unless and until XFS notifies you in writing to the contrary, the following shall apply to personal property taxes and returns. 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 such personal property taxes. XFS MAKES NO WARRANTY, EXPRESS OR IMPLIED, REGARDING THE TAX OR ACCOUNTING TREATMENT OF THIS AGREEMENT.

**12. Equipment Warranty Information and Disclaimers.** XFS HAS NO INVOLVEMENT IN THE DESIGN, MANUFACTURE, SALE, DELIVERY, INSTALLATION, USE OR MAINTENANCE OF THE EQUIPMENT. THEREFORE, XFS DISCLAIMS, AND YOU WAIVE SOLELY AGAINST XFS, ALL EQUIPMENT WARRANTIES, 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 WHATSOEVER, 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 Equipment warranty rights we may have against Supplier or manufacturer thereof. If the Equipment is returned to XFS or you are in default, 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, 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.

**13. 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. 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 acceptance or rejection, ownership, leasing, possession, operation, use, return or other disposition of the Equipment; and (b) any and all loss or damage of or to the Equipment. Neither sentence in this Section shall apply to Claims arising directly and proximately from XFS's gross negligence or willful misconduct.

**14. Default and Remedies.** You will be in default hereunder if XFS does not receive any Payment within 10 days after its due date, or you breach any other material obligation hereunder 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), immediately require you to do one or more of the following: (a) as liquidated damages for loss of bargain and not as a penalty, pay the sum of (i) all amounts then past due, plus interest from the due date until paid at the rate of 1.5% per month; (ii) 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, (iii) the Equipment's booked residual, and (iv) Taxes; and (b) require you to return the Equipment as provided in Sections 5 and 6 hereof. You agree to pay all reasonable costs, including attorneys' fees and disbursements, incurred by XFS to enforce this Agreement.

**15. 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 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. XFS shall be named as an additional insured on all 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 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 AND APPLICATION 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 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.

**16. Finance Lease and Customer Waivers.** The parties agree this Agreement shall be construed as a "finance lease" under UCC Article 2A. Customer waives its rights as a lessee under UCC 2A Sections 508-522.

**17. 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 Federal Tax ID, and you authorize XFS to obtain credit reports on you in the future should you default or fail to make prompt payments hereunder.

**18. 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. To the extent this Agreement constitutes UCC chattel paper, 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. 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.

**19. 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. 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.

**20. Miscellaneous.** Your obligations under the "Taxes" and "Liability" Sections commence upon execution, and survive the expiration or earlier termination, of this Agreement. Notices hereunder 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 hereunder 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 hereunder or refunded to you.





# Service Agreement

CUSTOMER INFO	SHIP TO	Name	American Indian Model Schools		BILL TO	Name	American Indian Model Schools			
		Address	171 12th Street			Address	171 12th Street			
		City	Oakland			City	Oakland			
		State	CA	ZIP		94607	State	CA	ZIP	94607
		Phone	510-893-8701			Phone	510-893-8701			

SERVICED DEVICES	Make / Model	Serial Number	Starting Meter BW/CLR	Location / Notes
	Xerox PrimeLink B9100			2nd Floor

See Schedule A for more devices.

AGREEMENT DETAILS	Device Group	Monthly Allowance	Payment	Overage Rate	Included items
	BW Production	0		0.0039	<input checked="" type="checkbox"/> All inclusive (no staples)

**Notes / Special Instructions**

No escalation for contract term.

Base Billing	Monthly			Term	
Overage Billing	Monthly	Total	\$0.00	60	Start _____ End _____

METER COLLECTION	<b>MRC 360 APP</b>		
	<input type="checkbox"/> Accept installation	Name	Phone
	<input type="checkbox"/> Decline	Email	

CUSTOMER AGREES TO PURCHASE AND MRC AGREES TO PROVIDE MAINTENANCE SERVICE, PARTS, AND SUPPLIES. UNLESS OTHERWISE STATED HEREIN, FOR THE EQUIPMENT LISTED ON THE ATTACHED SCHEDULE A ("EQUIPMENT") IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THIS AGREEMENT, WHICH IS ATTACHED HERETO (TOGETHER, THIS "AGREEMENT"). PAPER, LABELS, TRANSPARENCIES, OR STAPLES ARE NOT INCLUDED. THE AGREEMENT TERM STARTS ON THE LATER OF THE DATE ON WHICH NEW EQUIPMENT IS INSTALLED BY MRC OR THE CUSTOMER SIGNATURE DATE BELOW. BY SIGNING, CUSTOMER AGREES TO THE TERMS AND CONDITIONS OF THIS AGREEMENT AND ACKNOWLEDGES THAT THE AGREEMENT IS NOT BINDING ON MRC UNTIL SIGNED BY ITS CFO.

