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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

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**FORM 8-K**

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**CURRENT REPORT**

**Pursuant to Section 13 or 15(d) of  
the Securities Exchange Act of 1934**

**Date of Report (date of earliest event reported): January 31, 2018**



**XEROX CORPORATION**

(Exact name of registrant as specified in its charter)

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**New York**  
(State or other jurisdiction  
of incorporation)

**001-04471**  
(Commission File Number)

**16-0468020**  
(IRS Employer  
Identification No.)

**201 Merritt 7**  
**Norwalk, Connecticut**  
**06851-1056**  
(Address of principal executive offices) (Zip Code)

**Registrant's telephone number, including area code: (203) 968-3000**

**Not Applicable**  
(Former Name or Former Address, if Changed Since Last Report)

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Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Indicate by check mark whether the Registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§ 230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the Registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

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**Item 8.01 Other Events**

Xerox Corporation is voluntarily filing the agreements attached hereto as Exhibits 99.1, 99.2, 99.3, 99.4 and 99.5.

**Additional Information and Where to Find It**

This filing may be deemed to be solicitation material in respect of the transaction with FujiFilm Holdings Corporation (the "Transaction") and/or the matters to be considered at the Company's 2018 Annual Meeting. In connection with the Transaction and the 2018 Annual Meeting, Xerox plans to file with the Securities and Exchange Commission ("SEC") and furnish to Xerox's shareholders one or more proxy statements and other relevant documents. BEFORE MAKING ANY VOTING DECISION, XEROX'S SHAREHOLDERS ARE URGED TO READ THE PROXY STATEMENT(S) IN THEIR ENTIRETY WHEN THEY BECOME AVAILABLE AND ANY OTHER DOCUMENTS TO BE FILED WITH THE SEC IN CONNECTION WITH THE TRANSACTIONS AND/OR THE COMPANY'S 2018 ANNUAL MEETING OR INCORPORATED BY REFERENCE IN THE PROXY STATEMENTS BECAUSE THEY WILL CONTAIN IMPORTANT INFORMATION ABOUT THE TRANSACTIONS AND/OR THE COMPANY'S 2018 ANNUAL MEETING AND THE PARTIES RELATED THERETO. Xerox's shareholders will be able to obtain a free copy of documents filed with the SEC at the SEC's website at <http://www.sec.gov>. In addition, Xerox's shareholders may obtain a free copy of Xerox's filings with the SEC from Xerox's website at <http://www.xerox.com> under the heading "Investor Relations" and then under the heading "SEC Filings."

**Participants in the Solicitation**

The directors, executive officers and certain other members of management and employees of Xerox may be deemed "participants" in the solicitation of proxies from shareholders of Xerox in favor of the Transaction or in connection with the matters to be considered at the Company's 2018 Annual Meeting. Information regarding the persons who may, under the rules of the SEC, be considered participants in the solicitation of the shareholders of Xerox in connection with the Transaction or the Company's 2018 Annual Meeting will be set forth in the applicable proxy statement and other relevant documents to be filed with the SEC. You can find information about Xerox's executive officers and directors in Xerox's Annual Report on Form 10-K for the fiscal year ended December 31, 2016, Xerox's and such persons' other filings with the SEC and in Xerox's definitive proxy statement filed with the SEC on Schedule 14A.

**Item 9.01 Financial Statements and Exhibits**

(d) Exhibits

<u>Exhibit No.</u>	<u>Exhibit</u>
99.1	2001 Joint Enterprise Contract, dated as of March 30, 2001, by and between Xerox Corporation and Fuji Photo Film Co., Ltd.
99.2	Side Letter, dated March 30, 2001, by and between Xerox Corporation and Fuji Photo Film Co., Ltd.
99.3	Amendment No. 1 to 2001 Joint Enterprise Contract, dated January 2, 2002, by and between Xerox Corporation and Fuji Photo Film Co., Ltd.
99.4	2006 Technology Agreement, dated as of April 1, 2006, by and between Xerox Corporation and Fuji Xerox Co., Ltd.
99.5	Master Program Agreement, dated as of September 9, 2013, by and between Xerox Corporation and Fuji Xerox Co., Ltd.

## EXHIBIT INDEX

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**SIGNATURE**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

XEROX CORPORATION

By: /s/ Douglas H. Marshall

Name: Douglas H. Marshall

Title: Assistant Secretary

Date: January 31, 2018

2001 JOINT ENTERPRISE CONTRACT

THIS 2001 JOINT ENTERPRISE CONTRACT (this "Agreement") entered into as of March 30, 2001 by and between

XEROX CORPORATION, a company incorporated under the laws of the State of New York, U.S.A. with its principal office at 800 Long Ridge Road, Stamford, Connecticut, U.S.A., ("XEROX CORP"), and

FUJI PHOTO FILM CO., LTD., a company incorporated under the laws of Japan with offices at 26-30, Nishiazabu 2-chome, Minato-ku, Tokyo, Japan ("FUJI PHOTO").

RECITALS:

FUJI PHOTO and XEROX CORP desire to provide herein for their future collaboration concerning FUJI XEROX.

IT IS AGREED:

## 1. DEFINITIONS

The following terms shall have the indicated meanings throughout this Agreement:

- 1.1. "Affiliate", with respect to a specified person, shall mean a person that directly, or indirectly through one or more intermediaries, controls or is controlled by or is under common control with, the person specified, where "control" (including the terms "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract or otherwise.
- 1.2. "Business" shall have the meaning specified in Section 2.1 hereof.
- 1.3. "Change of Control" as used in any Section of this Agreement means, with respect to XEROX CORP, the occurrence of any of the following events: (i) a Person becomes the beneficial owner, directly or indirectly, of more than a percentage specified in such Section of the total voting power of the voting stock of XEROX CORP; (ii) the merger or consolidation of XEROX CORP with or into another Person or the merger of another Person into XEROX CORP and, in the case of any such merger or consolidation, the securities of XEROX CORP that are outstanding immediately prior to such transaction and which represent one hundred percent (100%) of the total voting power of the voting stock of XEROX CORP are changed into or exchanged for cash, securities or property of such other Person (provided, however, this clause (ii) shall not apply to any merger or consolidation where,

pursuant to such transaction, such XEROX CORP securities are changed into or exchanged for, in addition to any other consideration, securities of the Person surviving such transaction that represent, immediately after such transaction, a percentage specified in such Section of the total voting power of the voting stock of the surviving Person) or (iii) the sale of all or substantially all the assets of XEROX CORP to another Person (other than to a Subsidiary of XEROX CORP).

- 1.4. "Common Stock" means the outstanding common stock, par value 500 Japanese Yen, of FUJI XEROX.
- 1.5. "Competitor" means any of not more than ten (10) corporations or entities whose primary business focus is in the "image processing" field and who are identified (i) in Schedule A attached hereto and (ii) in a written notice in the form of a revised Schedule A given by FUJI PHOTO to XEROX CORP every three years, in each case on or within thirty (30) days following the anniversary of the date of this Agreement, and their respective successors and Affiliates who operate primarily in the same field.
- 1.6. "Fuji Photo Company" means FUJI PHOTO or any Subsidiary of FUJI PHOTO except FUJI XEROX.
- 1.7. "FUJI XEROX" means Fuji Xerox Co., Ltd., a company incorporated under the laws of Japan with its principal office at 2-17-22 Akasaka, Minato-ku, Tokyo, Japan.
- 1.8. "Party" means, on the one hand, XEROX CORP and, on the other hand, FUJI PHOTO and "Parties" shall mean XEROX CORP and FUJI PHOTO, collectively.
- 1.9. "Person" means any, individual, corporation, partnership, limited liability company, association, joint-stock company, trust, unincorporated organization, government or any agency or political subdivision thereof or any other entity.
- 1.10. "Subsidiary" means any company or other legal entity as to which another company owns or controls, directly or indirectly, a majority of the outstanding voting stock or analogous equity interest and, by virtue of such ownership or otherwise, has the right to elect a majority of the Board of Directors or other body charged with the management thereof.
- 1.11. "Threshold Amount" means, with respect to transactions specified in Section 7.2(d), (e), (g) and (h), the total amount proposed to be spent on each transaction or each series of related transactions, whether such amount is proposed to be spent in a single fiscal year or in not more than two consecutive fiscal years, five billion Japanese Yen; provided, however, that from and after April 1, 2002, the Threshold Amount shall increase or decrease by one billion Japanese Yen for every cumulative incremental increase or decrease in the consolidated annual operating revenues of FUJI XEROX

in an amount equal to 20% of the consolidated annual operating revenues of FUJI XEROX, such increase or decrease to be effective as of the end of the first fiscal year in which such cumulative 20% change is achieved; provided, further, that upon any increase or decrease in the Threshold Amount pursuant to this Section 1.11, calculation of any subsequent increase or decrease of consolidated annual operating revenues shall be based upon the consolidated annual operating revenues of FUJI XEROX for the fiscal year ending March 31, 2002 (i.e., an increase or decrease of 20% of the amount of the consolidated annual operating revenues in that fiscal year). The term "consolidated annual operating revenues", when used in respect of any fiscal year, means the line item amount reported as such in the financial statements included in FUJI XEROX's annual report for such fiscal year.

- 1.12. "Transfer" shall have the meaning specified in Section 8.1 hereof.
- 1.13. "U.S. GAAP" means generally accepted accounting principles as applied in the United States.
- 1.14. "Xerography" means the art of forming and utilizing an electrostatic charge pattern on an insulating photoconductive insulating surface.
- 1.15. "Xerox Company" means XEROX CORP or any Subsidiary of XEROX CORP except FUJI XEROX.
- 1.16. "XEROX LIMITED" means Xerox Limited, a company incorporated under the laws of England and Wales with registered office at Bridge House, Oxford Road, Uxbridge, Middlesex UB8 1HS, U.K.
- 1.17. "1999 TA" means that certain 1999 Technology Agreement, made and effective as of March 1, 1999, between XEROX CORP and FUJI XEROX, as amended from time to time.

## 2. BUSINESS OBJECTIVES OF FUJI XEROX

- 2.1. The Parties agree that the main business objectives of FUJI XEROX shall be document processing activities, including developing, manufacturing, marketing, servicing and financing document processing products and solutions (hardware, services and software) by various technologies (including Xerography) (the "Business").
- 2.2. Notwithstanding the foregoing, without the approval of either Party, FUJI XEROX may engage in any other business which is in support of the Business and which is set forth in Article 2 of FUJI XEROX's Articles of Incorporation.

2.3. Also notwithstanding the foregoing Sections 2.1 and 2.2, without the approval of XEROX CORP and subject only to any applicable approval rights set forth in Section 7.2, FUJI XEROX may also engage in any other business which is set forth in Article 2 of FUJI XEROX's Articles of Incorporation.

### 3. CO-OPERATION AND MAINTENANCE OF SECRECY

3.1. The Parties shall cooperate with FUJI XEROX in accordance with the terms of this Agreement for the purpose of extending the business and success of FUJI XEROX.

3.2. Taking into account the mutual and individual interests of the Parties, each Party assures the other that it will deal with each other in matters relating to FUJI XEROX and this Agreement with honesty and good faith in accordance with the principles embodied in this Agreement and observing reasonable commercial standards of fair dealing.

3.3. The Parties intend FUJI XEROX to collaborate with XEROX CORP in the development of mutually-beneficial strategic, operating and long range plans including, without limitation, financial, research and product development. To the extent permitted by the provisions of intellectual property licenses and other agreements, the Parties also intend FUJI XEROX to collaborate with FUJI PHOTO in the development of mutually-beneficial strategic, operating and long range plans including, without limitation, financial, research and product development.

3.4. Except as permitted by the 1999 TA and as otherwise agreed in writing, each Party agrees that any confidential information that is disclosed to it (or in the case of XEROX CORP, to XEROX LIMITED) by or on behalf of FUJI XEROX or the other Party, either (i) in fulfillment of the purposes of this Agreement, (ii) in its capacity as a direct or indirect shareholder of FUJI XEROX, or (iii) by any director of FUJI XEROX appointed or caused to be appointed by such Party, shall not be used by the receiving person for any purpose other than the exercise of rights or performance of obligations as a direct or indirect shareholder of FUJI XEROX or as a party to this Agreement and shall not be disclosed by it to any person, firm or company, save that, subject to the same secrecy and non-use obligations as set forth in this Section 3.4, either Party (and, in the case of XEROX CORP, XEROX LIMITED) shall be entitled to disclose to, and permit use by, or have FUJI XEROX disclose to, and permit use by, Xerox Companies or Fuji Photo Companies any confidential non-technological information concerning FUJI XEROX, such as financial information or information about its business and business methods in general; provided, however, that each Party shall be released from the foregoing non-use and non-disclosure obligations if such confidential information (1) was previously known to it on a non-confidential basis (as shown by its prior written records) prior to the disclosure by or on behalf of



FUJI XEROX or the other Party, or (2) is or becomes part of the public domain through no wrongful act or omission on its part, or (3) is subsequently otherwise legally acquired by it on a non-confidential basis from an independent third party, or (4) is information which is required to be disclosed under legal process by subpoena or other court order or other applicable laws or regulations and which is so disclosed in accordance with the following sentence. In the event that a Party is requested pursuant to, or required by, applicable law or regulation or by legal process to disclose any confidential information disclosed to it (or, in the case of XEROX CORP, XEROX LIMITED), such Party shall provide the disclosing Party with prompt notice of such request or requirement in order to enable the disclosing Party (i) to seek an appropriate protective order or other remedy, (ii) to consult with the receiving person or FUJI XEROX with respect to taking steps to resist or narrow the scope of such request or legal process, or (iii) to waive compliance, in whole or in part, with the terms of this Section 3.4. In any such event the receiving person will use its reasonable efforts to ensure that all confidential information that is so disclosed will be accorded confidential treatment.

#### 4. DEALINGS WITH FUJI XEROX

- 4.1. Prices charged by any Xerox Company or Fuji Photo Company to FUJI XEROX or any of its Subsidiaries for goods or services shall be subject to the following:
  - (a) Prices shall be equal to or less than the prices at which other goods or services suitable for the purpose intended can be purchased by FUJI XEROX from unaffiliated third parties; and
  - (b) in no event will the prices exceed the prices at which the supplier offers goods or services of like quality and quantity to unaffiliated third parties.
- 4.2. The prices for Products (as defined in the 1999 TA) and parts and components thereof to be sold by FUJI XEROX and its Subsidiaries to any Xerox Company or Fuji Photo Company shall be determined by mutual agreement, but such prices shall not be less than the prices at which items of like quality and quantity are made available to unaffiliated third parties under similar terms and conditions.
- 4.3. Notwithstanding anything herein to the contrary, where goods and services may be available from more than one source in the open market, preference will be given by FUJI XEROX and its Subsidiaries to purchasing such goods and services from Xerox Companies and Fuji Photo Companies if the conditions of sale are competitive, including price, quality, delivery schedules, specifications and any other material conditions of purchase.

5. CAPITAL AND DIVIDENDS

5.1. The Parties agree and acknowledge that, on the date hereof, the holdings of the Common Stock are as set forth below:

	<u>Number of Shares</u>	<u>Shareholding</u>
XEROX LIMITED (indirectly owned by XEROX CORP)	10,000,000	25%
FUJI PHOTO (directly)	30,000,000	75%

5.2. Each of XEROX LIMITED and FUJI PHOTO shall have the pre-emptive right to subscribe for any shares of stock, options, warrants, rights, calls, commitments, conversion rights, rights of exchange, plans or other agreements providing for the purchase, issuance or sale of any shares of the capital stock of FUJI XEROX to be newly issued, granted or entered into by FUJI XEROX in proportion to the ratio of its respective shareholdings immediately preceding such issuance.

6. DIRECTORS AND AUDITORS

- 6.1. The number of directors of FUJI XEROX shall be twelve (12), nine (9) of whom shall be designated by FUJI PHOTO and three (3) of whom shall be designated by XEROX CORP as provided in Section 6.6.
- 6.2. Meetings of the Board of Directors of FUJI XEROX shall be held in Japan in accordance with FUJI XEROX's Articles of Incorporation and applicable law. A quorum for a meeting of the Board of Directors shall consist of a majority of all members of the whole Board of Directors, and resolutions of the Board of Directors shall be adopted by a majority of directors present at the meeting of the Board of Directors.
- 6.3. The Parties agree that, so long as each such committee shall continue in existence, XEROX CORP shall have the right to designate, as provided in Section 6.6, at least two (2) board members to serve on the Finance Committee of the FUJI XEROX Board of Directors and at least one (1) board member to serve on each other committee of such Board of Directors as may exist from time to time.
- 6.4. The Parties agree that FUJI XEROX shall have four (4) statutory auditors, three (3) of whom shall be designated by FUJI PHOTO and one (1) of whom shall be designated by XEROX CORP, as provided in Section 6.6.
- 6.5. Each director or statutory auditor designated by XEROX CORP pursuant to this Section 6 shall be an employee of any Xerox Company, provided that no shareholder of such Xerox Company is a Competitor.