AUTHORIZATION	Company	American Indian Model Schools	MRC Smart Technology Solutions	
	Authorized Signature		MRC Authorized Signature	
	Print name		Print name	
	Title	Date	Title	Date



## SERVICE AGREEMENT TERMS AND CONDITIONS

1. This required Service Agreement Terms and Conditions ("Agreement") is attached to and made a part of the Service Agreement between Customer and MRC. This Agreement covers required maintenance and all toner and ink cartridges ("Supplies") provided by MRC necessitated by normal use by the Customer, as listed on page one, of Newly Acquired Machines from MRC as listed on Schedule A, and Pre-Existing Customer Machines. Damage to the Equipment or its parts caused by misuse, abuse, or negligence beyond MRC's control are not covered. MRC reserves the right to replace the Equipment rather than repair it, at no cost to the Customer, if it is determined by MRC service personnel that it is more cost effective. In the event Equipment cannot be repaired by MRC due to age, expected life meter range, excessive volume usage, chronic failure, parts unavailability or other reasons outside of MRC's control, Customer has the option of replacing it by purchasing new Equipment, or a mutually agreed upon used piece of Equipment, or rebalancing its fleet. MRC may terminate this Agreement in the event: preexisting Customer Equipment is not in good working order as of the Start date of the Agreement, or any Equipment is: modified, altered, serviced by personnel other than those authorized by MRC, damaged in a move, given supply items other than those provided by MRC that, in MRC's judgment, increase the cost of basic service, and in all such cases Customer agrees to pay MRC for MRC Supplies installed in Customer's Equipment that will be left with Customer at contract termination. Parts and drums required for repair may be recovered or reprocessed, and replaced parts and drums will become the property of MRC at its option. The Customer's Equipment installation site must, at all times, conform to manufacturers recommended space, electrical, and environmental requirements. Customer will provide, at no charge to MRC, access to the Equipment. When customer initiates the request for repair, if access is denied for greater than fifteen minutes, then Customer will pay a separate labor charge. MRC Onsite service hours are from 8:00am to 5:00pm Monday through Friday excluding MRC Holidays. This Agreement covers Equipment Analyst Services/Network Support provided by MRC for the first 30 days from the Start Date only. Analyst Services/Network Support beyond the initial 30 days is offered by MRC on a separate Assurance+ Support Agreement or billed hourly. This Agreement excludes removing data from the Equipment. Customer is responsible for data stored on the equipment. Data wipes, hard drive removals and other security services are offered by MRC on a separate agreement. More information on Data Security and Network Support Services is available on our website [www.mrc360.com/solutions/assurance-plus-contract](http://www.mrc360.com/solutions/assurance-plus-contract).

2. Except as otherwise expressly indicated herein, this Agreement is non-cancellable and will commence on the Start Date and remain in effect throughout the term as stated on the signature page. Upon expiration, this Agreement will automatically renew on a month to month basis (each a "Renewal Term") unless either party provides the other with written notice of its intent not to renew this Agreement at least 30 days before the end of the Term. If a party is in material breach of its obligations under this Agreement and fails to cure such breach within thirty (30) days from the date it receives written notice from the non-breaching party which sets forth in reasonable detail the nature of the breach, then the non-breaching party shall have the option to terminate this Agreement immediately by written notice. MRC reserves the right to cancel this agreement, at any time, and without cause. Any charges during the Renewal Terms will be billed in the same manner as set forth herein. The Base Rate will be billed in advance of the time period covered. The Overage Rate will be billed at the end of the time period covered. Unused allowances expire at the end of the applicable billing period and are not carried over to future periods. Customer agrees to remit payment for MRC invoices within thirty (30) days of invoice date. Any invoice(s) open and undisputed shall be assessed a late fee, not to exceed 10% of Total Invoice. All taxes resulting from this Agreement are the responsibility of the Customer. Shipping charges will be billed at \$9.98 per month for autoshipments. If customer ops out of autoshipments they agree to be billed \$15.00 per supply order. Customer parking charges incurred by MRC Service Technicians in connection with this Agreement will be billed to the Customer. All Magnetic Ink Character Recognition toner (MICR toner) ordered by Customer will be invoiced separately at an additional charge unless specifically identified and incorporated within this Agreement. If Customer fails to timely pay invoices when due, MRC, at its sole discretion, may (1) refuse to provide service and or Supplies until past invoices are paid in full, (2) furnish all future service and Supplies on a C.O.D. "Per Call" basis at MRC's rates and/or (3) accelerate all remaining amounts due hereunder and terminate this Agreement. MRC may increase either or both the monthly Base Rate or the Overage Rate on an annual basis. MRC shall be entitled to and Customer shall pay all costs and expenses, including attorneys' fees incurred by MRC in any collection efforts of any amounts due hereunder. A Page/Print/Copy/Image is defined as a standard 8.5" x 11" Page/Print/Copy/Image. MRC reserves the right to charge an appropriate additional amount for sizes over 8.5" x 11". If Customer requires any specialized procedure or invoicing, Company reserves the right to bill an administrative fee not to exceed \$100 per invoice.

3. Customer is required to notify MRC within one week upon installation of any additional Equipment at Customer's site capable of using MRC Supplies provided by MRC under this Agreement. Upon installation of said Equipment, such Equipment shall automatically be covered by this Agreement and shall be considered the Equipment for all purposes under this Agreement. For Equipment Adds or Remove, Customer must print out and submit to MRC a configuration sheet generated from the Equipment being added or removed showing current meter reads. The Equipment Serial Number and Date must be clearly printed or written on the configuration sheet. Configuration sheets may be emailed to MRC at [mrccontracts@mrc360.com](mailto:mrccontracts@mrc360.com) or faxed to 858-573-1962 with a proper cover sheet. If Customer is unable to provide configuration sheets in a reasonable amount of time, MRC will, at its sole discretion, convert the Equipment to MRC's current flat rate monthly pricing program. Customer agrees to pay the monthly flat rate pricing charges until a current configuration report is provided and customer requests to change the equipment pricing program to a cost per page program. If MRC is unable to collect a start meter read on any device listed on Schedule A, then MRC will convert the Equipment to MRC's current flat rate monthly pricing program. MRC reserves the right to refuse Service and Supplies on certain devices and can elect to refuse to flat rate devices based on age of the Equipment. MRC reserves the right to convert any Equipment on MRC's Flat Rate Service Programs to MRC's current Cost Per Copy rates for all machines that are reporting on the MRC approved remote meter collection software ("360-App").

4. REMOTE METER COLLECTION. Customer agrees to install the MRC approved remote meter collection software ("360-App") on its server or network PC which will allow MRC to collect meter reads and monitor supply levels to detect the need to ship refills on a timely basis. Customer agrees to provide MRC reasonable assistance as required to maximize the number of Equipment reporting remotely to MRC. Equipment that will not report remotely will be identified and an alternate method of meter collection will be assigned. Reads can be reported via email to [mrcmeters@mrc360.com](mailto:mrcmeters@mrc360.com). In the event meter reads are not reported for any Equipment, MRC will estimate usage of such unreported Equipment based on internally established procedures for billing purposes. The pricing of this Agreement has factored in the 360-App being installed and reporting meters automatically. If the 360-App is offline for greater than one (1) billing cycle or customer refuses to allow 360-App to be loaded, a \$5.00 fee will apply per month per Device.

5. TAXES. Payments are exclusive of all state and local sales, use, excise, privilege and similar taxes. You will pay when due, either directly or to us upon demand, all taxes, fines and penalties relating to this Agreement that are now or in the future assessed or levied.