- 6.6. XEROX CORP shall exercise its right to designate directors and a statutory auditor through such Xerox Company that, at the time of exercise, directly or indirectly owns of record shares of FUJI XEROX that are directly or indirectly owned by XEROX CORP. If more than one Xerox Company holds shares of FUJI XEROX, such Xerox Companies shall act jointly through the Xerox Company that owns of record a majority of shares of FUJI XEROX that are directly or indirectly owned by XEROX CORP. FUJI XEROX and FUJI PHOTO shall be entitled to rely on all designations made by such Xerox Company.
7. MANAGEMENT, POLICY AND CONTROL
- 7.1. The Board of Directors of FUJI XEROX as constituted from time to time shall be responsible for the establishment of the policy and overall control and supervision of the business of FUJI XEROX in accordance with the terms of this Agreement. It is however agreed and understood between the Parties that the executive directors of FUJI XEROX shall be properly nominated and appointed by FUJI PHOTO and shall be responsible for the day-to-day management and supervision and the execution of policy directives on behalf of the Board of Directors of FUJI XEROX.
- 7.2. The Parties agree that the following actions to be taken by FUJI XEROX shall be subject to prior written approval by XEROX CORP:
- (a) any change of the business objectives of FUJI XEROX that are set forth in Article 2 of the Articles of Incorporation of FUJI XEROX;
  - (b) the raising of additional funds by issuance of shares of capital stock or any security convertible into or exchangeable for shares of capital stock of FUJI XEROX;
  - (c) important technological collaboration or arrangements with any Person within the field of the Business, where the term "important" means either (i) relating to Xerography or (ii) involving a total amount proposed to be spent or transferred in one fiscal year of more than 100 million Japanese Yen, including the value of any intangible assets to be transferred as part of such collaboration;
  - (d) any single or series of related investments in, loans to or guarantees for the account of any Person in an amount exceeding the Threshold Amount;
  - (e) any (i) single or series of related purchases or sales of significant capital or other assets, including property transactions, or (ii) merger, consolidation, combination, divestiture or reorganization involving an amount exceeding the Threshold Amount;

- (f) the dissolution, liquidation or winding up of FUJI XEROX;
  - (g) the expansion or reduction of manufacturing facilities provided by or for FUJI XEROX in a single or series of related transactions involving expenditures or consideration exceeding the Threshold Amount; or
  - (h) any single or series of related research and development projects, the budgeted amount of which project or projects exceeds the Threshold Amount.
- 7.3. FUJI XEROX shall promptly deliver to each of the Parties: (i) annual audited consolidated financial statements prepared in accordance with U.S. GAAP; (ii) quarterly unaudited financial statements; and (iii) such other financial information as either Party may reasonably request in order to comply with reporting requirements to which it is subject under applicable law or contractual obligations.
- 7.4. FUJI XEROX shall provide to each of the Parties all information reasonably requested by such Party in order to enable such party or its Affiliates to timely file tax returns and provide information requested by, or on behalf of, taxing authorities pursuant to applicable law.
8. TRANSFERS OF INTERESTS IN FUJI XEROX
- 8.1. (Transfer of Shares) – Except as otherwise set forth in Section 8.2, XEROX CORP shall ensure that any Xerox Company owning shares of FUJI XEROX shall not sell, assign, transfer, pledge, mortgage, encumber or otherwise dispose of (hereinafter “Transfer”) any shares of FUJI XEROX which it owns without the prior written consent of FUJI PHOTO. Except as otherwise set forth in Section 8.2, FUJI PHOTO shall not Transfer any shares of FUJI XEROX which it owns without the prior written consent of XEROX CORP. The Parties agree and acknowledge that the Articles of Incorporation of FUJI XEROX shall provide that no Transfer of shares of FUJI XEROX may be made without the approval of the Board of Directors of FUJI XEROX. In the event that either Party shall Transfer any shares to any third party in accordance with the foregoing, such transferee of shares of FUJI XEROX shall, as a condition precedent to such Transfer, agree in writing to be bound by all the terms and conditions hereof.
- 8.2. (Permitted Transfer) – XEROX CORP may cause XEROX LIMITED (or any subsequent permitted transferee pursuant to this Section 8.2) to Transfer shares of FUJI XEROX to a Xerox Company that directly or indirectly is wholly-owned by XEROX CORP if it notifies FUJI PHOTO and FUJI XEROX in writing. FUJI PHOTO (or any subsequent permitted transferee) may Transfer shares of FUJI XEROX to a Fuji Photo Company that directly or indirectly is wholly-owned by FUJI PHOTO if it notifies XEROX CORP and FUJI XEROX in writing. In each case, the

transferee of shares of FUJI XEROX pursuant to this Section 8.2 shall be entitled to the benefits of this Agreement and the provisions hereof applicable to it as a shareholder of FUJI XEROX (provided that all Xerox Companies or Fuji Photo Companies owning shares of FUJI XEROX shall be obligated to exercise such benefits as a group, and not singly) and shall be bound by all the terms and conditions hereof.

8.3. (Restrictions Concerning XEROX LIMITED) –

For so long as XEROX LIMITED or any permitted transferee of XEROX LIMITED pursuant to Section 8.2 owns any shares of FUJI XEROX:

- (a) At all times during the term hereof, XEROX CORP shall cause XEROX LIMITED to be a Subsidiary of XEROX CORP.
- (b) XEROX CORP shall promptly report to FUJI PHOTO any change in the ownership or the right to elect a majority of the directors of any Subsidiary through which XEROX CORP directly or indirectly owns shares of XEROX LIMITED.
- (c) In connection with any Transfer of an interest in shares of XEROX LIMITED or any Subsidiary through which XEROX CORP directly or indirectly owns shares of XEROX LIMITED, XEROX CORP shall, or shall cause the transferor of such shares to, retain to itself or such transferor the right to elect not less than a majority of the directors of XEROX LIMITED or such Subsidiary and shall not transfer the right to elect a majority of the directors to the transferee of such shares.

9. TERMINATION

9.1. (Termination of Agreement) –

(a) This Agreement shall be subject to termination in its entirety as follows:

- (i) in the event that either Party shall Transfer the whole of its direct or indirect shareholdings in FUJI XEROX to the other Party, then this Agreement shall automatically terminate and cease to have any force or effect;
- (ii) upon mutual consent in writing of each of the Parties;
- (iii) either Party may terminate this Agreement if the other Party materially breaches any of its covenants or agreements contained herein, and, if

such breach is susceptible of cure, the breaching Party has not cured such breach within sixty (60) days from the date the Party seeking termination gives notice of breach, provided, that notwithstanding Section 10.1, prior to termination the Parties may submit any dispute about materiality to non-binding, 30-day mediation conducted by a mutually-agreed independent mediator experienced in such matters, provided, further that nothing herein shall be construed as a limitation on either Party's right to seek the remedies available under Section 10.1;

- (iv) if XEROX CORP Transfers, or permits the Transfer of, a beneficial direct or indirect interest in shares of XEROX LIMITED or any Subsidiary through which XEROX CORP directly or indirectly owns shares of XEROX LIMITED to any Competitor, FUJI PHOTO may terminate this Agreement upon written notice to XEROX CORP; or
  - (v) if a Change of Control occurs and a Competitor (a) becomes the beneficial owner of more than thirty percent (30%) of the total voting power of XEROX CORP as described in clause (i) of the "Change of Control" definition, (b) acquires control of more than thirty percent (30%) of the total voting power of the surviving Person as described in clause (ii) of the "Change of Control" definition or (c) acquires assets of XEROX CORP as described in clause (iii) of the "Change of Control" definition, FUJI PHOTO may terminate this Agreement upon written notice to XEROX CORP.
- (b) The foregoing notwithstanding, any such termination shall not affect any rights accruing to either Party prior to or as a result of such termination or the obligations pursuant to Section 3.4.
- 9.2. (Partial Termination) – If a Change of Control occurs and any Person who is not a Competitor (a) becomes the beneficial owner of fifty percent (50%) or more of the total voting power of XEROX CORP as described in clause (i) of the "Change of Control" definition, (b) acquires control of fifty percent (50%) or more of the total voting power of the surviving Person as described in clause (ii) of the "Change of Control" definition or (c) acquires assets of XEROX CORP as described in clause (iii) of the "Change of Control" definition, then, at the option of FUJI PHOTO exercised by written notice to XEROX CORP, the provisions of Sections 7.2(d), (e), (g), and (h) shall terminate and have no further effect.

- 9.3. (Tradenames) – Upon any termination of this Agreement or any winding up of FUJI XEROX, the tradenames “Fuji” and “Xerox” and all rights thereto, as well as all other intellectual property and rights thereto granted by the Parties to FUJI XEROX, shall continue or be disposed of in accordance with applicable agreements, including without limitation the 1999 TA and any supplemental agreements thereto, providing for the licensing thereof to FUJI XEROX, or if no such provision has been made, shall revert respectively to FUJI PHOTO and to XEROX CORP, without any payment being made therefor.
10. GENERAL PROVISIONS
- 10.1. (Dispute and Arbitration) – If any dispute shall arise between the parties to this Agreement as to the interpretation of this Agreement, then the matter shall be referred to an independent arbitrator to be appointed by the Japan Commercial Arbitration Association of Tokyo, Japan in accordance with whose rules the arbitration shall be conducted. The decision of the arbitrator shall be final and binding upon the parties and shall not be appealed or appealable to any court, but the decision of the arbitrator shall be enforceable in any court having jurisdiction.
- 10.2. (Applicable Law) – This Agreement is made in Japan and shall be construed in accordance with Japanese law.
- 10.3. (Effective Date) – This Agreement shall become effective upon the date of this Agreement set forth above.
- 10.4. (Version of Agreement) – This Agreement is made in two versions, one in the Japanese language, the other in the English language. In the event of any variation between the two versions, the English version shall prevail.
- 10.5. (Assignment) – Except as provided herein, this Agreement may not be assigned by either Party without the prior written consent of the other Party.

IN WITNESS WHEREOF the Parties have caused this Agreement to be executed by their authorized representatives on this 30th day of March, 2001.

XEROX CORPORATION

By: /s/ Paul A. Allaire

Name: Paul A. Allaire

Title: Chairman and Chief Executive Officer

FUJI PHOTO FILM CO., LTD.

By: /s/ Minoru Ohnishi

Name: Minoru Ohnishi

Title: Chairman and Chief Executive Officer



March 30, 2001

Fuji Photo Film Co., Ltd.  
26-30, Nishiazabu 2-chome  
Minato-ku, Tokyo 106-8620  
Japan

Gentlemen:

In connection with the Joint Enterprise Contract ("JEC"), dated as of the date hereof, by and between Fuji Photo Film Co., Ltd. ("FPF") and Xerox Corporation ("XC"), XC and FPF (the "Parties") hereby agree as follows:

1. The Parties agree that Fuji Xerox Co., Ltd. ("FX") dividends will be declared and paid at such time or times and in such amounts as may be determined by the Board of Directors of FX. Notwithstanding the foregoing, the Parties shall ensure that FX dividends will be declared and paid annually in an amount equal to not less than 40% of the consolidated net profits after taxes of FX (as determined under U.S. generally accepted accounting principles ("GAAP")), provided that the long term unsecured debt of FX is rated at no lower than investment grade by Standard & Poor's.

2. The Parties shall cause FX to continue to deliver to XC in a timely manner and in English financial and other data, including but not limited to the following:

- (a) annual audited financial data prepared in accordance with U.S. GAAP and XC disclosure requirements;
- (b) quarterly unaudited financial data in accordance with U.S. GAAP; and
- (c) tax receipts, tax returns, balance sheet and profit and loss by legal entity, tax packages for depreciation, fixed assets, reserves and other financial information and local statutory annual reports.

3. With respect to any meeting of the Board of Directors of FX, at least 14 days prior written notice of each meeting of the Board of Directors, any committee thereof and of the Board of Corporate Auditors of FX shall be given to each director, committee member and statutory auditor designated by XC. Each such notice shall specify the agenda for such meeting. Notwithstanding the foregoing, in case of emergency, such notice period may be shortened with the consent of XC's designees to the Board of Directors, which consent shall not be unreasonably withheld or delayed. Further, at the request of either Party, each director of FX shall have the right, upon written request given to FX not less than two business days prior to the scheduled date of any meeting, to participate in any meeting of the Board of Directors by means of a video conference call (or by means of any other telecommunications equipment permitted by applicable law) in which all persons participating in such meeting can see and hear each other, and participation in such meeting shall constitute presence in person at the meeting.

4. XC shall not, and shall cause each of its Subsidiaries not to, enter into or permit itself to become contractually bound by any shareholders or similar agreement with any third party minority investor in Xerox Limited ("XL") which would grant any rights granted to XC under the JEC to such third party minority investor (including but not limited to agreements providing rights to participate in the management of or management decisions regarding FX).

5. Without the prior agreement of FX, XC shall not, in any way that materially and adversely affects the rights of FX thereunder, amend any agreement between XC and any third party with respect to patents, patent rights, copyrights, trademarks, service marks, trade names, trade secrets and proprietary know-how (either registered, applied for, or common law) that are material to FX for carrying out its business as currently conducted and that are in effect as of the date hereof.

6. XC shall not take any action regarding its ownership or control of FX through XL, direct or indirect, that gives rise to the termination of FX's rights pursuant to the provisions of any agreement described in paragraph 5 above.

7. This letter agreement shall be governed by, and shall be construed in accordance with, the internal laws of Japan, without regard to the conflicts of law principles thereof.

8. This letter constitutes an integral part of the JEC and shall be deemed incorporated therein.

Each of the undersigned parties has caused this letter agreement to be executed by their respective duly authorized officer or representative as of the date written above.

**XEROX CORPORATION**

By: /s/ Paul A. Allaire

Name: Paul A. Allaire

Title: Chairman and Chief Executive Officer

Accepted and Agreed:

**FUJI PHOTO FILM CO., LTD.**

By: /s/ Minoru Ohnishi

Name: Minoru Ohnishi

Title: Chairman and Chief Executive Officer

January 2, 2002

Ms. Anne M. Mulcahy  
Chairman and Chief Executive Officer  
XEROX CORPORATION  
800 Long Ridge Road  
Stamford, Connecticut 06904 U.S.A

Re: Amendment No. 1 to 2001 Joint Enterprise Contract between FPF and XC

Dear Ms. Mulcahy:

We respectfully propose to you that Section 1.4 of the 2001 Joint Enterprise Contract made and entered into by XEROX CORPORATION and us dated March 30, 2001 be hereby amended in the following manner in accordance with the recent revisions of the Commercial Code of Japan.

- By deleting Section 1.4 thereof in its entirety and substituting therefor the following sentence as new Section 1.4:

1.4. "Common Stock" means the outstanding common stock of FUJI XEROX.

- The above change shall be incorporated as part of the 2001 Joint Enterprise Contract and, except as specifically provided herein, the 2001 Joint Enterprise Contract shall remain in full force and effect.

In confirmation of the above amendment, please countersign and return to us the enclosed counterparts of this Amendment No. 1, whereupon this Amendment No. 1 shall become effective in accordance with its terms as of January 2, 2002.

Very truly yours,

**Fuji Photo Film Co., Ltd.**

/s/ Minoru Ohnishi

\_\_\_\_\_  
Chairman and Chief Executive Officer

**ACCEPTED AND AGREED:**

This January 2, 2002

**XEROX CORPORATION**

By: /s/ Anne M. Mulcahy

\_\_\_\_\_  
Anne M. Mulcahy  
Chairman and Chief Executive Officer

**2006 Technology Agreement**

THIS 2006 TECHNOLOGY AGREEMENT (this Agreement) by and between XEROX CORPORATION (“Xerox”), a corporation organized under the laws of the State of New York and resident in the United States of America with principal offices at 800 Long Ridge Road, Stamford, Connecticut, U.S.A., and FUJI XEROX CO., LTD. (“Fuji Xerox”), a corporation organized under the laws of Japan and resident in Japan with principal offices at 2-17-22 Akasaka, Minato-ku, Tokyo 107-0052, Japan (each referred to individually as “Party” and collectively as “Parties”) is made as of this 1<sup>st</sup> day of April, 2006 (the “Effective Date”).

**RECITALS**

WHEREAS, Xerox Corporation and Fuji Xerox Co., Ltd. are parties to a 1999 Technology Agreement with the effective date of March 1, 1999 as amended and restated in March 2001 (Amended 1999TA),

WHEREAS, Xerox and Fuji Xerox Co., Ltd. have enjoyed a long lasting relationship and now wish to reconfirm their intent to foster closer and more effective working relations, enabled by a spirit of trust and cooperation, for their greater mutual benefit, and,

WHEREAS, Xerox and Fuji Xerox desire to enter into an agreement in order to reflect the parties’ current assessment of the value of their respective intellectual property portfolios and to set forth their rights and obligations to each other, and

WHEREAS, Xerox and Fuji Xerox reached an agreement that the Amended 1999 TA needs to be amended in order to reflect, among other things, changed business conditions,

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth and other good and valuable consideration, Xerox and Fuji Xerox, hereby agree as follows:

**PART A – DEFINITIONS**

**A1. Territory:**

Territory means Japan, the People’s Republic of China, the Special Administrative Region of Hong Kong of the People’s Republic of China, the Special Administrative Region of Macau of the People’s Republic of China, Taiwan, the Philippines, the Democratic People’s Republic of Korea (North Korea), the Republic of Korea (South Korea), Thailand, Kampuchea (Cambodia), Laos, Vietnam, Indonesia, Singapore, Malaysia, Myanmar (Burma), Australia, New Zealand, Negara Brunei Darussalam, Republic of Fiji, Republic of Kiribati, Republic of Nauru, Papua New Guinea, Kingdom of Tonga, Republic of Vanuatu, Western Samoa, Tuvalu, Micronesia, excluding United States territories, possessions or dependencies, and other countries or areas in the South Pacific which the Parties may mutually agree to add from time to time.

**A2. Fuji Xerox JV OPCO:**

Fuji Xerox JV OPCO means Taiwan Fuji Xerox Corporation, P.T. Astra-Graphia and other companies which the Parties may mutually agree from time to time.

**A3. Subsidiary:**

Subsidiary means any company or other legal entity as to which either Party owns or controls, directly or indirectly, a majority of the outstanding voting stock or has the right to elect a majority of the Board of Directors or other body charged with the management thereof.

**A4. Product:**

A Product means any tangible or intangible DPA, as defined in Section A10, item manufactured, sold, distributed, licensed, leased or otherwise disposed of by Xerox, Fuji Xerox or their Subsidiaries or Fuji Xerox JV OPCOs including hardware, software, components, parts, services and publications and consulting and other services and solutions offered by a Party to its customers. For purposes of this Agreement, intellectual property itself shall not be deemed a Product.

**A5. Xerography:**

Xerography means the art of forming and utilizing an electrostatic charge pattern on an insulating or photoconductive insulating surface. Examples of Xerography are set forth on Annex A-1 to this Agreement. From time to time the Parties may agree to add additional examples to Annex A-1.

**A6. Xerographic:**

Xerographic means pertaining to or used in Xerography.

**A7. Xerographic Product(s):**

Xerographic Product means all Products which are predominantly Xerographic. The determination as to whether a Product is predominantly Xerographic shall be made by the Parties on a consistent basis.

**A8. Marking:**

Marking means the use of any technology or set of component technologies to apply and/or fix an impression or image of a document on a surface, and intermediates thereof when used with the DPA, including but not limited to Xerography. Examples of Marking are set forth on Annex A-1 to this Agreement. From time to time the Parties may agree to add additional examples to Annex A-1.

**A9. Marking Product(s):**

Marking Products means Products which are predominantly Marking. The determination as to whether a Product is predominantly Marking shall be made by the Parties on a consistent basis.

**A10. Document Processing Activities or DPA:**

Document Processing Activities or DPA means any activities, including developing, manufacturing, marketing, servicing and financing document processing products and solutions (hardware, services and software) by various technologies (including without limitation Xerography).

**A11. Patents:**

Patents mean all patents, utility models, design rights or the like, and the applications to granting authorities therefor.

**A12. Copyrights:**

Copyrights means rights in literary works; musical works (including any accompanying words); pictorial, graphic and sculptural works; motion pictures and other audiovisual works; sound recordings; and architectural works, and compilations and derivative works of the same, as each of those terms is defined and applied in Article 2 of the Berne Convention for the Protection of Literary and Artistic Works (Paris Text 1971).

**A13. Technical Information:**

Technical Information means any knowledge or information, including but not limited to, customer or employee training information, processes, formulae, drawings, designs, recipes, Software as defined in Section A18 below, and other technological information, whether or not subject to Patent or Copyright protection, as well as accumulated techniques and experience.

**A14. Fuji Xerox Revenue:**

Fuji Xerox Revenue means the total consolidated revenue of Fuji Xerox determined in accordance with generally accepted accounting principles in the United States of America as reflected in the practice of independent certified public accountants of international reputation; less any portion of such revenues derived from sales to Japanese Original Equipment Manufacturers (JOEMs), for use in the manufacture of products shipped directly or indirectly outside the Territory as specified in the Memorandum of Understanding between Xerox and Fuji Xerox dated as of October 1, 1991, as amended by and between the Parties from time to time; and less sales to Xerox or any Xerox Subsidiary.

**A15. Trademarks:**

Trademarks means any trademark or service mark, whether registered or not and the application therefor, including, but not limited to, trade names that contain one or more Trademark(s) only to the extent and portion Trademark is contained in such trade names.

**A16. Trade Name:**

Trade Name means any company name adopted and / or to be adopted by either Party or its Subsidiaries or Fuji Xerox JV OPCOs.

**A17. Quality Control Standards:**

Quality Control Standards means: (i) Xerox's Corporate Identity Guidelines as attached hereto as Annex A-2, (ii) industrial design and human interface standards as adopted by each of the respective Parties as of the execution date hereof, and (iii) environmental, health and safety standards as adopted by each of the respective Parties, as of the execution date hereof (hereinafter, "Quality Control Standards"). Xerox shall give Fuji Xerox notice of any changes of Xerox's Corporate Identity Guidelines with a reasonable preparation period. Each Party shall notify the other Party of any proposed material change to the standards set forth in (ii) and (iii) of this paragraph to enable discussion of and concurrence on such change.



**A18. Software:**

Software means all software, including without limitation all object code, source code and supporting or related documentation such as detailed program specifications, patent applications and/or other descriptions which can be readily used to reconstruct or write source code.

**A19. Interpretation of Definitions:**

Whenever Patents, Technical Information, Trademarks, Trade Names or Copyrights are preceded by the name of any entity, such as in "Xerox Patents", such phrase shall mean Patents, Technical Information, Trademarks, Trade Names or Copyrights owned controlled, or licensable by such entity during the term of this Agreement, and whenever such terms are preceded by a descriptive identifier, such as in Xerographic Patents, such phrase shall mean Patents, Technical Information, Trademarks, Trade Names or Copyrights which relate to such descriptive identifier.

**PART B – TECHNOLOGY PROVISIONS AND LICENSES**

**B1. Xerox License to Fuji Xerox of Xerographic Technical Information, Copyrights and Patents:**

- (a) Except as otherwise expressly provided in the Agreement, Xerox grants to Fuji Xerox for the term of the Agreement a royalty-free, exclusive license (a) under Xerographic Patents, and Xerographic Technical Information of Xerox and its Subsidiaries to manufacture, have made, use, lease, sell, distribute or otherwise dispose of Products in the Territory and (b) under Xerographic Copyrights of Xerox and its Subsidiaries to reproduce, modify, prepare derivative works (as that term is defined in Article 2 of the Berne Convention) of, display, perform and distribute Products in the Territory. No right or license is granted under this Agreement with respect to any Patent, Technical Information or Copyright of

Xerox and its Subsidiaries outside the Territory. In accordance with the license granted herein, Xerox agrees to use commercially reasonable efforts to prevent the sale by a third party inside the Territory of Xerox's Xerographic Products unless such sale has been approved in writing by Fuji Xerox.

- (b) Fuji Xerox shall have the right to grant sublicenses to its Subsidiaries and Fuji Xerox JV OPCOs (to the extent that such Fuji Xerox JV OPCOs agree to be bound by all other obligations of the Parties under this Agreement) or any of them with respect to all licenses granted to it above.
- (c) Fuji Xerox may grant sublicenses to any third party under the licenses granted under Section B1 (a) with respect to Xerographic Patents, Technical Information and/or Copyrights of Xerox with the prior written approval of Xerox, which shall not be unreasonably withheld in the opinion of Xerox. In addition, in connection with Fuji Xerox's exclusive right set forth below to enforce Xerographic Patents of Xerox issued in the Territory, if it becomes necessary or desirable in the opinion of Fuji Xerox to resolve a particular enforcement action against a third party infringer by means of Fuji Xerox sublicensing such third party infringer under one or more of such Patents of Xerox, Fuji Xerox shall discuss the matter with Xerox, and Xerox may authorize Fuji Xerox to grant such sublicense under terms and conditions mutually agreed by the Parties.

**B2. Xerox License to Fuji Xerox of non-Xerographic Marking Technical Information, Copyrights and Patents:**

- (a) During the term of the Agreement Xerox grants to Fuji Xerox a Reserved Right of Option ("RRO") under which Fuji Xerox may elect to receive a non-exclusive, royalty-bearing right and license to (a) non-Xerographic Marking Patents and Technical Information of Xerox and its Subsidiaries, with a right to sublicense the same to its Subsidiaries and Fuji Xerox JV OPCO's (to the extent that such Fuji Xerox JV OPCOs agree to be bound by all other obligations of the Parties under this Agreement), to manufacture, have made, use, lease, sell, distribute or

otherwise dispose of Products in the Territory and (b) non-Xerographic Marking Copyrights of Xerox and its Subsidiaries, with a right to sublicense the same to its Subsidiaries and Fuji Xerox JV OPCO's (to the extent that such Fuji Xerox JV OPCOs agree to be bound by all other obligations of the Parties under this Agreement), to reproduce, modify, prepare derivative works of, display, perform and distribute Products in the Territory. The royalty rates shall be negotiated in good faith by the Parties taking into account the nature and scope of the applicable Patents, Copyrights and Technical Information which royalties shall be no less favorable to Fuji Xerox than those offered by Xerox to a third party under similar circumstances. The RRO set forth in this Section shall become available to Fuji Xerox, for any item or items of Patent, Copyright, Technical Information, either upon Xerox offering the same to Fuji Xerox by written notice, requesting that Fuji Xerox exercise or waive its rights under this Section or upon Fuji Xerox notifying Xerox in writing, requesting that Fuji Xerox be allowed to exercise its rights under this Section. The Party receiving such notice shall respond to such notice of offer within thirty (30) days of the receipt of same indicating that (in the case of an offer by Xerox) Fuji Xerox elects to exercise or waives its rights under this RRO or (in the case of a request for license by Fuji Xerox) Xerox agrees to consider the requested license of rights to Fuji Xerox under this RRO. Xerox and Fuji Xerox agree that each Party shall negotiate in good faith, but the failure of the Parties to reach agreement shall not be deemed a lack of good faith on the part of either Party. If acceptable terms and conditions are not agreed in writing within ninety (90) days (or such other time as the Parties may mutually agree in writing) of receipt by Fuji Xerox of the offer by Xerox or (in the case of a request for license by Fuji Xerox) receipt by Xerox of the request by Fuji Xerox, Xerox may proceed with other transactions regarding such non-Xerographic Marking Patents, Copyrights and Technical Information of Xerox and its Subsidiaries. In addition to the foregoing, Fuji Xerox may later request a right to receive a non-exclusive, royalty-bearing right and license even after Fuji Xerox has waived its rights under paragraph (a) above, but such license shall be considered by Xerox only to the extent that Xerox can grant such license without derogating from any

other license or licenses to which Xerox then is a party. For avoidance of doubt, the Parties agree that Xerox may offer and grant non-exclusive licenses to non-Xerographic Marking Patents, Copyrights and Technical Information to any third party prior to offering the same to Fuji Xerox.

- (b) Notwithstanding the foregoing, Fuji Xerox may request an exclusive, royalty-bearing license to such non-Xerographic Marking Patents, Copyrights and Technical Information of Xerox and its Subsidiaries, but Xerox shall be under no obligation to accept such request nor to grant such license on an exclusive basis.

**B3. Xerox License to Fuji Xerox of non-Xerographic non-Marking DPA Technical Information, Copyrights and Patents:**

- (a) During the term of this Agreement Xerox grants to Fuji Xerox a Reserved Right of Option (“RRO”) under which Fuji Xerox may elect to receive a non-exclusive right and license to non-Xerographic, non-Marking, DPA Patents, Copyrights and Technical Information of Xerox and its Subsidiaries, with a right to sublicense the same to its Subsidiaries and Fuji Xerox JV OPCO’s (to the extent that such Fuji Xerox JV OPCOs agree to be bound by all other obligations of the Parties under this Agreement) (a) with respect to Patents and Technical Information, to manufacture, have made, use, lease, sell, distribute or otherwise dispose of Products in the Territory and (b) with respect to Copyrights, to reproduce, modify, prepare derivative works of, display, perform and distribute Products in the Territory. The license to Fuji Xerox under this Section shall be royalty-free only to the extent the non-Xerographic, non-Marking, DPA Technical Information, Copyrights and Patents are used or embodied in Marking Products, and will arise without the need for election as set forth above. The use or embodiment of the non-Xerographic, non-Marking, DPA Technical Information, Copyrights and Patents in non-Marking Products shall be royalty-bearing. The royalty rates shall be negotiated in good faith by the Parties taking into account the nature and scope of the applicable Patents, Copyrights and Technical Information which royalties shall be no less favorable to Fuji Xerox than those offered by Xerox to a

third party under similar circumstances. The RRO set forth in this Section shall become available to Fuji Xerox, for any item or items of Patents, Copyrights or Technical Information, either upon Xerox offering the same to Fuji Xerox by written notice, requesting that Fuji Xerox exercise or waive its rights under this Section or upon Fuji Xerox notifying Xerox in writing, requesting that Fuji Xerox be allowed to exercise its rights under this Section. The Party receiving such notice shall respond to such notice of offer within thirty (30) days of the receipt of same indicating that (in the case of an offer by Xerox) Fuji Xerox elects to exercise or waives its rights under this RRO or (in the case of a request for license by Fuji Xerox) Xerox agrees to consider the requested license of rights to Fuji Xerox under this RRO. Xerox and Fuji Xerox agree that each Party shall negotiate in good faith, but the failure of the Parties to reach agreement shall not be deemed a lack of good faith on the part of either Party. If acceptable terms and conditions are not agreed in writing within ninety (90) days (or such other time as the Parties may mutually agree in writing) of receipt by Fuji Xerox of the offer by Xerox or (in the case of a request for license by Fuji Xerox) receipt by Xerox of the request by Fuji Xerox, Xerox may proceed with other transactions regarding such non-Xerographic non-Marking DPA Patents, Copyrights and Technical Information of Xerox and its Subsidiaries. In addition to the foregoing, Fuji Xerox may later request a right to receive a non-exclusive, royalty-bearing right and license even after Fuji Xerox has waived its rights under paragraph (a), above, but such license shall be considered by Xerox only to the extent that Xerox can grant such license without derogating from any other license or licenses to which Xerox then is a party. For avoidance of doubt, the Parties agree that Xerox may offer and grant non-exclusive licenses to non-Xerographic non-Marking, DPA Patents, Copyrights and Technical Information to any third party prior to offering the same to Fuji Xerox.

- (b) Notwithstanding the foregoing, Fuji Xerox may request an exclusive, royalty-bearing license to such non-Xerographic, non-Marking, DPA Patents, Copyrights and Technical Information of Xerox and its Subsidiaries, but Xerox shall be under no obligation to accept such request nor to grant such license on an exclusive basis.

**B4. Fuji Xerox License to Xerox of Xerographic Technical Information, Copyrights and Patents:**

- (a) Except as otherwise expressly provided in the Agreement, Fuji Xerox grants to Xerox for the term of the Agreement a royalty-free, exclusive license (a) under Xerographic Patents, and Xerographic Technical Information of Fuji Xerox and its Subsidiaries and Fuji Xerox JV OPCOs (to the extent licensable by Fuji Xerox to Xerox) to manufacture, have made, use, lease, sell, distribute or otherwise dispose of Products outside the Territory and (b) under Xerographic Copyrights of Fuji Xerox and its Subsidiaries and Fuji Xerox JV OPCOs (to the extent licensable by Fuji Xerox to Xerox) to reproduce, modify, prepare derivative works (as that term is defined in Article 2 of the Berne Convention) of, display, perform and distribute Products outside the Territory. No right or license is granted under this Agreement with respect to any Patent, Technical Information or Copyright of Fuji Xerox and its Subsidiaries and Fuji Xerox JV OPCOs inside the Territory. In accordance with the license granted herein, Fuji Xerox agrees to use commercially reasonable efforts to prevent the sale by a third party outside of the Territory of Fuji Xerox's Xerographic Products unless such sale has been approved in writing by Xerox.
- (b) Xerox shall have the right to grant sublicenses to its Subsidiaries or any of them with respect to all licenses granted to it above.
- (c) Xerox may grant sublicenses to any other third party under the licenses granted under Section B4(a) with respect to Xerographic Patents, Technical Information and/or Copyrights of Fuji Xerox with a prior written notice to Fuji Xerox except for cases where Xerox intends to bring a case against a third party by utilizing Xerographic Patents of Fuji Xerox issued outside the Territory, which requires prior consultation with Fuji Xerox, which consultation shall not exceed thirty (30) days.

**B5. Fuji Xerox License to Xerox of non-Xerographic Marking Technical Information, Copyrights and Patents:**

- (a) During the term of the Agreement Fuji Xerox grants to Xerox a Reserved Right of Option (“RRO”) under which Xerox may elect to receive a non-exclusive, royalty-bearing right and license to (a) non-Xerographic Marking Patents and Technical Information of Fuji Xerox and its Subsidiaries and Fuji Xerox JV OPCO’s (to the extent licensable by Fuji Xerox to Xerox), with a right to sublicense the same to its Subsidiaries, to manufacture, have made, use, lease, sell, distribute or otherwise dispose of Products outside of the Territory and (b) non-Xerographic Marking Copyrights of Fuji Xerox and its Subsidiaries and Fuji Xerox JV OPCO’s (to the extent licensable by Fuji Xerox to Xerox), with a right to sublicense the same to its Subsidiaries, to reproduce, modify, prepare derivative works of, display, perform and distribute Products outside the Territory. The royalty rates shall be negotiated in good faith by the Parties taking into account the nature and scope of the applicable Patents, Copyrights and Technical Information which royalties shall be no less favorable to Xerox than those offered by Fuji Xerox to a third party under similar circumstances. The RRO set forth in this Section shall become available to Xerox, for any item or items of Patent, Copyright or Technical Information, either upon Fuji Xerox offering the same to Xerox by written notice, requesting that Xerox exercise or waive its rights under this Section or upon Xerox notifying Fuji Xerox in writing, requesting that Xerox be allowed to exercise its rights under this Section. The Party receiving such notice shall respond to such notice of offer within thirty (30) days of the receipt of same indicating that (in the case of an offer by Fuji Xerox) Xerox elects to exercise or waives its rights under this RRO or (in the case of a request for license by Xerox) Fuji Xerox agrees to consider the requested license of rights to Xerox under this RRO. Xerox and Fuji Xerox agree that each Party shall negotiate in good faith, but the failure of the Parties to reach agreement shall not be deemed a lack of

good faith on the part of either Party. If acceptable terms and conditions are not agreed in writing within ninety (90) days (or such other time as the Parties may mutually agree in writing) of receipt by Xerox of the offer by Fuji Xerox or (in the case of a request for license by Xerox) receipt by Fuji Xerox of the request by Xerox, Fuji Xerox may proceed with other transactions regarding such non-Xerographic Marking Patents, Copyrights and Technical Information of Fuji Xerox and its Subsidiaries and Fuji Xerox JV OPCO's. In addition to the foregoing, Xerox may later request a right to receive a non-exclusive, royalty-bearing right and license even after Xerox has waived its rights under paragraph (a), above, but such license shall be considered by Fuji Xerox only to the extent that Fuji Xerox can grant such license without derogating from any other license or licenses to which Fuji Xerox then is a party. For avoidance of doubt, the Parties agree that Fuji Xerox may offer and grant non-exclusive licenses to non-Xerographic Marking Patents, Copyrights and Technical Information to any third party prior to offering the same to Xerox.

- (b) Notwithstanding the foregoing, Xerox may request an exclusive, royalty-bearing license to such non-Xerographic Marking Patents, Copyrights and Technical Information of Fuji Xerox and its Subsidiaries and Fuji Xerox JV OPCOs, but Fuji Xerox shall be under no obligation to accept such request nor to grant such license on an exclusive basis.