6. DIAGNOSTIC SOFTWARE. Software used to evaluate or maintain the Equipment ("Diagnostic Software") is included with the Equipment. Diagnostic Software is a valuable trade secret of Company, or its Licensors. Title to Diagnostic Software will remain with Company or its licensors. Company does not grant Customer any right to use Diagnostic Software, and Customer will not access, use, reproduce, distribute or disclose Diagnostic Software for any purpose (or allow third parties to do so). Customer will allow Company reasonable access to the Equipment to remove or disable Diagnostic Software if Customer is no longer receiving Service from Company, provided that any on-site access to Customer's facility will be during Customer's standard business hours.

7. SUPPLIES. Supplies provided under this Agreement shall remain the property of MRC provided however, Customer may use any Supplies delivered to the Customer's Site under this Agreement in the Equipment on an as-needed basis, and the ownership rights to the Supplies shall transfer from MRC to Customer upon Customer's full payment for such Supplies. Customer agrees the Supplies in this Agreement are provided based on the industry standard 5% page area coverage. When Customer's ordering or receipt of Supplies multiplied by the manufacturer's standard yield of pages is actually higher than the pages billed under this Agreement then Customer agrees to pay MRC's separate invoice for excess supply usage within thirty (30) business days of the date on the supplemental supply invoice. Customer agrees that MRC may periodically pick up any Supplies at the Customer's Site that MRC deems is over normal stocking quantity. Customer shall promptly return to MRC all Supplies not installed in Equipment at the termination or expiration of this Agreement or pay for any Supplies not returned within thirty (30) business days.

8. SOFTWARE LICENSE. Company grants (and is hereby authorized by its licensor's to grant) you a non-exclusive, non-transferable license to use in the U.S.: (a) software and accompanying documentation ("Base Software") only with the Equipment with which it was delivered; and (b) Software that is set forth as a separate line item in this Agreement ("Application Software") (including its accompanying documentation), as applicable, for as long as you are current in the payment of all applicable software license fees. "Base Software" and "Application Software" are referred to collectively as "Licensed Software". You have no other rights and may not: (1) distribute, copy, modify, create derivatives of, decompile, or reverse engineer Licensed Software; (2) activate Licensed Software delivered with the Equipment in an inactivated state; or (3) allow others to engage in same. Title to, and all intellectual property rights in, Licensed Software will reside solely with Company and/or its licensors (who will be considered third-party beneficiaries of this Section). Licensed Software may contain code capable of automatically disabling the Equipment. Disabling code may be activated if: (x) Company is denied access to periodically reset such code; (y) you are notified of a default under this Agreement; or (z) your license is terminated or expires. The Base Software license will terminate: (i) if you no longer use or possess the Equipment; or (ii) upon the expiration or termination of this Agreement, unless you have exercised your option to purchase the Equipment. Neither Company nor its licensors warrant that Licensed Software will be free from errors or that its operation will be uninterrupted. The foregoing terms do not apply to Diagnostic Software or to Licensed Software/documentation accompanied by a clickwrap or shrink-wrap license agreement or otherwise made subject to a separate license agreement.

9. SOFTWARE SUPPORT. Except for Products and/or Third-Party Products identified as "No Svc.", Company (or a designated servicer) will provide the software support set forth below or in accordance with an attached statement of work ("Software Support"). For Base Software for Equipment, Software Support will be provided during the initial Term and any renewal period but in no event longer than 5 years after Company stops taking customer orders for the subject model of Equipment. For Application Software, Software Support will be provided as long as you are current in the payment of all applicable software license and support fees. Company will maintain a web-based or toll-free hotline during Company's standard working hours to report Licensed Software problems and answer Licensed Software-related questions. Company, either directly or with its vendors, will make reasonable efforts to: (a) assure that Licensed Software performs in material conformity with its user documentation; (b) provide available workarounds or patches to resolve Licensed Software performance problems; and (c) resolve coding errors for (i) the current Release and (ii) the previous Release for a period of 6 months after the current Release is made available to you. Company will not be required to provide Software Support if you have modified the Licensed Software. New releases of Licensed Software that primarily incorporate compliance updates and coding error fixes are designated as "Maintenance Releases" or "Updates". Maintenance Releases or Updates that Company may make available will be provided at no charge and must be implemented within six months. New releases of Licensed Software that include new content or functionality ("Feature Releases") will be subject to additional license fees at then-current pricing. Maintenance Releases, Updates and Feature Releases are collectively referred to as "Releases". Each Release will be considered Licensed Software governed by the Software License and Licensed Software Support provisions of this Agreement (unless otherwise noted). Implementation of a Release may require you to procure, at your expense, additional hardware and/or software from Company or another entity. Upon installation of a Release, you will return or destroy all prior Releases. For Third Party Software identified as "No Svc.", you shall enter into a support agreement with a Third-Party Software vendor or its support services provider, who shall be solely responsible for the quality, timeliness and other terms and conditions of such support services. Company shall have no liability for the acts or omissions of such third-party support services provider.