**B6. Fuji Xerox License to Xerox of non-Xerographic non-Marking DPA Technical Information, Copyrights and Patents:**

- (a) During the term of this agreement Fuji Xerox grants to Xerox a Reserved Right of Option ("RRO") under which Xerox may elect to receive a non-exclusive right and license to non-Xerographic, non-Marking, DPA Patents, Copyrights and Technical Information of Fuji Xerox and its Subsidiaries and Fuji Xerox JV OPCO's (to the extent licensable by Fuji Xerox to Xerox), with a right to sublicense the same to its Subsidiaries (a) with respect to Patents and Technical Information, to manufacture, have made, use, lease, sell, distribute or otherwise



dispose of Products outside of the Territory and (b) with respect to Copyrights, to reproduce, modify, prepare derivative works of, display, perform and distribute Products outside of the Territory. The license to Xerox under this Section shall be royalty-free only to the extent the non-Xerographic, non-Marking, DPA Technical Information, Copyrights and Patents are used or embodied in Marking Products, and will arise without the need for election as set forth above. The use or embodiment of the non-Xerographic, non-Marking, DPA Technical Information, Copyrights and Patents in non-Marking Products shall be royalty-bearing. The royalty rates shall be negotiated in good faith by the Parties taking into account the nature and scope of the applicable Patents, Copyrights and Technical Information which royalties shall be no less favorable to Xerox than those offered by Fuji Xerox to a third party under similar circumstances. The RRO set forth in this Section shall become available to Xerox, for any item or items of Patent, Copyright and Technical Information, either upon Fuji Xerox offering the same to Xerox by written notice, requesting that Xerox exercise or waive its rights under this Section or upon Xerox notifying Fuji Xerox in writing, requesting that Xerox be allowed to exercise its rights under this Section. The Party receiving such notice shall respond to such notice of offer within thirty (30) days of the receipt of same indicating that (in the case of an offer by Fuji Xerox) Xerox elects to exercise or waives its rights under this RRO or (in the case of a request for license by Xerox) Fuji Xerox agrees to consider the requested license of rights to Xerox under this RRO. Xerox and Fuji Xerox agree that each Party shall negotiate in good faith, but the failure of the Parties to reach agreement shall not be deemed a lack of good faith on the part of either Party. If acceptable terms and conditions are not agreed in writing within ninety (90) days (or such other time as the Parties may mutually agree in writing) of receipt by Xerox of the offer by Fuji Xerox or (in the case of a request for license by Xerox) receipt by Fuji Xerox of the request by Xerox, Fuji Xerox may proceed with other transactions regarding such non-Xerographic, non-Marking, DPA Patents, Copyrights and Technical Information of Fuji Xerox and its Subsidiaries and Fuji Xerox JV OPCO's. In addition to the foregoing, Xerox may later request a right to receive

a non-exclusive, royalty-bearing right and license even after Xerox has waived its rights under paragraph (a), above, but such license shall be considered by Fuji Xerox only to the extent that Fuji Xerox can grant such license without derogating from any other license or licenses to which Fuji Xerox then is a party. For avoidance of doubt, the Parties agree that Fuji Xerox may offer and grant non-exclusive licenses to non-Xerographic, non-Marking, DPA Patents, Copyrights and Technical Information to any third party prior to offering the same to Xerox.

- (b) Notwithstanding the foregoing, Xerox may request an exclusive, royalty-bearing license to such non-Xerographic, non-Marking, DPA Patents, Copyrights and Technical Information of Fuji Xerox and its Subsidiaries and Fuji Xerox JV OPCOs, but Fuji Xerox shall be under no obligation to accept such request nor to grant such license on an exclusive basis.

**B7. Fuji Xerox Rights to Xerox non-Xerographic Marking Products:**

Xerox shall provide Fuji Xerox with a Right of First Offer (“ROFO”) under which prior to offering a non-Xerographic Marking Product to any third party within the Territory, Xerox shall first offer Fuji Xerox the right to negotiate with Xerox for distribution rights to such non-Xerographic Marking Product, such negotiation to be conducted in good faith. If mutually acceptable terms and conditions are agreed in writing within sixty (60) days, Xerox shall not offer any third party distribution rights to such non-Xerographic Marking Product. If the Parties are unable to agree to mutually acceptable terms and conditions within such sixty (60) day period or if Fuji Xerox declines the offer to distribute such non-Xerographic Marking Product, Xerox may grant exclusive or non-exclusive rights for such non-Xerographic Marking Product to other third parties in the Territory under terms and conditions which are as favorable or more favorable to Xerox in similar order volume and terms and conditions as those offered to Fuji Xerox. Nothing set forth in this Section shall be deemed to be an offer of a license to any patents embodied in such non-Xerographic Marking Product, and any such license shall be governed by other provisions of this Part B of this Agreement. Fuji Xerox may request a non-exclusive right to distribute such non-Xerographic Marking Product, even after Fuji Xerox has waived its rights under the offer made to Fuji Xerox by Xerox under this Section, but only to the extent that such right can be granted without derogating from any other agreements to which Xerox then is a party.

**B8. Xerox's Rights to Fuji Xerox non-Xerographic Marking Products:**

Fuji Xerox shall provide Xerox with a Right of First Offer ("ROFO") under which prior to offering a non-Xerographic Marking Product to any third party outside of the Territory, Fuji Xerox shall first offer Xerox the right to negotiate with Fuji Xerox for distribution rights to such non-Xerographic Marking Product, such negotiation to be conducted in good faith. If mutually acceptable terms and conditions are agreed in writing within sixty (60) days, Fuji Xerox shall not offer any third party distribution rights to such non-Xerographic Marking Product. If the Parties are unable to agree to mutually acceptable terms and conditions within such sixty (60) day period or if Xerox declines the offer to distribute such non-Xerographic Marking Product, Fuji Xerox may grant exclusive or non-exclusive rights for such non-Xerographic Marking Product to other third parties outside the Territory under terms and conditions which are as favorable or more favorable to Fuji Xerox in similar order volume and terms and conditions as those offered to Xerox. Nothing set forth in this Section shall be deemed to be an offer of a license to any patents embodied in such non-Xerographic Marking Product, and any such license shall be governed by other provisions of this Part B of this Agreement. Xerox may request a non-exclusive right to distribute such non-Xerographic Marking Product, even after Xerox has waived its rights under the offer made to Xerox by Fuji Xerox under this Section, but only to the extent that such right can be granted without derogating from any other agreements to which Fuji Xerox then is a party.

**B9. Notice of Business Activities Outside Licensed Territory:**

Subject to Part B of this Agreement, each Party shall notify the other Party prior to the conduct of DPA outside the Territory (in the case of Fuji Xerox) and within the Territory (in the case of Xerox) in order to permit the respective Parties to exercise their rights under this Agreement.

**B10. Limitation On Sublicense Rights:**

Except as expressly set forth in this Agreement, neither Party shall have the right to sublicense with respect to all licenses granted a Party hereunder.

**B11. Right of License to Third Party Patents, Copyrights and Technical Information:**

Any Patents or Technical Information licensable or sublicensable by Xerox or Fuji Xerox because of an agreement with a third party and as to which Xerox or Fuji Xerox is required to make payment to a third party, or under which Xerox or Fuji Xerox is not free to grant full licenses or sublicenses to the other Party, shall be licensed to the other Party in accordance with the territorial limits of Part B hereto, if so desired by the other Party and the other Party agrees to be sublicensed under the terms and conditions for such license or sublicense, including payment of a royalty or other compensation to the third party, if any, and subject to the terms of the agreement with such third party.

**B12. Ownership and Administration of Intellectual Property:**

For purposes of this Section, the term "Party" or "Parties" shall include a Subsidiary of a Party if the context so indicates. All inventions, works of authorship and Technical Information created by either or both Parties during the term of the Agreement, together with all Patents and Copyrights obtained with respect to such inventions, works of authorship and Technical Information (collectively, the "Intellectual Property"), shall be owned and administered solely by the Party who controls the principal creator(s); provided, however, that if (i) the other Party provides more than 80% of the investment for the intended Project (as that term is defined below in this Section B12) which results in the creation of such inventions, works of authorship and Technical Information (as shall be defined in a prior, written agreement between the Parties) as defined in the specific Project agreement or statement of work under which such Intellectual Property was created; or (ii) the Party who controls the principal creator(s) cannot be identified and agreed upon, then such Intellectual Property shall be owned and administered jointly worldwide by Xerox and Fuji Xerox. For avoidance of doubt, the terms and agreements set forth in any Project agreement or statement of work (the "Project"),

which shall be required for all such joint efforts between the Parties, shall govern the ownership and administration of Intellectual Property created thereunder to the extent that such terms and conditions differ from those set forth in this Section if such Project is agreed in writing between corporate officers of the Parties. In no event shall ownership of any Project deliverables or other Project outputs alter or affect the ownership of any underlying or previously existing Patents, Technical Information or Copyrights. Further, in determining the 80% threshold for a Project, any works that have already been implemented by the Party who controls the principal creator(s), without any involvement and/or contribution by the other Party, either in the form of development or investment, shall not be taken into consideration for the purpose of determining ownership.

**B13. Rights in Software Derivative Works:**

A Software derivative work that does not reflect or contain significant added value (including, but not limited to a mere translation from one language to another or a simple localization of a program from one market to another, etc.) shall be owned by the owner(s) of the original work.

**B14. Disclosure of Technical Information; Gatekeepers:**

- (a) Xerox and Fuji Xerox shall promptly and fully disclose or cause to be disclosed to the other Party, on a continuing basis, all Xerographic Technical Information as to which either Party has transferable rights; provided that the use of such Technical Information shall be subject to those provisions of Part D if, applicable.
- (b) For purposes of this Section B14 (b) through (g), each Party shall designate a gatekeeper, which gatekeeper shall serve in such capacity until a replacement is notified to the other Party in writing. Such gatekeeper shall be one or more individual employees of a Party designated by such Party to receive information from the other Party in order to ascertain if a more complete disclosure of Technical Information is desired or needed by such Party or if such information is already licensed under the Amended 1999TA.

- (c) Xerox and Fuji Xerox further agree to disclose to the designated gatekeeper of the other Party all non-Xerographic Marking Technical Information not disclosed pursuant to the above paragraph on an ongoing basis to enable the other Party to obtain its RRO and ROFO rights as set forth above.
- (d) Xerox and Fuji Xerox shall also disclose to the designated gatekeeper of the other Party, on a continuing basis, such information concerning non-Xerographic, non-Marking DPA Technical Information not disclosed pursuant to the above sufficient to enable the other Party to ascertain if such non-Xerographic, non-Marking DPA Technical Information is used or embodied in any Marking Product with respect to which Marking Product the Party shall be entitled to a royalty-free license as set forth above, or to enable the other Party to obtain its RRO rights as set forth above.
- (e) For purposes of this provision, Software shall be treated within the category(ies) in which it is likely to be applied in accordance with the definitions of Xerography, Marking and DPA set forth above.
- (f) The Parties shall agree upon a process to govern disclosures made pursuant to this Section B14 and shall, upon reaching such agreement, append such process to this Agreement as Annex B-1.
- (g) The Parties agree that disclosures between the gatekeepers of the Parties shall be promptly made without reference to other matters set forth in this Agreement.

**B15. Training and Technical Assistance:**

- (a) The Parties agree that personnel in the full-time employment of Xerox or Fuji Xerox will be permitted to visit certain facilities designated by the other Party and/or become resident at such locations designated by the other Party in order to receive disclosure of Xerographic Technical Information. Any such visitation or residence shall not include, and any visitor or resident shall not request access to facilities or portions thereof, which are not directly involved in the creation of Xerographic Technical Information or Xerographic Products.

Except as otherwise agreed, visitors and residents may not contact or access vendors and suppliers of the hosting Party without consulting with the hosting Party if the visitors and residents know that the hosting Party has contracts with such vendors and suppliers and such contacts require the disclosure by the vendor or supplier of the confidential information of the hosting Party which is subject to an obligation of confidentiality.

A Party may elect, at its option to grant the other Party, such other assistance and training as the Party determines. All non-Xerographic Technical Information shall only be disclosed to the designated gatekeeper of the other Party and shall not be disclosed to residents unless such residents are designated as one of gatekeepers. The numbers of such visitors or residents, the objectives and purposes for such visits and the schedules of visits shall be agreed in advance in order to minimize interference with other business activities. All visitors and residents shall act as employees of the employer Party and are not allowed to hold themselves out as representatives or agents of the hosting Party. All expenses incurred by such visitors or residents shall be paid by their employer.

- (b) In the event a Party sends personnel to the facilities of the other Party to disclose its Technical Information or render other assistance and training in response to a request from the other Party, the hosting Party shall reimburse the providing Party with all reasonably incurred travel and living expenses subject to standard limits imposed by the providing Party.

**B16. Third Party Agreements:**

- (a) Notification: Xerox and Fuji Xerox shall promptly notify the other Party in writing upon the initiation of negotiations by Xerox, Fuji Xerox or one of their respective Subsidiaries with any third party involving any of the following, provided that if such third party is Fuji Photo Film Co., Ltd. reporting of such events shall be made after such occurrence of the events on a quarterly basis:

- (i) acquisition from or supply to such third party of products for resale or lease which could reasonably be expected to be of significance to the other Party,
  - (ii) licensing of Copyrights from or to a third party which could reasonably be expected to be of significance to the other Party,
  - (iii) licensing of Patents, Technical Information or Trademarks from or to a third party, which license could reasonably be expected to be of significance to the other Party,
  - (iv) joint technical research or development with such third party which could reasonably be expected to be of significance to the other Party, or
  - (v) other business cooperation with such third party which could reasonably be expected to be of significance to the other Party.
- (b) Mutual Rights: In the negotiations described above, and with respect to Xerographic Patents and Technical Information, Xerox agrees to use commercially reasonable efforts to obtain rights in the Territory equivalent to those which it obtains for itself outside the Territory, including the right to grant such rights to Fuji Xerox, and Fuji Xerox agrees to use commercially reasonable efforts to obtain rights outside the Territory equivalent to those which it obtains for itself in the Territory, including the right to grant such rights to Xerox.

**B17. Measures to Insure Confidentiality of Xerographic Technical Information:**

- (a) Subject to the provisions regarding Confidentiality set forth in Part E below, Xerox and Fuji Xerox agree to adopt and implement security procedures for classifying Xerographic Technical Information and for determining the persons to whom the various classes of such Xerographic Technical Information are authorized to be disclosed based upon their need to know the same for purposes of performing their responsibilities on behalf of the disclosing Party. All non-Xerographic Technical Information shall be disclosed only through the designated gatekeeper(s) of the other Party in accordance with the process which shall also be agreed between the Parties.



- (b) Xerox and Fuji Xerox agree to arrange for senior technical representatives of the Parties to jointly review the above-mentioned security procedures and the practices thereunder from time to time, and at least once each calendar year, to determine what, if any, changes are appropriate.
- (c) The Parties will ensure that each employee of Xerox, Fuji Xerox and their Subsidiaries has executed a confidentiality agreement satisfactory to the other Party before such employee is given access to Technical Information covered by an obligation of confidentiality, but such access shall be limited as otherwise provided in the Agreement.
- (d) The Parties agree to take all necessary action, including but not limited to court proceedings, to compel compliance with the provisions of this Section B17 and the written agreements to be obtained pursuant to Section B17(c) above.
- (e) The provisions of this Section B17 shall also apply to all Technical Information exchanged by and between a Party and the Subsidiaries of the other Party, and between Subsidiaries of the Parties.
- (f) The Parties agree to review the processes and procedures established under this Section upon the request from either Party eighteen (18) months from the Effective Date.

**B18. Patent Applications, Maintenance and Abandonment:**

Each Party shall, without cost to the other Party, pay all maintenance and renewal fees necessary to keep its issued Xerographic Patents (in the Territory in the case of Xerox ownership, and outside the Territory in the case of Fuji Xerox ownership) in force, provided that the owning Party may abandon any issued Xerographic Patent in the respective geography with the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. Either Party may abandon any application for a Patent prior to the issuance of such Patent for any reason.

**B19. Filing, Maintenance and Defense of Jointly Owned Patents:**

For those inventions to be owned and administered jointly worldwide by Fuji Xerox and Xerox in accordance with Section B12, the following patent application filing procedures will apply:

- (a) Promptly upon one Party's decision to initiate a patent filing, the Parties shall establish a joint worldwide patent filing program.
- (b) The Party in whose territory an invention is made shall be responsible for the preparation and filing of all domestic and foreign patent applications. A copy of the initial patent application shall be provided to the other Party. If the initial application is filed in Japan by Fuji Xerox, a translation into English thereof, shall be provided to Xerox.
- (c) All preparation, filing and maintenance costs will be shared equally by the Parties.
- (d) The preparing Party shall promptly forward copies of prosecution documents to the other Party.
- (e) In the event that the Parties have not agreed upon the scope of a patent filing program, the Party desiring to file a patent application in a given country may do so at its own expense. The patent applications so filed shall continue to be jointly owned.
- (f) If one Party chooses not to file a Jointly Owned Patent application in any country and, in lieu thereof, desires to publish the subject matter of the invention, the other Party will be given an opportunity (not less than forty-five (45) days) to file a patent application, at its expense in any country, and shall be given the full cooperation of the inventors of the other Party. The patent applications so filed shall continue to be jointly owned.

- (g) Once a patent application has been filed in any country, either Party shall be free to independently publish the subject matter of the invention. However, the Party desiring to publish shall notify the other Party prior to publication in order to give the other Party an opportunity to present compelling reasons for not publishing.

**B20. Enforcement Rights for Patents:**

- (a) Fuji Xerox shall have the exclusive right to enforce: (i) all Patents which are issued inside the Territory and which are owned either solely by Fuji Xerox or jointly with Xerox; (ii) all Xerographic Patents of Xerox which are issued inside the Territory; and (iii) all of its non-Xerographic Patents which are issued outside the Territory.
- (b) Xerox shall have the exclusive right to enforce: (i) all Patents which are issued outside the Territory and which are owned either solely by Xerox or jointly with Fuji Xerox; (ii) all Xerographic Patents of Fuji Xerox which are issued outside the Territory; and (iii) all of its non-Xerographic Patents which are issued inside the Territory.
- (c) In the event that Fuji Xerox brings a lawsuit inside the Territory to enforce a Xerographic Patent as to which it has exclusive enforcement rights under this Section, or Xerox brings a lawsuit outside the Territory to enforce a Xerographic Patent as to which it has exclusive enforcement rights under this Section, the Party bringing the lawsuit shall be: (i) solely responsible for managing it, including retaining and supervising outside counsel, and for paying the on-going litigation costs and expenses; and (ii) entitled to retain all damages, costs and expenses awarded against the defendant for infringement of the Patent.

- (d) In the event a Party commences an enforcement action as permitted in this Section B20, the other Party agrees to offer all reasonable cooperation and assistance requested by such enforcing Party, all at the enforcing Party's cost and expense.

**B21. Enforcement Rights for non-Xerographic Patents:**

- (a) In the event that a non-Xerographic Patent of Fuji Xerox which is issued outside the Territory and which is licensed to Xerox, or a non-Xerographic Patent of Xerox which is issued inside the Territory and which is licensed to Fuji Xerox, is infringed by a third party, the Parties shall discuss the situation and decide whether or not to bring a lawsuit against the third party and, if so, which Party shall do so. If a Party other than the Patent owner is to bring a lawsuit, then the Party owning the Patent shall either assign or exclusively license it to the other Party in order that it may do so. Unless otherwise agreed by the Parties, the Party bringing the lawsuit shall be: (i) solely responsible for managing it, including retaining and supervising outside counsel, and for paying the on-going litigation costs and expenses; and (ii) entitled to retain all damages, costs and expenses awarded against the defendant for infringement of the Patent.
- (b) Insofar as it is necessary to join a Party as an indispensable Party in an enforcement action, the Parties agree to cooperate in such enforcement action and to participate in such joinder. In addition, the Parties shall share costs, expenses and any damage awards in a manner to be agreed upon on a case-by-case basis.