10. WARRANTY. You acknowledge that the Equipment covered by this Agreement was selected by You based upon Your own judgment. COMPANY MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF NON-INFRINGEMENT; IMPLIED WARRANTIES OF MERCHANTABILITY; OR FITNESS FOR A PARTICULAR PURPOSE, ALL OF WHICH ARE SPECIFICALLY AND UNRESERVEDLY EXCLUDED.

11. LIMITATION OF LIABILITY. In no event, shall Company be liable for any indirect, special, incidental, consequential damages, loss of profits, or punitive damages whether based in contract, tort, or any other legal theory and irrespective of whether Company has notice of the possibility of such damages.

12. DEFAULT; REMEDIES: Any of the following events or conditions shall constitute an Event of Default under this Agreement: (a) failure to make payment when due of any indebtedness to Company or for the Equipment, whether or not arising under this Agreement, without notice or demand by Company; (b) breach by You of any obligation herein; or (c) if You cease doing business as a going concern. If You default, Company may: (1) require future Services, including supplies, be paid for in advance, (2) require You to immediately pay the amount of the remaining unpaid balance of the Agreement, (3) terminate any and all agreements with You, and/or (4) pursue any other remedy permitted at law or in equity. In the Event of Default, remaining payment amounts due will be calculated using the average of the last six months' billing or the amount set forth on the face of the Agreement, whichever is greater, multiplied by the remaining months of the Agreement. You agree that any delay or failure of Company to enforce its rights under this Agreement does not prevent Company from enforcing any such right at a later time. All of Company's rights and remedies survive the termination of this Agreement. In the event of a dispute arising out of this Agreement or the Equipment listed herein, should it prevail, Company shall be entitled to collection of its reasonable costs and attorneys' fees incurred in defending or enforcing this Agreement, whether or not litigation is commenced.

13. ASSIGNMENT. Neither Party may assign or transfer any of its rights or obligations under the Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, MRC MAY ASSIGN OR TRANSFER the Agreement to Xerox Corporation, or another party in the event of a merger, consolidation, stock transfer or sale of all or substantially all of its assets, without consent.

14. NOTICES. All notices required or permitted under this Agreement shall be by overnight courier or by registered mail to such party at the address set forth in this Agreement, or at such other address as such party may designate in writing from time to time. Any notice from Company to You shall be effective three days after it has been deposited in the mail, duly addressed, or one day if sent via overnight courier.

15. INDEMNIFICATION. You are responsible for and agree to indemnify and hold Us harmless from, any and all (a) losses, damages, penalties, claims, suits and actions (collectively, "Claims"), whether based on a theory of contract, tort, strict liability of otherwise caused by or related to Your use or possession of the Equipment, and (b) all costs and attorneys' fees incurred by Us relating to such claim.

16. FAX/ELECTRONIC EXECUTION. A faxed or electronically transmitted version of this Agreement may be considered the original and You will not have the right to challenge in court the authenticity or binding effect of any faxed or scanned copy or signature thereon. This Agreement may be signed in counterparts and all counterparts will be considered and constitute the same Agreement.

17. MISCELLANEOUS. (a) Choice of Law. This Agreement shall be governed by the laws of the state of California (without regard to the conflict of laws or principles of such states); (b) Jury Trial. YOU EXPRESSLY WAIVE TRIAL BY JURY AS TO ALL ISSUES ARISING OUT OF OR RELATED TO THIS AGREEMENT; (c) Entire Agreement. This Agreement constitutes the entire agreement between the parties with regards to the Services herein and supersedes all prior agreements, proposals or negotiations, whether oral or written regarding the Services set forth herein; (d) Enforceability. If any provision of this Agreement is unenforceable, illegal or invalid, the remaining provisions will remain in full force and effect; (e) Amendments. This Agreement may not be amended or modified except by a writing signed by the parties; provided You agree that we are authorized, without notice to You, to supply missing information or correct obvious errors provided that such change does not materially alter Your obligations; (f) Force Majeure. Company shall not be responsible for delays or inability to provide Services caused directly or indirectly by strikes, accidents, climate conditions, parts availability, unsafe travel conditions, or other reasons beyond our control; (g) Company has the right to modify/correct any clerical errors.

18. REPLACEMENT GUARANTEE. Should your Printer mainframe fail to perform as outlined above, you must notify MRC at its corporate address in care of the Director of Service. MRC will have 30 working days to repair your Printer to factory specifications or, if unable to do so, replace it with a device of equal capabilities and features, at no additional cost to you. Replacement guarantee does not apply to Printers with manufacturer date greater than 7 years at point of failure.

19. CANCELLATION CLAUSE. To opt out of the Maintenance Agreement for MPS contracts only, the customer must provide a 60 day notice in writing and pay one times the base amount for the number of years of the contract. For example, 3 years (36 months) contracts have a termination fee of 3 times the monthly base payment. If the contract includes equipment built in the monthly payment, then the remaining balance of that equipment is owed in addition to the fee of one times the base for the number of years of the contract. If the contract included a promotion of deferred payments or free payments for the duration of the contract, then the contract is not cancellable.

Customer Initials \_\_\_\_\_

MRC Initials \_\_\_\_\_



## Equipment Removal Authorization

CUSTOMER INFO	SHIP TO	Name	American Indian Model Schools		<b>Total Removal</b>	<b>1</b>
	Address	171 12th Street		Lease Return	1	
	City	Oakland		Disposal	0	
	State	CA	Zip	94607	Storage	0
	Contact	Tiffany Tung				
	Phone	510-893-8701	Email	<a href="mailto:tiffany.tung@aimsk12.org">tiffany.tung@aimsk12.org</a>		

Make / Model	Location	Serial #	Lessor	Lease #	End Date	Return Type
Xerox D95	2nd Floor	BG2955541	XFS	010-0028535-003	7/20/2022	Lease return

UNLESS FOR NEGLIGENCE DIRECTLY ATTRIBUTABLE TO MRC, CUSTOMER ASSUMES ALL RESPONSIBILITY FOR LOSSES WHICH MAY OCCUR IN STORAGE OR SHIPMENT.

MRC will issue pay-off to the Lessor(s) and terminate the Leases listed on this document. Customer must (a) submit a letter of intent to the Lessor in accordance with the lease terms; (b) provide to MRC the Lessor's complete lease return instructions within one week of lease completion; (c) provide timely access to Equipment.

1. Equipment marked for Lease Return. Customer warrants that the Equipment lease is not in default in any manner. Upon receipt of lease return instructions from Customer, MRC will schedule the return of the Equipment to the US destination instructed by and in accordance with Lessor's return instructions.
2. Equipment marked for Disposal. MRC is not responsible for any additional unpaid balance owed on Equipment listed in this document. By releasing the equipment customer is acknowledging they are the rightful owner and the equipment is free and clear of any encumbrances and ownership is being transferred to MRC.
3. Equipment marked for Storage. MRC assumes no responsibility for damage to Equipment which occurred prior to the date/time that MRC picked up Equipment from Customer's location(s). MRC will pick up and store Equipment for a period not to exceed the listed End Date. If the Equipment to be stored is to be returned to the Lessor before the End Date, Section 1 applies. Customer remains responsible for any trailing unpaid fees, renewal costs, and taxes associated with the Equipment. Further, Customer shall remain responsible to Lessor for any buyout as well as any late fees which result from untimely or incomplete provision of Equipment lease return instructions to MRC.

Authorization	Company	American Indian Model Schools	Company	<i>MRC Smart Technology Solutions</i>
	Signature		Signature	
	Name		Name	
	Title		Date	