**PART C – BRAND PROVISIONS, ROYALTIES AND LICENSES**

**C1. Xerox Trademark License to Fuji Xerox:**

- (a) Subject to the terms and conditions of this Agreement, Xerox hereby grants to Fuji Xerox (i) an exclusive license to use Xerox Trademarks to manufacture, have made, use, lease, sell, distribute or otherwise dispose of Xerographic

Products in the Territory; (ii) a non-exclusive license to use Xerox Trademarks to manufacture, have made, use, lease, sell, distribute or otherwise dispose of all other Products in the Territory; and (iii) a limited right, on a case by case basis and upon the prior written permission of Xerox, to use the "Fuji Xerox Co., Ltd." name on the nameplate attached to certain products sold outside of the Territory as set forth in Annex C-1. Fuji Xerox acknowledges and understands that the use of the "Fuji Xerox" Trademark and Trade Name outside of the Territory for advertisement or solicitation purposes is outside of this grant and is strictly prohibited.

- (b) Notwithstanding the above, Xerox reserves all rights with respect to Xerox Trademarks not expressly licensed to Fuji Xerox hereunder, including but not limited to:
- (i) the right to use Xerox Trademarks inside the Territory in connection with any goods and/or services other than the right to manufacture, have made, use, lease, sell, distribute or otherwise dispose of Xerographic Products. However, Xerox shall consult with Fuji Xerox before using the word "XEROX" inside the Territory in order to understand any concerns that Fuji Xerox may have regarding the proposed use; and
  - (ii) the right to license the Xerox Trademarks to others inside the Territory in connection with any goods and/or services other than Products; and
  - (iii) the right to source Xerographic Products bearing Xerox Trademarks in the Territory for distribution exclusively outside the Territory, pursuant to Section D4 of this Agreement.

**C2. Fuji Xerox Trademark License to Xerox:**

Fuji Xerox hereby agrees to grant to Xerox, upon negotiation of the terms and conditions for same, a royalty-free, non-exclusive license to use any Fuji Xerox Trademarks solely in connection with DPA outside the Territory on a case by case basis.

**C3. Brand Non-performance:**

If, in the reasonable opinion of Xerox, Fuji Xerox fails to use its best efforts to create, expand and maintain a profitable market for any branded Xerographic Product in any country in the Territory, the license granted in Section C1 shall, at Xerox's option, exercisable after consultations between the Parties and an opportunity of Fuji Xerox to cure such failure within six (6) months after notice of such failure from Xerox, become non-exclusive only with respect to such branded Xerographic Product or Products in such country or countries and Xerox shall have the express right to enter the country or countries with such Product(s).

**C4. Trademark Sublicense Rights:**

- (a) Subject to the provisions of this Agreement, Fuji Xerox shall have the right to grant sublicenses of Xerox Trademarks to its Subsidiaries and Fuji Xerox JV OPCOs and the Subsidiaries of any of them. All such sublicenses must be in substantial accordance with the terms and conditions contained in this Part C of this Agreement. Any such sublicensing shall not relieve Fuji Xerox of its obligations hereunder. No right or license is granted under this Agreement in respect of any Xerox Trademark outside of the Territory.
- (b) Except as expressly provided in this Section, Fuji Xerox has no right to grant sublicenses of Xerox Trademarks to any other entity without the express written approval of Xerox; except that, if it becomes necessary or desirable in the opinion of Fuji Xerox to sublicense a Xerox Trademark in order to resolve a particular enforcement action against a third party infringer, the Parties shall discuss the matter with each other and Xerox may authorize Fuji Xerox to grant such sublicense to such third party under terms and conditions mutually agreed by the Parties.

**C5. Business Use of Xerox Trade Names:**

Fuji Xerox and its Subsidiaries and such other companies as agreed in writing (except for certain small "start-up" companies to be mutually agreed to in writing) shall trade under the trade names that include the term "Xerox" in the Territory except where otherwise agreed between the Parties and except in the case of P.T. Astra-Graphia in Indonesia.

**C6. Business Use of Xerox Trademarks:**

(a) Trademarks for Products within DPA.

(i) Use of XEROX and FUJI XEROX Trademarks.

All Products manufactured, made, used, sold, leased, distributed or otherwise disposed of within DPA inside the Territory by Fuji Xerox, its Subsidiaries and Fuji Xerox JV OPCOs shall prominently bear the "XEROX" or "FUJI XEROX" trademark. Use of such Trademarks shall be subject to Xerox's review and approval and be registered (where registerable) in the name of Xerox Corporation or Xerox Limited in the Territory.

(ii) Use of Product Names for Product to be marketed only in the Territory within Office Segment.

For purposes of this paragraph, Products within the Office Segment ("Office Products") shall be agreed to separately between the Parties. Provided, however, Office Products shall generally include products designed to be marketed and used in a business office setting. All such Products manufactured, made, used, sold, leased, distributed or otherwise disposed of within DPA in the Territory by Fuji Xerox, its Subsidiaries and Fuji Xerox JV OPCOs for the Office Segment may bear Fuji Xerox Trademarks as product names, if so desired by Fuji Xerox, provided such use is secondary to the "XEROX" or "FUJI XEROX" Trademark used; and provided further that prior to implementation of such Fuji Xerox trademarks, Fuji Xerox shall propose, in writing, to Xerox such Fuji Xerox Trademarks for Xerox's prompt concurrence. If Xerox does not so concur to the proposed use of Fuji Xerox Trademarks, then Fuji Xerox shall propose alternatives for Xerox concurrence until mutual agreement is reached, in writing, between the Parties. Such Fuji Xerox Trademarks shall be registered (where registerable) in the name of Fuji Xerox in the Territory.

(iii) Use of Product Names within Production Group and Global Services Segments.

For purposes of this paragraph, Products within the Production Group and Global Services Segments shall be agreed to separately between the Parties.

All Products manufactured, made, used, sold, leased, distributed or otherwise disposed of within DPA inside the Territory shall bear Xerox Trademarks as product names, be approved by Xerox and registered (where registerable) in the name of Xerox Corporation or Xerox Limited in the Territory at Xerox's cost; provided that Xerox Corporation or Xerox Limited shall effectively manage that process.

- (iv) Fuji Xerox may, from time to time, use other trademarks with respect to DPA; provided however, all new names must be approved in advance by Xerox and such new names shall be registered (where registerable) in the name of Xerox Corporation or Xerox Ltd. except as provided in Section C6(a)(ii) above.
- (v) As of the Effective Date hereof, the Trademarks issued within the Territory shall be owned by the Parties as set forth on Annex C-2 to this Agreement and the Parties shall take all actions necessary to effect such ownership.

(b) Trademarks for Products Outside DPA.

For products manufactured, made, used, sold, leased, distributed or otherwise disposed of outside of DPA in the Territory, Fuji Xerox may not use any Xerox Trademark, unless Fuji Xerox obtains prior written approval from Xerox for such use of the Xerox Trademark on a product-by-product basis.



- (c) Fuji Xerox shall not use Xerox Trademarks in any manner that would, in Xerox's reasonable opinion, be considered to adversely affect Xerox or Xerox Trademarks.
- (d) Xerox agrees to give assistance to Fuji Xerox at the expense of Fuji Xerox to enable Fuji Xerox to register the licenses granted pursuant to this Agreement and the right to use Xerox Trademarks as provided herein at the trademark bureau in the Territory.

**C7. Fuji Xerox Rights to Xerox Trademarks Upon Expiration or Termination:**

- (a) In the event Xerox opts not to renew this Agreement, Fuji Xerox shall have a non-exclusive right to use Xerox Trademarks for a period of up to two (2) years from the date of expiration subject to the Quality Control Standards and royalty payments set forth above for such period that the Products are sold, except that during the first year following expiration, such right shall be royalty-free.
- (b) In the event Fuji Xerox opts not to renew this Agreement, Fuji Xerox shall immediately cease implementation of any new or expanded uses of Xerox Trademarks and shall, upon expiration or termination, discontinue existing uses of Xerox Trademarks within thirty (30) days; provided, however, that the use of Xerox Trademarks affixed to Products that have already been sold, leased, distributed or licensed to customers of Fuji Xerox, its Subsidiaries or FX JV OPCOs shall not be affected by this Section C7(b).
- (c) Fuji Xerox acknowledges that its failure to cease use of the Xerox Trademarks in accordance with the provisions of this Agreement after termination thereof will result in immediate and irreparable harm to Xerox for which there is no adequate remedy at law. Notwithstanding the provisions of E29 below, Xerox shall be entitled to bring an action or proceeding for specific performance, injunctive relief and/or other equitable relief to compel Fuji Xerox to discontinue the infringement of the Xerox Trademarks, to cease and desist all unauthorized use of the Xerox Trademarks, to take all affirmative acts necessary to ensure discontinuance of use of the Xerox Trademarks after the expiration or termination of this Agreement, and to obtain such other or different relief as may be necessary and proper.

- (d) Unless otherwise expressly provided herein, upon any other termination of this Agreement all licenses under this Part C will survive for a period of thirty (30) days from the date of termination, during which period the terms and conditions of this Agreement will apply.

**C8. Rights of Inspection Following Termination:**

- (a) At the end of the post-termination use period (if any) or expiration date, each Party shall be allowed reasonable access to the other's premises (including each Party's Subsidiaries and in the case of Fuji Xerox, Fuji Xerox JV OPCOs) to observe and inspect to insure that either Party's Trademarks are no longer in use. Continued use of Trademarks of the other Party beyond the above-specified removal periods shall constitute infringement of Xerox Trademarks by Fuji Xerox and Fuji Xerox Trademarks by Xerox respectively and shall give rise to remedy of specific performance for the owner of respective Trademarks as set forth above. Each Party shall not adopt any trade name, trademarks, or service marks that are confusingly similar to the Trademarks of the other Party in the event of termination or expiration of this Agreement.
- (b) Fuji Xerox may not, after the end of the post termination or expiration use period, use Xerox Trademarks in any manner, including without limitation, indicating that Fuji Xerox's products were formerly marketed under the "Xerox" or "Fuji Xerox" trade name and/or trademark; provided, however, that Fuji Xerox may refer to the fact that the company name was previously Fuji Xerox Co., Ltd. in an editorial manner.

**C9. Trademark Indemnification:**

- (a) Fuji Xerox shall, at its own expense, indemnify and hold harmless Xerox, its Subsidiaries, affiliates or assignees, and their directors, officers, employees and agents and defend any action brought against same with respect to any claim, demand, cause of action, debt or liability, including attorneys' fees, incurred or sustained by a third party, whether for personal injury or otherwise, because of (i) the manufacture, marketing, use or sale of the Products bearing Xerox Trademarks by Fuji Xerox, any of its Subsidiaries and/or Fuji Xerox JV OPCOs, (ii) the breach by Fuji Xerox of its obligations under this Part C, or (iii) any suit, claim or proceeding brought against Xerox and/or any of its Subsidiaries by a third party alleging that a Fuji Xerox Trademark, if so licensed to Xerox under Section C2 infringes a trademark owned by such third party in any country; provided that Fuji Xerox is promptly notified, given the assistance required, and permitted to direct the defense.
- (b) Xerox shall, at its own expense, indemnify and hold harmless Fuji Xerox, its Subsidiaries and/or Fuji Xerox JV OPCOs, affiliates or assignees, and their directors, officers, employees and agents and defend any action, debt or liability, including attorney's fees incurred or sustained by a third party because of any suit, claim or proceeding brought against Fuji Xerox, any of its Subsidiaries and/or Fuji Xerox JV OPCOs by a third party alleging that a Xerox Trademark licensed to Fuji Xerox under Part C infringes a trademark owned by such third party in any country; provided that Xerox is promptly notified, given the assistance required, and permitted to direct the defense.

**C10. Trademark Ownership:**

- (a) Fuji Xerox acknowledges that the Xerox Trademarks are the exclusive and sole property of Xerox regardless of the name of the current registrant of such Xerox Trademark. Fuji Xerox agrees that any and all rights that might be acquired by its use of Xerox Trademarks shall inure to the sole benefit of Xerox. Fuji Xerox agrees to execute all papers reasonably requested by Xerox to affect further registration of, maintenance and renewal of Xerox Trademarks, where applicable.

- (b) Fuji Xerox shall not at any time apply for registration of any copyright, design, patent or trademark or other designation that would affect the ownership of Xerox Trademarks, nor file any document with any governmental authority or take any action which would adversely affect the ownership of Xerox Trademarks or aid or abet anyone else in doing so.
- (c) Fuji Xerox shall at no time, whether during the Term or thereafter adopt and/or use any trademark, company name or other designation which is confusingly or colorably similar to Xerox Trademarks. If any application for registration is, or has been filed in the Territory or any other country which relates to any name or mark which, in the reasonable opinion of Xerox, is confusingly similar, deceptive or misleading with respect to any Xerox Trademark shall immediately abandon any such application or registration or, at Xerox's sole discretion, assign it to Xerox. Fuji Xerox shall reimburse Xerox for all the costs and expenses of any opposition, cancellation or related legal proceedings, including attorney's fees, brought successfully by the Xerox or its authorized representative, in connection with any such registration or application.

**C11. Unlicensed Sales by Third Party:**

Except as expressly provided herein, neither Party shall sell any Products bearing the other Party's Trademarks outside the Territory in the case of Fuji Xerox or inside the Territory in the case of Xerox. If either Party learns of any such sales, it shall use reasonable efforts to obtain possession of said Products and to prevent such sales in the future, including refusing to sell Products bearing the other Party's Trademarks to the persons or entities responsible for the resale outside the Territory or within the Territory as the case may be. To the fullest extent permitted by applicable law, either Party shall promptly notify the other of such sales, giving the particulars thereof and providing necessary information and assistance. Either Party shall be reimbursed for its out of pocket expenses.

**C12. Quality Control Standards:**

- (a) Fuji Xerox shall manufacture, sell, lease, use, distribute or otherwise dispose of Products and all related packaging and promotional materials in compliance with the Quality Control Standards.  
Xerox branded Products offered by Fuji Xerox shall be of no less quality than the quality of goods, services and the promotional and packaging materials related thereto offered by Fuji Xerox, as of the execution date hereof.
- (b) The Parties recognize the quality of Products sold under the Xerox and Fuji Xerox Trademarks historically in Fuji Xerox Territory and will cooperate to maintain such appropriate standards of quality.

**C13. Quality Control Inspection During Term:**

Xerox shall be allowed reasonable access to the Fuji Xerox or any of its Subsidiaries' and Fuji Xerox JV OPCOs' or vendors' or suppliers' premises upon reasonable advanced notice and during normal business hours solely for the purpose of observing and inspecting to insure that Fuji Xerox is in compliance with the above requirements and that Xerox Trademarks are being used in accordance with the requirements of this Part C. Fuji Xerox agrees to cooperate with Xerox in order to enable such inspection to be conducted. In the event such inspection discloses any material failure by Fuji Xerox to comply with the obligations set forth in this Part C, Fuji Xerox shall immediately remedy such non-compliance. The failure of Fuji Xerox to do so within ninety (90) days or such other time as the Parties may mutually agree in writing shall constitute a material breach of this Agreement, and particularly Part C hereof.

**C14. Enforcement of Xerox Trademarks in the Territory:**

In the event Fuji Xerox learns of any infringement, threatened infringement or passing-off of Xerox Trademarks in the Territory or that any third party alleges or claims that any Xerox Trademark is liable to cause deception or confusion to the public in the Territory, or is liable to dilute or infringe any right in the Territory, Fuji Xerox shall forthwith notify Xerox and Fuji Xerox and Xerox shall agree to cooperate in addressing said issue.

**PART D – PRODUCT PROVISIONS**

**D1. Prices and Terms Applicable to Supply Products; Volume Building:**

- (a) Subject to the terms set forth below in this Part D related to each Party being the Preferred Supplier (as defined in Section D4. (b)) of the other Party, it is anticipated that one Party may, from time to time, agree to purchase or license Products and parts and components thereof from the other Party. The prices to be paid for such Products will be mutually agreed between the Parties. Such prices will not exceed the prices at which the same or at least substantially similar items of like quality are made available to unaffiliated third parties of the selling/licensing party under similar terms and conditions. For the purpose of this Part D, Products shall specifically exclude any DPA commodity item which does not include or embody any intellectual property of the Parties and which the non-purchasing Party does not manufacture (including have made) and sell. Subject to Section E33, the Parties agree that they may, by mutual agreement, adopt other terms and conditions governing specific transactions and/or markets or other segments and such terms, once agreed in writing, shall take precedence over this Part D to the extent there is a conflict or discrepancy between them.
- (b) To the extent that a product is economically viable for Xerox and meets Xerox's Quality, Cost and Deliverables (QCDs), it is both Parties' intention that Fuji Xerox shall be the first-line Preferred Supplier (except for the case that Xerox supplies for itself) of Xerographic IOT's to Xerox in the product space commonly known as

Segments 3-5 (as understood on the date of this Agreement). Such first-line Preferred Supplier relationship will be separately agreed to, from time to time, in writing, and typically on a program or product basis. It is further both Parties' intention that Xerox sources such Segments 3-5 product from suppliers in the Territory only if Fuji Xerox cannot provide such Segments 3-5 Product which meets Xerox's QCDs and only in accordance with Section D4.

- (c) To the extent that a product is economically viable for Fuji Xerox and meets Fuji Xerox's QCDs, it is both Parties' intention that Xerox shall be the first-line Preferred Supplier to Fuji Xerox (except for the case that Fuji Xerox supplies for itself) of Products in the Production mono product space (as understood on the date of this Agreement) and iGen3® Digital Publisher space and their follow on Products. Such first-line Preferred Supplier relationship will be separately agreed to, from time to time, in writing, and typically on a program or product basis. It is further both Parties' intention that Fuji Xerox sources such Production product from suppliers outside the Territory only if Xerox cannot provide such Production product which meets Fuji Xerox's QCDs and only in accordance with Section D4.
- (d) With respect to volume building in the product space outside the Territory, commonly known as Segments 1 and 2 (as understood on the date of this Agreement), the Parties acknowledge the Charter of Xerox International Partners (XIP), a California general partnership and the 1991 General Partnership Agreement relating to XIP, as amended from time to time as its governing framework. The Parties further acknowledge that realization of volume building in the product space commonly known as Segments 1 and 2 outside the Territory may from time to time require separate agreement between the Parties.

**D2. Manufacturing License Fee:**

If either Party manufactures any Product (other than Consumables, where Consumables are toner, fuser, ink or photoreceptor, or constituent parts thereof, including Customer Replaceable Unit ("CRU") thereof) which the Parties agree employs

a significant design of the other Party, the manufacturing Party shall pay an agreed compensation (if any) to the other Party in the form of a manufacturing license fee (“MLF”) or as otherwise may be agreed from time to time; provided, however, there shall be no compensation for the use of Technical Information, unless such Technical Information is a significant design of the other Party. In accordance with Section B14 of the Agreement, under no circumstances will the prompt and full disclosure of Technical Information be interrupted.

**D3. Software License Fee:**

If either Party elects to utilize, sublicense or distribute Software of the other Party in a Product, a reasonable Software License Fee (“SLF”) or other form of mutually agreed compensation shall be negotiated with, and paid to, the Party from whom such Software was acquired.

**D4. Purchases from Third Party Vendors:**

- (a) The purchase by one Party of a Product manufactured by a third party vendor in the territory of the other Party will be governed by the conditions described in this Part D. Nothing in this Part D shall be construed as altering the obligations of the Parties with reference to the Joint Enterprise Contract (“the 2001 JEC”) as described in Section E28 of this Agreement.
- (b) Any time a buying Party seeks to purchase a Product from a supplier in the other Party’s territory, the buying Party shall first enter into discussions with the other Party to determine whether the other Party is capable of supplying the Product to be purchased. Thus, for sourcing Product in each other’s territory, each Party shall be deemed to be the “Preferred Supplier” of the other. If the buying Party determines that the other Party is capable of fulfilling its requirements, the buying Party shall proceed to negotiate in good faith terms and conditions for the purchase of the desired Product from the other Party. If however the buying Party determines in its sole discretion that the other Party is not yet capable of supplying the desired Product within reasonably required quality, cost and



delivery targets, the buying Party shall so inform the other Party and may thereupon enter into discussions with alternative, third party vendors. In such event, the buying Party agrees to continue consultations with the other Party concerning: the strategic implications of the purchase, such as advice/concern expressed by the other Party; the possibility of the other Party supplying the desired Product in the future; or the possibility of the other Party sourcing the same Product from such alternative third party vendor for the other Party's own use. The buying Party may invite the other Party to join in discussions with potential suppliers but there is no requirement that the buying Party does so.

- (c) Once a decision has been made to purchase a Product from a third party vendor in the other Party's territory, the following conditions will apply:
  - (i) If no technology of either Party is to be transferred or licensed to the third party vendor, the buying Party is not required to seek or obtain approval from the other Party. No compensation shall be paid by the buying Party to the other Party for any purchases the buying Party makes from third party vendors in the other Party's territory.
  - (ii) If the Xerographic technology of the buying Party is to be transferred or licensed to the third party vendor in the other Party's territory, then:
    - (1) If the buying Party agrees to permit the third party vendor to also sell a Product incorporating the Xerographic technology in the other Party's territory, the other Party's approval shall be required before such purchases can be made in the other Party's territory. Compensation shall be provided by the buying Party to the other Party for such sales the third party vendor makes in the other Party's territory.
    - (2) If no sales by the third party vendor in the other Party's territory are contemplated, the buying Party shall advise and consult with the other Party and seek approval, which shall not be unreasonably withheld, conditioned or delayed. No compensation will be paid by the buying Party to the other Party for such purchases the buying Party makes from third party vendors in the other Party's territory.

- (iii) If the non-Xerographic technology of the buying Party is to be transferred or licensed to a third party vendor in the other Party's territory, then the buying Party is not required to seek or obtain approval from the other Party. No compensation shall be paid by the buying Party for any purchases the buying Party makes from third party vendors in the other Party's territory.
- (iv) If a buying Party purchases a Product from a third party vendor in the other Party's territory and transfers or licenses to such third party vendor either Xerographic or non-Xerographic technology of the other Party, the following rules will govern:
  - (1) If the third party vendor will be free to sell the Product in the other Party's territory, the buying Party shall obtain prior approval from the other Party. Compensation shall be provided by the buying Party to the other Party based upon the reasonable impact upon the other Party's marketing activity in its territory.
  - (2) If the third party vendor is not free to sell the Product in the other Party's territory, the buying Party will consult with and seek approval of the purchases from the other Party, which shall not be unreasonably withheld, conditioned or delayed. Compensation shall be provided by the buying Party to the other Party based upon a reasonable projection of the licensing value of that technology outside the other Party's territory with respect to contemplated sales of the Product by the third party vendor. No compensation shall be paid by the buying Party for its own sales in its own territory
- (v) In the above cases, the other Party may also seek to acquire the same Product from the third party vendor and both Parties are encouraged to coordinate their purchasing activities so as to achieve the most favorable conditions of purchase for the Parties.

- (vi) Where the approval of a Party is required under this Section D4, such approval or denial of approval shall be given within thirty (30) days from the request for same. In the event a Party fails to grant or deny such approval within such period, approval shall be deemed to have been given by such Party.
- (vii) Subject to Section E33, the Parties may agree to a simplified notification or blanket notification process to expedite procurement of items, including whole Products, in each other's territories.
- (viii) For purposes of clarification, in the event a vendor sells, leases or otherwise disposes of a Product containing the design or Technical Information of the other Party in the other Party's territory, there shall be a single payment which takes into account all applicable fees under this Part D (including, but not limited to, those compensation items set forth in Sections D2 and D3.)

**D5. Factors To Be Considered When Compensation Payable:**

The following factors are considered to be relevant elements to take into consideration, in accordance with understandings described above, in determining total compensation levels to be paid by a buying Party to the other Party where negotiated compensation is called for pursuant to Section D4: the projected impact upon the marketing activity of the other Party in whose territory the third party vendor's sales are to be made; the total amount of such sales and the proportional usage of each Party's technology in the Product to be sold; the amount of royalties either Party may be receiving from a third party vendor for the transferred or licensed technology, or the licensing value of technology; and the value of grant backs or cross licenses with third party vendors related to the transferred or licensed technology. In the above statement, technology licensed to a third party vendor shall be used for sourcing purpose only and technology means Patents, drawings, technical support and know-how. All references to compensation as described herein refer solely to compensation in Section D4.

**D6. Vendor Access Compensation:**

Compensation, if any, for access to vendors in the other Party's territory will be negotiated separately.

**D7. Graphic Representation of Rights and Responsibilities of Part D:**

Attached hereto as Annex D-1 to this Agreement is a summarized graphic representation of the relevant rights and responsibilities of the Parties arising from this Part D. In the event of any discrepancy or disagreement between such graphic representation and the written terms of this Part D, the text of this Part D shall govern and control.

**D8. Product Liability:**

- (a) For purposes of this Section, the term "Party" may be construed to mean and include a Subsidiary of a Party, if appropriate to the context. Further, this Section D8 shall not apply to cases where infringement of any Patent, Copyright or other intellectual property right is involved, that are covered by the Section D9 below.
- (b) Each Party shall bear responsibility for its own conduct with respect to any claims, suits, causes of action or proceedings brought against it, the other Party, the other Party's Subsidiaries and/or their respective officers, directors, employees or representatives by third parties resulting from or caused by the defective or allegedly defective design, manufacture, storage, use, sale, lease or transportation of the Product and each Party shall indemnify, defend and hold the other Party, together with its and its Subsidiaries, officers, directors, employees and representatives harmless from and against any judgment awarded by a tribunal of competent jurisdiction as well as reimbursing the indemnitees for reasonable court costs and attorneys fees incurred by any of

them arising from any such third party suit, claim, cause of action or proceeding. Provided, however, and notwithstanding any other term or condition contained in this Agreement to the contrary, the maximum liability of the indemnifying Party under the foregoing indemnity shall be one hundred million (\$100,000,000) dollars (USD) per occurrence and five hundred million (\$500,000,000) dollars (USD) in the aggregate of occurrences.

- (c) A Party seeking to market a Product designed or manufactured by the other Party, shall advise the other Party of any (i) applicable product safety standards, (ii) warning labels, (iii) legal requirements known to the Party seeking to market the Product, the compliance with which is necessary for the Products to be marketed in such Party's territory or (iv) required content of manuals deemed necessary in its marketplace so as to enable the designing/manufacturing Party to comply with or incorporate these requirements.
- (d) A Party seeking to market a Product may provide to the designing/manufacturing Party specific instructions in the design of components, parts, or of the Product itself.
- (e) If the designing Party has incorporated all of the product safety standards, warning label requirements, manual content requirements and complied with the legal requirements described above; or if the designing Party has followed the specific instructions, the Party seeking to market the Product shall bear full responsibility for, and shall indemnify, defend and hold harmless the designing or manufacturing Party, the designing or manufacturing Party's Subsidiaries and their respective officers, directors, employees and representatives from and against any judgment awarded by a tribunal of competent jurisdiction as well as reimbursing such indemnitees for reasonable court costs and attorneys fees arising from any third party suit, claim, cause of action or proceeding relating to any defect brought about by the designing Party's compliance with

the requirements or instructions given to it by the Party seeking to market the Product in accordance the above. Provided, however, the maximum liability of the Party seeking to market the Product under the foregoing indemnity shall be one hundred million (\$100,000,000) dollars (USD) per occurrence and five hundred million (\$500,000,000) dollars (USD) in the aggregate of occurrences.

- (f) Subject to a maximum liability of one hundred million (\$100,000,000) dollars (USD) per occurrence and five hundred million (\$500,000,000) dollars (USD) in the aggregate of occurrences, notwithstanding the source of technology embodied in a Product, if a defect is found in a product design or manufacture, the Party having responsibility for the Product design or manufacture which is found to be defective or the cause of liability shall bear full responsibility for such defect (including the repair or modification of Product in inventory of the other Party or its resellers or installed at end-user locations or effecting any other necessary remedial action) and shall indemnify, defend and hold harmless the other Party, the other Party's Subsidiaries and their respective officers, directors, employees and representatives from and against any judgment awarded by a tribunal of competent jurisdiction as well as reimbursing such indemnitees for reasonable court costs and attorneys fees such indemnitees incurred arising from any third party suit, claim, cause of action or proceeding relating to such defect.

**D9. Infringement of Intellectual Property Rights Held by Others:**

- (a) The Parties agree that each program agreement shall include provisions for intellectual property indemnification which shall be subject to the following principles. Subject to paragraph (b) of this Section, each Party shall, at its expense, defend and indemnify the other Party and its Subsidiaries, and in the case of Fuji Xerox, the Fuji Xerox JV OPCOs, from and against any suit, claim or proceeding brought against the other Party by a third party alleging infringement in any country of any Patent, Copyright or other intellectual property right as a result of the purchase or other acquisition by the other Party of any Product of

such Party, provided such Party is promptly notified, given assistance required, and permitted to direct the defense. Further, each Party shall pay any damages and costs awarded against the other Party or its Subsidiaries in such suit, claim or proceeding, but such Party shall have no liability for settlements or costs incurred without its consent. To avoid infringement, even if not alleged, such Party may, at its option and at no charge to the other Party, obtain a license, modify or substitute an equivalent of the allegedly infringing Product, provided that any modification shall not affect form, fit or function, and any substitute equivalent shall exhibit the same form, fit and function.

- (b) A Party shall not be liable to the other Party for alleged infringement of Patents, Copyrights or other intellectual property rights, except for as provided in Section C9, by any of such Party's Products resulting from: (i) designs or components incorporated into such Product at the request of the other Party and which would not otherwise have been incorporated by such Party, or (ii) the use, marketing or distribution of such Product by the other Party in combination with products not marketed or supplied by such Party. In either of such events, the other Party shall defend and indemnify such Party in a manner fully equivalent to the obligations set forth in paragraph (a) of this Section.
- (c) In developing the program agreement indemnification provisions described above, the Parties may take into account, as the case may arise, circumstances including, but not limited to: late acceptance of the Product, disagreement over indemnity risk, local law, or other factors affecting the indemnity being undertaken by a Party.

**D10. Restrictions on Use/Distribution of Third Party Software:**

- (a) A Party's right to sublicense any Software with respect to which its right to use and distribute is granted under this Agreement by the other Party shall be exercisable only in accordance with the terms and conditions set forth in the respective original license agreement between the sublicensing Party and the original licensor/third party.

- (b) The sublicensing Party shall use in connection with its efforts to sublicense the Software a written sublicense agreement which contains terms required by this Agreement or (and only to the extent the licensing Party notifies the sublicensed Party in writing of such requirements in a timely manner) terms required by the original licensor/third party to be contained in such sublicense.
- (c) The licensed Party shall consult with the licensing Party concerning the terms to be contained in the licensed Party's sublicense agreements applicable to such Software.

**D11. U.S. Trade Agreements Act of 1979:**

Fuji Xerox acknowledges that under the U.S. Trade Agreements Act of 1979 (the "Trade Agreements Act") the U.S Government is barred, except under limited circumstances, from procuring products manufactured in countries that are not signatories to the World Trade Organization's Agreement on Government Procurement. Fuji Xerox also acknowledges that procurement by the U.S Government represents a substantial and vitally important segment of overall potential U.S. demand for Marking Products. Fuji Xerox agrees that any products that it manufactures or has manufactured and that are sold to Xerox under any Product Acquisition Agreement ("PAA") shall be "eligible products" within the meaning of 19 U.S.C. §2518(4), 19 C.F.R. § 177.22, and 41 C.F.R. §25.003 (or successor provisions) that originate in a designated country within the meaning of 48 C.F.R. § 25.003 (or successor provision). In addition, Fuji Xerox shall apprise Xerox in detail of those activities which Fuji Xerox believes will enable Fuji Xerox Products sold to Xerox under a PAA to be "substantially transformed" (as that term is used in the Trade Agreements Act and implementing regulations) so as not to restrict the procurement thereof by the U.S. Government under the Trade Agreements Act as early as is reasonably practicable in the manufacturing planning process but in any event substantially prior to the date when such activities are scheduled to commence.



**D12. Advice of Claims:**

Xerox and Fuji Xerox shall promptly advise the other Party whenever it shall become apprised of any claim asserted by any third party against either Party hereto which is of a nature specified in Section D8 or Section D9. Further, either Party shall have the right, with the consent of the other Party, to assist in the conduct of any legal proceedings brought by or against the other Party which are of a nature specified in Section D8 or Section D9 through counsel of its own choosing and at its own expense.

**PART E – GENERAL PROVISIONS**

**E1. Applicability:**

Unless otherwise specifically provided in Parts B through D inclusive, above, the provisions in this Part E shall apply to this Agreement in its entirety.

**E2. Royalties:**

- (a) During the Term of this Agreement and renewals hereof, in consideration of the rights provided under Sections C1(a), Fuji Xerox shall pay to Xerox a royalty as set forth in this Section E2. For purposes of this Section E2, the term “Base Royalty” shall mean a sum of money equivalent to the cumulative Royalties paid by Fuji Xerox to Xerox under the terms of the Amended 1999TA between the Parties during the period from April 1, 2005 through and including March 31, 2006.
- (b) For the purposes of this Section E2, the term “Exemption Fuji Xerox Revenue” shall mean a sum equal to ten percent (10%) of the Fuji Xerox Revenue for any relevant period of time and the term “Net Fuji Xerox Revenue” shall mean the Fuji Xerox Revenue for the defined period of time minus the Exemption Fuji Xerox Revenue for that same period of time.

- (c) During the initial year of the Term of this Agreement, Fuji Xerox shall pay to Xerox a royalty computed by multiplying the Net Fuji Xerox Revenue by the applicable Royalty Rate (as defined below) or the Base Royalty, whichever sum shall be greater. For all years of the Term of this Agreement subsequent to the initial year, Fuji Xerox shall pay to Xerox a royalty computed by multiplying the Net Fuji Xerox Revenue by the applicable Royalty Rate (as defined below).
- (d) The following Royalty Rates shall be applied during each year of the Term of this Agreement and renewals hereof:
  - (i) for Net Fuji Xerox Revenue up to and including [\*\*\*] Yen (¥[\*\*\*]) a Royalty Rate of [\*\*\*]%; and
  - (ii) for Net Fuji Xerox Revenue between [\*\*\*] (¥[\*\*\*]) and [\*\*\*] Yen (¥[\*\*\*]) a Royalty Rate of [\*\*\*]%; and
  - (iii) for Net Fuji Xerox Revenue between [\*\*\*] Yen (¥[\*\*\*]) and [\*\*\*] Yen (¥[\*\*\*]) a Royalty Rate of [\*\*\*]%; and
  - (iv) for Net Fuji Xerox Revenue in excess of [\*\*\*] Yen (¥[\*\*\*]), a Royalty Rate of [\*\*\*]%.
- (e) All royalties payable as provided above shall be paid in accordance with the provisions set forth in Sections E2 through and including E8 of this Agreement.

**E3. Accounting Standards:**

All computations relating to the determination of the amount of royalties and payments due and payable under this Agreement shall be made in accordance with generally accepted accounting principles in the United States of America, as reflected in the practice of independent certified public accountants of international reputation acceptable to both Parties.

**E4. Time of Payment:**

Within thirty (30) days after the end of each calendar quarter (or such other days as may be agreed upon by and between the Parties hereto) of each year during the term of this Agreement, and for any period thereafter for which the rights of either Party shall survive the termination or expiration of this Agreement, Fuji Xerox shall pay to Xerox or Xerox shall pay to Fuji Xerox, as the case may be, the royalties which may be due and payable in respect of the immediately preceding calendar quarter, or portion thereof, during which this Agreement has been in effect. Interest on any unpaid amounts shall accrue at the rate of LIBOR plus 1% per annum from the expiration of the above-mentioned thirty (30) day grace period.

**E5. Royalty Report:**

Each payment of royalties by Fuji Xerox or Xerox shall be accompanied by a written statement in English, certified as true and accurate by a responsible executive of the reporting Party showing the computation of the payment. Each such statement shall contain sufficient detail to permit the accuracy of such payment to be readily determined and shall set forth the following with respect to the reporting period:

- (a) The revenue, by components, in respect of which royalties are due and payable by the reporting Party.
- (b) The amount of any royalty that is due and payable.

**E6. Remittances:**

All amounts due and payable by Fuji Xerox to Xerox pursuant to this Agreement shall be paid in Japanese yen and shall be remitted by Fuji Xerox to such bank or to such other address as Xerox shall designate in writing from time to time. All amounts due and payable by Xerox to Fuji Xerox pursuant to this Agreement shall be paid in U.S. dollars, and shall be remitted by Xerox to such bank or to such other address as Fuji Xerox shall designate in writing from time to time.

**E7. Records and Audit:**

Xerox and Fuji Xerox shall keep full and accurate records and accounts which may bear upon amounts, if any, payable pursuant to this Agreement. Each Party shall have the right, at all reasonable times and at its own expense, to examine and audit such records and accounts of the other through a firm of certified public accountants of international reputation, or through such other qualified personnel as may be acceptable to the Parties.

**E8. Taxes:**

- (a) Xerox and Fuji Xerox shall cooperate with each other and take all commercially reasonable steps to file certificates and other documentation with taxing authorities required to obtain a reduction or elimination of or credit for, any taxes, levies or other imposts arising from transactions contemplated by this Agreement. Such cooperation shall include but not be limited to providing any information required to secure, complete and file any documents, certificates or assurances in order that payments under this Agreement shall qualify as either "Royalties" under Article 12 or "Other Income" under Article 21, of the Tax Convention between the United States of America and Japan entered into force on March 30, 2004. The filing Party shall reimburse the cooperating Party with all reasonably incurred out of pocket expenses.
- (b) Any income taxes levied by any governmental authorities upon the payments to be made by Xerox or Fuji Xerox pursuant to this Agreement and required to be withheld from said payments, shall be withheld and timely paid and reported to the appropriate tax authorities as required by applicable law. With respect to each such tax payment made hereunder the Parties shall use commercially reasonable efforts to transmit or cause to be transmitted to the other Party promptly upon receipt the official tax receipts or other evidence (with English translation attached) issued by the tax authorities sufficient to support a claim for credit against income taxes in respect of such taxes so withheld and paid. All other taxes imposed as a result of the existence or performance of this Agreement shall be paid by the Party required to do so by applicable law.

**E9. Confidentiality:**

Except as otherwise expressly provided in the Agreement, all Technical Information or other confidential information furnished or disclosed by either Party ("Discloser") in writing shall remain the property of Discloser and shall be deemed the confidential information of Discloser. Such information shall, to the extent practicable, be marked with an appropriate proprietary legend, or identified as proprietary within a reasonable time after disclosure in order to be treated as confidential information that is subject to the terms of this Section. Information exchanged prior to the Effective Date that is not marked "Confidential", "Proprietary" or "Private" or words of similar import shall be deemed to be confidential information for the purposes hereof if under the circumstances prevailing at the time of disclosure the Party receiving such information reasonably should have understood that it was intended by Discloser to be treated as confidential information. The Party receiving such information ("Recipient") shall not disclose such information or any part thereof to any third party and shall restrict circulation of such information within its own organization on a need-to-know basis. If Recipient reproduces any part of such information for use within its own organization, Recipient shall mark all reproductions by indicating the Discloser's proprietary interest. Such information may be transferred to Recipient's vendors, suppliers or customers only to the extent that the Recipient is licensed to such information under the terms of the Agreement and may be transferred only for purposes so licensed. Notwithstanding the foregoing, and subject to the provisions of Part D hereof, Xerox and Fuji Xerox agree that either Party may make disclosures on a confidential basis to sublicensees, vendors, and distributors or other resellers, to the extent reasonably necessary to permit such entities to perform their functions as such, and to other third parties as expressly agreed in writing by the other Party. Any transferee of such information by the Recipient shall be required to maintain the confidentiality of such information to an equivalent standard as the Discloser's and except as expressly provided above such transfer must be authorized in writing by Discloser which authorization may be withheld for any reason. Recipient will promptly notify Discloser upon discovery of any unauthorized use or disclosure of the confidential information of Discloser. Such obligation to keep information confidential shall survive termination or expiration of this Agreement.

**E10. Exclusions to Confidentiality:**

Recipient shall not be bound by the confidentiality obligations of the above if:

- (a) in the case of information first exchanged after the Effective Date, the information was not Technical Information and was not specifically designated in writing as confidential or proprietary at the time of the disclosure or, if the disclosure was orally made, it had not been initially identified as being confidential at such time;
- (b) the information was in the public domain at the time of the disclosure;
- (c) the information becomes publicly available through no fault of Recipient;
- (d) the information was in Recipient's possession, free of any obligation of confidence, at the time of receipt of the information;
- (e) the information becomes available on an unrestricted basis to a third party from Discloser;
- (f) the information was developed by employees or agents of Recipient (not while serving as employees, or contractors or consultants to Discloser) independently of and without reference to the information disclosed in confidence, as documented by Recipient's contemporaneous written records; and
- (g) to the extent (i) Recipient is obligated to produce the information under court or government action, after affording Discloser prompt notice, to the extent feasible, to enable it to contest such disclosure or (ii) with respect solely to non-Technical Information, that the Recipient is obligated to disclose such information to any parent entity under applicable corporate governance laws and regulations.

**E11. License Under Amended 1999TA:**

- (a) The licenses granted to either Party in the Amended 1999TA under the Parties' respective Patents, Copyrights and Technical Information as they exist as of Effective Date shall continue in full force and effect in accordance with their terms under the Amended 1999TA, except for the right to grant sublicenses as provided in Section B1 hereof for Fuji Xerox and Section B4 hereof for Xerox and shall hereafter be paid-up, royalty-free licenses, and nothing set forth herein shall be deemed to alter such licenses or the rights and obligations of the Parties thereunder; provided however, the Parties agree that the termination or expiration of this Agreement shall also constitute a termination or expiration of the Amended 1999TA.
- (b) From and after the Effective Date all licenses, rights and obligations of the Parties shall be as set forth in this Agreement except for the rights and licenses provided in Section E11(a) above in accordance with the Amended 1999TA. This Agreement shall govern all exchanges of Technical Information and activities of the Parties occurring on or after the Effective Date unless the same have been licensed to either Party under the Amended 1999 TA.
- (c) For purposes of clarification and avoidance of doubt, and in all cases subject to the provisions of Section E17 and E18, the Parties further specifically agree as follows;
  - (i) Patents of each Party filed prior to the Effective Date shall be licensed to the other Party and shall also be sublicensed to its Subsidiaries and Fuji Xerox JV OPCOs in case of Fuji Xerox in accordance with their terms (including definition thereof) under the Amended 1999 TA and shall hereafter be fully paid-up, royalty-free licenses;

- (ii) Patents of each Party that were sublicensed to any third party prior to the Effective Date shall remain unchanged and continue to be governed in accordance with the existing terms of respective license agreements; provided, however, any new sublicense arrangement that is proposed after the Effective Date shall be subject to the terms (including definition thereof) under this Agreement;
  - (iii) Technical Information of each Party that was licensed to other Party prior to the Effective Date shall continue to be licensed to the other Party and shall also be sublicensed to its Subsidiaries and Fuji Xerox JV OPCO's in case of Fuji Xerox and shall hereafter be fully paid-up, royalty-free licenses subject to any existing arrangements, including arrangements requiring MLF payment under the Section 9.01(b) of the Amended 1999 TA;
  - (iv) Copyrights of each Party that were licensed to the other Party prior to the Effective Date shall continue to be licensed to the other Party and shall also be sublicensed only to its Subsidiaries and Fuji Xerox JV OPCO's in case of Fuji Xerox in accordance with their terms (including definition thereof) under the Amended 1999TA and shall hereafter be fully paid-up, royalty-free licenses subject to any existing arrangements, including arrangements requiring SLF payment under the Section 9.01(c) of the Amended 1999TA.
- (d) The Supplemental Technology Agreement between the Parties dated March 30, 2001 shall continue in full force and effect in accordance with its terms.
  - (e) All other agreements with respect to the intellectual property of either Party that are not covered by the Amended 1999TA in existence on the Effective Date shall continue to be governed by their existing terms and conditions.



**E12. Compliance With Law:**

- (a) In the performance of this Agreement, each Party shall (i) comply with all applicable laws and regulations, including, by way of example only, all laws and regulations relating or pertaining to the design, marking, manufacture, sale, advertising or use of the Products in such Party's respective territory, and (ii) all applicable regulatory requirements with regard to public safety.
- (b) Each Party shall be responsible for making all legally required notification to all federal, state and local agencies in each Party's respective territory. In the event either Party is or becomes aware of any applicable laws or regulations, which are inconsistent with the provisions of this Agreement, such Party shall promptly notify the other Party of such inconsistency.

**E13. Export Controls:**

- (a) Fuji Xerox agrees to comply with all laws, rules and regulations of the United States and any other applicable jurisdiction(s) regarding the export of any commodity, technology and/or software used, developed or acquired under this Agreement which, at the time of export, requires an export license or other government approval, including, without limitation, first obtaining such license or approval, and further agrees to use commercially reasonable efforts to provide Xerox with any information needed by Xerox to determine the export control status, and/or obtain any export license or approval regarding the export, of any commodity, technology or software used, developed or acquired under this Agreement.
- (b) Without limiting the foregoing, Fuji Xerox shall identify to Xerox any encryption software, encryption programs, and/or encryption source code that Fuji Xerox uses, develops or provides to Xerox (or Xerox's clients) hereunder. Fuji Xerox shall identify to Xerox the export authorization issued by the United States Commerce Department (or other United States government agency with applicable jurisdiction) for such encryption software, encryption programs, and/or

encryption source codes. If no such export authorization has been issued, Fuji Xerox shall provide Xerox with such information as Xerox may require in order to seek any applicable export authorization or, when requested by Xerox at its option, Fuji Xerox shall obtain any applicable export authorization at its sole cost and expense.

- (c) Xerox will endeavor to notify Fuji Xerox of any changes in U.S. Government regulations and/or export licensing policy which affect Fuji Xerox's rights in respect of Products in any country in the Territory and will, if requested by Fuji Xerox, arrange for Xerox to provide reasonable assistance in attempting to secure any necessary licenses or consents from the U.S. Government to enable Fuji Xerox to export Products to any country in the Territory.

**E14. Term and Effective Date:**

The term of this Agreement shall be five (5) years from the Effective Date and (subject to such approval by the government authorities as shall be required in each instance by applicable law) shall be automatically renewed for an additional term of five (5) years and thereafter for additional terms of five (5) years each until either Party gives to the other written notice of its intent not to renew at least six (6) months prior to the initial or any renewal expiration date.

**E15. Termination: General Provision:**

The Parties may terminate the Agreement only as set forth herein. Either Party may terminate this Agreement, upon written notice to the other Party in the following events:

- (a) If the other Party shall have committed a material breach of any of the covenants or provisions of this Agreement; provided that in the case of any such breach capable of being cured, the Party serving notice shall not terminate this Agreement unless and until the defaulting Party shall have failed to cure the noticed breach within sixty (60) days after it is given notice in writing requiring it to make good such breach.

- (b) If an order is made or an effective resolution passed for the winding up of the other Party except for the purpose of amalgamation or reconstruction.
- (c) If an encumbrancer takes possession or a receiver is appointed of the undertaking, or the property and assets (or any material part thereof) of the other Party.

**E16. Survival of Rights and Obligations:**

Termination of this Agreement for any reason shall not release either Party from any liability which has accrued to the other Party, or which may accrue in respect of any antecedent material breach of this Agreement, nor shall it affect in any way the survival of any other rights, duty or obligations of either Party which is expressly stated elsewhere in this Agreement to survive such termination. Nothing in the immediately preceding sentence shall affect, or be construed to operate as a waiver of, the right of the Party aggrieved by any material breach of this Agreement to be compensated for any injury or damage resulting therefrom which is incurred either before or after such termination. In addition, for purposes of clarification, the Parties acknowledge and agree that the expiration or termination of this Agreement for any reason shall not affect, and the Parties shall remain bound by, the rights, duties or obligations of the Parties under any other agreement (including, without limitation, any product program agreement), understanding, waiver, license, consent or undertaking between the Parties and all such rights, duties and obligations shall expressly survive any termination or expiration of this Agreement and shall continue in full force and effect in accordance with their respective terms.

**E17. Effect of Termination or Expiration on Licenses granted to Fuji Xerox by Xerox:**

Upon expiration or termination of this Agreement under Section E14, the Patent, Technical Information and Copyright licenses and rights granted to Fuji Xerox under the Amended 1999TA and such already granted to Fuji Xerox under Sections B1, B2, and B3 hereof as of the date of expiration or termination shall continue in effect as

royalty-free, irrevocable, non-exclusive licenses, with the right to grant sublicenses as provided in Section B1, B2, and B3 and, if this Agreement is terminated pursuant to written notice given by Xerox to Fuji Xerox under Section E14, then the right to use Xerox Trademarks under Section C1 on a non-exclusive basis and the provisions of Part C shall continue in effect for two years from the date of such termination. Furthermore, upon expiration or termination of this Agreement, the Parties shall enter into negotiations with respect to the possibility of granting Fuji Xerox licenses and rights outside the Territory on reasonable terms and conditions under the Xerox Patents, Technical Information and Copyrights.

**E18. Effect of Termination or Expiration on Licenses granted to Xerox by Fuji Xerox:**

Upon expiration or termination of this Agreement under Section E14, the Patent, Technical Information and Copyright licenses and rights granted to Xerox under the Amended 1999TA and such already granted to Xerox under Sections B4, B5 and B6 hereof as of the date of expiration or termination shall be expanded to include the Territory and shall continue in effect as royalty-free, irrevocable, non-exclusive licenses, with the right to grant sublicenses as provided in Section B4, B5 and B6.

**E19. Applicable Law:**

The validity, construction and performance of this Agreement shall be governed as follows:

- (a) With respect to the Brand Provisions of this Agreement and all definitions related thereto, the law of the State of New York, United States;
- (b) With respect to all other provisions of this Agreement, the law of Japan;
- (c) This Agreement is in the English language only, which language shall be controlling in all respects. No translation, if any, of this Agreement into the Japanese or any other language shall be of any force or effect in the interpretation of this Agreement or in a determination of the intent of either of the Parties hereto.

**E20. Headings:**

The headings to Articles and Sections of this Agreement are to facilitate reference only, do not form a part of this Agreement, and shall not in any way affect the interpretation hereof.

**E21. Amendment:**

No amendment or modification or addition of this Agreement shall be effective or binding on either of the Parties hereto unless or until the same shall be reduced to writing and signed on behalf of both of the Parties hereto.

**E22. Non-Warranty:**

Except as otherwise expressly provided in this Agreement, nothing set forth herein shall be construed as:

- (a) A warranty or representation by any Party as to the validity or scope of any patent; or
- (b) A warranty or representation that anything made, used, sold or otherwise disposed of under any license granted herein is or will be free from infringement of patents of third persons or Parties; or
- (c) A requirement that any Party shall file a specific number of patent applications, secure any patent, or maintain any patent in force;
- (d) An obligation to bring or prosecute actions or suits against third Parties for infringement of any patent; or
- (e) Granting any right to sublicense others, except as provided in this Agreement; or

- (f) Granting, by implication, estoppel, or otherwise, any licenses or rights under Patents, Copyrights or Technical Information other than those expressly licensed pursuant to this Agreement.

**E23. Force Majeure:**

Neither Party shall be liable to the other Party hereto for any loss, injury, delay, damages or other casualty suffered or incurred by such other Party due to strikes, riots, storms, fires, acts of God, or war or terrorism, or any other cause beyond the reasonable control of either Party hereto.

**E24. Disclaimer:**

Neither Party shall be liable to the other Party hereto for failure to export or to grant a license if exportation of a Product or any Technical Information, or the granting of a Patent or Copyright license is prohibited by applicable law or regulations.

**E25. Assignment:**

This Agreement, and the rights and obligations hereunder, shall not be assigned by either of the Parties to any third party without the prior written consent of the other Party. Any attempt at an assignment without such consent shall be null and void.

**E26. Spin-Outs:**

In the event either Party shall transfer any of its or its Subsidiary's Patent, Technical Information, Trademark or Copyright for any reasons to any third party, including without limitation a legal entity or a person who shall have been a Subsidiary, a business unit, division or any other segment or organization, (hereinafter called collectively a "Division") of the Party or its Subsidiary and who shall become no longer owned or controlled by the Party as the result of setting up the Division's own business, the Party shall ensure that the rights granted to the other Party under Parts B and C with respect to Patents, Technical Information, Trademarks, Copyrights and Products before the transfer shall continue. After any such transfer as described above, licensees under Part B shall not be entitled to any continuing flow of Patents or Technical Information

from the third party to whom the transfer was made. However, a licensee may negotiate separately with a third party to whom Patents and Technical Information has been transferred either to acquire rights to technology to be developed in the future, or to surrender technology rights it may have acquired from the licensor prior to the transfer.

**E27. Notices:**

Except as otherwise set forth in this Agreement or as otherwise agreed between the Parties, all notices or other communications required or permitted to be given pursuant to this Agreement shall be communicated and shall be valid and sufficient if delivered by hand, email, facsimile transceiver, video mail, or registered airmail, postage prepaid, addressed as follows:

FUJI XEROX CO., LTD.  
Attention: President  
2-17-22 Akasaka  
Minato-ku, Tokyo 107-0052  
Japan

XEROX CORPORATION  
Attention: Chief Executive Officer  
P. O. Box 1600  
Stamford, Connecticut  
U.S.A. 06904

or to such other address of which either Party shall notify the other in writing. Notices dispatched by cable shall be deemed to have been given on the dates of dispatch, and notices dispatched by registered airmail shall be deemed to have been given six (6) days after the dispatch thereof.

**E28. Joint Enterprise Contract:**

Nothing contained herein shall be construed as a waiver by Xerox, or an implied limitation, of any rights or obligations Xerox or any Xerox Subsidiary may have as a result of its ownership of an interest in Fuji Xerox, including, but not limited to, any rights or obligations that such company may have under the 2001 JEC.

**E29. Dispute Resolution:**

In the event of any dispute arising out of or in connection with the present contract, the Parties agree to submit the matter to settlement proceedings under the International Chamber of Commerce (“ICC”) Alternate Dispute Resolution Rules. If the dispute has not been settled pursuant to the said Rules within forty-five (45) days following the filing of a Request for ADR or within such other period as the parties may agree in writing, such dispute shall be finally settled under the Rules of Arbitration of ICC by three (3) arbitrators appointed in accordance with the said Rules of Arbitration and who shall have prior knowledge and expertise in the subject matter of the arbitration. The place of any ADR or arbitration proceeding shall be San Francisco, California, and the language of such proceeding shall be English.

**E30. General Indemnity:**

Each Party shall defend, indemnify and hold the other Party, its affiliated companies, respective officers, directors, employees, agents and other authorized representatives, harmless against all claims, suits, costs, damages, punitive damages, judgments and attorneys fees incurred, claimed or sustained by third Parties, whether for personal injury or otherwise (collectively, the “Damages”) because of: (i) any act or omission of such Party giving rise to such Damages which act or omission does not arise from such Party’s complying with a direct request of the other Party; (ii) the manufacture, marketing, use or sale of Products by such Party; (iii) the breach by either Party of its obligations under this Agreement; or (iv) a Party’s other wrongful acts or omissions.



**E31. Severability:**

This Agreement is intended to be valid and effective throughout the world and, to the extent permissible under applicable law, shall be construed in a manner to avoid violation of or invalidity under any applicable law. In the event any provision hereof is declared by competent authority to be invalid, illegal or unenforceable under any applicable law, the other provisions hereof shall not be affected, and to the extent permissible under applicable law, any such invalid, illegal or unenforceable provision shall be deemed amended lawfully to conform to the intent of the parties.

**E32. Non-Waiver:**

- (a) Nothing contained herein shall be construed as a waiver by Xerox, or an implied limitation, of any rights or obligations Xerox or any Xerox Subsidiary may have as a result of its ownership of an interest in Fuji Xerox, including, but not limited to, any rights or obligations that such company may have under the 2001 JEC.
- (b) Failure of delay of either Party to exercise any right or remedy under this Agreement or to require strict performance by the other Party of any provision of this Agreement shall not be construed to be a waiver of any such right or remedy or any other right or remedy hereunder. All of the rights of either Party under this Agreement shall be cumulative and may be exercised separately or concurrently.

**E33. Precedence:**

Except as otherwise provided in Section E11(e), in the event any conflict in any provision between this Agreement and any existing agreement should arise, this Agreement shall take precedence and shall apply, unless the Parties adopt other terms and conditions by mutual agreement, in writing, of respective corporate officers.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives on the day and year first set forth above.

By: /s/ Anne M. Mulcahy

Name: Anne M. Mulcahy

Title: Chairman and Chief Executive

By: /s/ Toshio Arima

Name: Toshio Arima

Title: President and Officer  
Representative Director

**MASTER PROGRAM AGREEMENT**

**BETWEEN**

**FUJI XEROX CO., LTD.**

**AND**

**XEROX CORPORATION**

**CONFIDENTIAL**

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Do Not Duplicate Without Permission

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## AGREEMENT

This Master Program Agreement (“MPA”) is made and entered into as of September 9, 2013 (the “**Effective Date**”) by and between **Xerox Corporation** (“XC” or “Xerox”), a New York corporation with a place of business at 800 Phillips Rd. Webster, New York 14580, U.S.A and **Fuji Xerox Co., Ltd.** (“FX”) with a place of business at 9-7-3, Akasaka, Minato-ku, Tokyo 107-0052, Japan.

## RECITAL

**WHEREAS**, XC and FX entered into 2006 Technology Agreement (“2006 TA”) as of April 1, 2006, and

**WHEREAS**, XC and FX has been conducting product developments and mass production product deals under individual agreement called “Program Initiation Agreement (“PIA”)” or “Design and Development Agreement (“DDA”)” and/or “Program Agreement (“PA”)” or “Production Agreement (“PA”)” in conformity to 2006TA; and

**WHEREAS**, XC and FX agreed to General Terms and Conditions for Master Program Agreement, effective as of January 1, 2011, (“General T&C for MPA”) and then entered into partial Master Program Agreement, effective as of November 1, 2012, which consists of “General T&C for MPA” and mass production terms and conditions (“Mass Production Terms” or “Part C”); and

**WHEREAS**, XC and FX desire to agree to the terms and conditions of product development phase (“Development Terms” or “Part B”); and

**WHEREAS**, XC and FX desire to complete the Master Program Agreement as a basic business agreement regarding product developments and mass production product deals between XC and FX, by integration of “General T&C for MPA”, “Part B” and “Part C”.

**NOW, THEREFORE**, in consideration of the mutual agreements contained herein, the parties hereto agree as follows:

**Part A. General Terms and Conditions**

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**A1. Purpose**

Purpose of this Part A of the MPA is to set forth the general terms for the program agreements between XC and FX governing the Acquired Products and Deliverables (respectively defined hereunder). The general terms agreed hereto will apply to the Program Specific Agreements (“PSA”, defined hereunder) including purchase orders for Acquired Products and Deliverables agreed after the Effective Date. The parties agree that the existing program agreements, including but not limited to Program Initiation Agreement (“PIA”), Design and Development Agreement (“DDA”), Program Agreement (“PA”), Production Agreement (“PA”) and their addendums and amendments, will remain in full force and effect subsequent to the execution of this MPA. The parties further agree that parties may execute addendums and amendments to the existing program agreements for variant products and/or for new configurations thereto subsequent to the execution of this MPA.

**A2. Definitions**

**A2.1 2006TA Definitions.**

Definitions set forth in the 2006TA are hereby incorporated by reference.

**A2.2 Definitions Applicable to MPA and PSA**

1. **“2006TA”** means the 2006 Technology Agreement entered into between Xerox Corporation and Fuji Xerox Co., Ltd., effective April 1, 2006.
2. **“Acquired Product”** collectively means Prototypes, Preproduction Units and Production Unit (respectively defined hereunder) that Seller may design, develop and/or supply to Buyer. Acquired Product comprises hardware and/or software including but not limited to Equipment, Options, Consumables, Spare Parts, print servers, finishing module, publications, firmware and embedded Software.
3. **“Buyer”** means the party that is expected to purchase Acquired Products and/or Deliverables pursuant to a PSA.
4. **“Buyer Components”** means the components that are designed and manufactured by Buyer, procured by Buyer, selected by Buyer for Seller to procure from a designated third party, and/or delivered or sourced by Buyer to Seller. The Buyer Components are listed and incorporated in PSA.
5. **“Communication Matrix”** means a list of program members with their roles and contact information which the parties may create and attach to a PSA as its Appendix. In circumstances to which a Communication Matrix applies and is attached to a PSA, communications between the parties shall generally occur as set forth in the applicable Communication Matrix in the PSA as such Communication Matrix is revised from time to time and/or expires.
6. **“Configuration Matrix”** means detailed comprehensive listing of all modules, Options and Consumables to customize the standard Seller configuration into the Buyer configuration in accordance with Specifications. The latest version of the Configuration Matrix will be attached to a PSA-D (defined hereunder), or a PSA-P (defined hereunder) if the program does not execute a PSA-D. Any revision of Configuration Matrix signed by authorized representative of each party will be incorporated in the PSA-D or PSA-P by reference and made an integral part thereof.
7. **“Consumables”** means (i) where applicable, “PACs” (as defined in the Parts and Consumables Pricing Agreement dated February 28, 2007 and successor agreements thereof), (ii) items defined as “Consumables” in a PSA or a Specification that is incorporated into a PSA, and/or (iii) items described as customer replaceable items in a PSA or a Specification incorporated into a PSA.

8. **“CRSM”** means the currency risk sharing method as specified in the CRSM (the reference document listed in section C2).
9. **“Deliverables”** means any deliverables, tangible or intangible that Seller provides Buyer during the design and development phase, and the tooling items the Seller uses throughout the life of Acquired Product. The Deliverables are listed and incorporated in a PSA.
10. **“Deliverables and Completion Acknowledgment (DCA)”** generally means an acknowledgement that sets forth (a) specific deliverables agreed under PIA, DIA, or their equivalent PSA for a program, (b) acknowledgement of the completion of the said deliverables and (c) payment process of the fees to be paid to FX by XC.
11. **“Deliverables Initiation Agreement for XC Inbound (DIA for XC I/B)”** generally means an agreement that governs terms and conditions of the initial limited payment of program specific expenditure or non-recurring engineering expenses at the start of the design and development phase of a program, and prior to the execution of the PIA or a PSA for design and development phase.
12. **“Deliverables Initiation Agreement for XC Outbound (DIA for XC O/B)”** generally means an agreement for multiple XC outbound programs on the deliverables and technical support provided by XC and the compensation paid by FX during an agreed fiscal period, including its appendices, reference documents and any amendment thereto.
13. **“Documentation”** means documentation transferred with Acquired Products (but not necessarily with Buyer Components) in order to allow the end users to safely and successfully use the portions of Acquired Products provided by Seller together with its features as well as documentation and engineering drawings that are necessary or appropriate to fulfill Buyer’s service obligations for the portions of Acquired Products provided by Seller. Where the Seller integrates Buyer Components into Acquired products, “Documentation” shall additionally include relevant documentation and engineering drawings that are necessary or appropriate to aid Buyer in dealing with integration issues.
14. **“Equipment”** means the integrated module consisting of image output terminal (IOT) and other components such as image input terminal (IIT), embedded device controller and tray module. A detailed description of Equipment is specified in the PSA.
15. **“Ex-Godown”** is a trade term wherein the Seller fulfills its delivery obligation when the Seller delivers the Production Units at the disposal of the Buyer at the Seller’s warehouse.
16. **“Ex Works”** means Ex Works as defined in INCOTERMS 2000, as amended.
17. **“Exclusive Features Components”** means Buyer Exclusive Features, OEM Restricted Features and Unique Keying collectively respectively defined in section B6.1.
18. **“Exclusive Tooling”** means all items of tooling that Seller must produce or procure in order to develop Exclusive Features or Buyer’s form, fit and functionality aspects of Acquired Products. Exclusive Tooling shall be specified and listed in a PSA.
19. **“FAS”** means FAS as defined in INCOTERMS 2000, as amended.
20. **“FOB”** means free on board shipping and trade term (which is reflected in price terms) as defined in INCOTERMS 2000, as amended.
21. **“FX DDU”** means delivered duty unpaid shipping term as defined in DDU Agreement.
22. **“Lead Time”** means the time between the date a purchase order is placed and the date Buyer is notified that the applicable Acquired Product has become available at the relevant delivery point specified in the Exhibit based on agreed trade term or as otherwise set forth in a PSA.

23. **“Manufacturing and Quality Plan”** or **“Quality Plan”** means a document, if appropriate for a program, that specifies and describes the processes, tests, and reports to be used in the production of Production Units and Preproduction Units, if any, so as to ensure conformance with the Specifications. A Manufacturing and Quality Plan or Quality Plan, if appropriate for a program, shall be attached to the PSA of a respective program, and any revision thereof, signed by an authorized representative of each party, shall be incorporated therein by reference and made an integral part thereof.
24. **“Master Program Agreement (MPA)”** means this Master Program Agreement, including its appendices and any amendment hereto.
25. **“Milestone Schedule”** means a project schedule that sets forth critical engineering goals for various stages of design and development of Prototypes and Preproduction Units.
26. **“Modified DDU”** means delivered duty unpaid shipping term as defined in Modified DDU Letter Agreement.
27. **“Normal Warranty”** shall have the meaning as provided in the Warranty Agreement.
28. **“Options”** means incremental and/or optional features and functions specified in the Specification and/or listed as Options in a PSA.
29. **“Preproduction Units”** means complete assembly of the Equipment provided to Buyer after XC’s TTM 3.3 and before TTM 3.4 or after FX’s Production and Marketing Preparation Initiation Proposal and before Manufacturing/Shipment Initiation Proposal, for evaluation purpose of the value chain processes before mass production, which is manufactured through the mass production line. Preproduction Units are also referred to as “Sim B1s”.
30. **“Product”** means “Product” as defined in 2006TA.
31. **“Production Units”** means mass production version of the Acquired Product including but not limited to the Equipment, related Options, Spare Parts, Consumables, supplies, software and publications in accordance with the latest Specification agreed by the parties.
32. **“Program Acquisition Spending (PAS)”** means the costs of the Seller’s work during the design and development phase of a program that Seller and Buyer shall respectively bear.
33. **“Program Specific Agreement (PSA)”** means an agreement that governs program specific terms and conditions for the design and development and the sale and purchase of Acquired Product and/or Deliverables, including its appendices and any amendment thereto. Multiple PSA’s may be executed for a given program. The Program Specific Development Agreement (“PSA-D”) shall replace the program agreements previously known as PIA, DDA, and the Program Specific Production Agreement (“PSA-P”) shall replace the program agreements previously known as PA for the Acquired Products and Deliverables after the execution of this MPA.
34. **“Prototype”** means predecessor of any Preproduction Units provided to Buyer for engineering purposes.
35. **“Regulatory Agency”** means any regulatory agency or other body, governmental or private, including but not limited to agencies and organizations that regulate product safety, environmental, and/or electromagnetic emissions or monitor or certify compliance with safety, environmental, and/or electromagnetic emission standards.

36. **“Seller”** means the party that is expected to sell Acquired Products and/or provide Deliverables pursuant to a PSA.
37. **“Spare Parts”** means (i) where applicable, “Type 1 Parts” (as defined in the Parts and Consumables Pricing Agreement dated February 28, 2007 and successor agreements thereof), (ii) items defined as “Spare Parts” in a PSA or a Specification that is incorporated into a PSA, and/or (iii) parts, assemblies, and other components required for the repair and/or maintenance of Acquired Products in a PSA or a Specification incorporated into a PSA.
38. **“Specifications”** means the engineering, operational and/or functional description of Acquired Products and/or Deliverables of a respective program. Specifications shall be attached to a PSA. Any revision to Specifications, approved by authorized representatives of each party, shall be incorporated therein and made an integral part thereof. (Unless agreed between the parties, such approval shall be indicated by written or electronic correspondence.) Specifications may include, without limitation, engineering standards, technical and test instructions and procedures, functional information and related data, technical information and processes, quality control regulations and quality standards, a list of regulatory agency approvals.
39. **“Statement of Deliverables (SOD)”** means a statement of deliverables agreement, formerly referred as Deliverables Agreement, that defines a specific work project including the activities and deliverables to FX and sets forth (a) FX’s funding obligations; (b) the ownership of the intellectual property created under the work project including any intellectual property in the deliverables and (c) the terms under which XC will provide the deliverables to FX.
40. **“Systemic Defect”** shall have the meaning as provided in the Warranty Agreement. Systemic Defect may have been referred to as “Epidemic Failure” in previous program agreements.
41. **“Territory”** means FX territory as defined by the 2006 TA.
42. **“VMI”** means vendor managed inventory program implemented in accordance with the VMI Agreement.
43. **“Warranty”** shall have the meaning as provided in the Warranty Agreement.

### **A3. Priority and Structure of Agreements**

#### **A3.1 Priority of Agreements**

Unless stated otherwise, terms and conditions in 2006TA shall be applied to this MPA. The terms of this MPA shall control transactions within the scope of this MPA and PSA’s entered into under this MPA except in the case of an inconsistency between the language of this MPA and the 2006TA, in which case the 2006 TA prevails. Unless stated otherwise, terms and conditions in this MPA shall be applied to PSA’s. In case of any conflict between this MPA and any PSA, the applicable PSA shall prevail in respect to the applicable Acquired Product to the extent that the PSA refers to provisions of this MPA that are intended to be modified.

#### **A3.2 Structure of MPA**

##### **A3.2.1 Main Body**

Part A of the main body of this MPA sets forth the terms and conditions common to all PSAs. Part B of the main body of this MPA sets forth the terms and conditions for design and development and the purchase of Prototypes and Preproduction Units. Part C of the main body of this MPA sets forth the terms and conditions for manufacture, purchase and sale of Production Units. The following exhibits (“Exhibits”) are attached to this MPA and incorporated herein and are applicable as described in each Exhibit:

- A3.2.1.1 Exhibit I: Terms and Conditions for Office MFP and Production Products (XC Inbound)
- A3.2.1.2 Exhibit II: Terms and Conditions for Office Printers and Printer-based MFP Products (XC Inbound)
- A3.2.1.3 Exhibit III: Terms and Conditions for XC Outbound Products

**A3.2.2 PSA**

Each PSA sets forth specific terms and conditions that are unique for respective programs. Parties shall generally use the templates attached to the Exhibits in order to document program specific terms. Unless the parties specifically reference particular terms and conditions of this MPA (and its Exhibits) that are intended not to be included in the PSA, then the applicable terms and conditions of this MPA shall be deemed to be incorporated into the PSA, and the terms of the PSA shall be interpreted to be consistent with the terms and conditions of this MPA including the relevant Exhibit. Terms of a PSA that are inconsistent with the terms of this MPA, including the relevant Exhibit, shall supersede the terms of this MPA and the relevant Exhibit if the PSA specifically identifies a provision of the MPA to be superseded, and the PSA is signed by a corporate officer of both parties.

**A3.2.2.1 PSA for Part B (“PSA-D”)**

- a) Each individual program shall respectively execute a PSA to set forth the terms and conditions under which the Seller and the Buyer agree to the terms and conditions applicable to design and development and purchase of Prototypes and Preproduction Units during the terms of the PSA, including but not limited to roles and responsibilities of the parties, Milestone Schedule, program management, Specification and change, Exclusive Features and Exclusive Tooling, respectively as defined, and other terms and conditions specified in the Exhibits.
- b) A PSA-D for the development phase shall reference this MPA and the relevant Exhibit.
- c) Each PSA-D shall be executed as soon as practicable after completion of FX PDP Product Development Initiation Proposal and XC TTM 3.1P Exit and, in any event, prior to completion of FX PDP Production Investment Initiation Proposal and/or XC TTM 3.2 Exit.
- d) Execution of the PSA-D does not represent a commitment by Buyer to buy any quantity of the Production Units.
- e) Notwithstanding the foregoing, parties are exempt from executing PSA-D for Acquired Products described in section 2 of Exhibit II and Exhibit III of the MPA. In such event, the terms and conditions of development phase and mass production phase are combined into one PSA for a program, targeted to be executed prior to XC’s TTM 3.4.

**A3.2.2.2 PSA for Part C (“PSA-P”)**

- a) Each individual program shall respectively execute a PSA to set forth the terms and conditions under which the Buyer will purchase from the Seller the Production Units of the respective program, applicable to purchase orders issued during the terms of the PSA, regardless of whether the PSA

is referenced by purchase orders, including but not limited to the Specification, the configuration, the list of Production Units, their prices, Manufacturing and Quality Plan, design change process, Exclusive Features and Exclusive Tooling, respectively as defined, and other terms and conditions specified in the Exhibits.

- b) A PSA-P for the mass production phase shall reference this MPA and the relevant Exhibit.
- c) As set forth in section A18, a PSA supersedes the terms and conditions set forth in the Buyer's purchase order form and/or any of the Seller's quotation or acknowledgement documents covering Production Units and other Acquired Products, if applicable, to the extent any conflict exists between the PSA and the said prior documents.
- d) Each PSA for the mass production phase of a program shall be executed as soon as practicable after completion of FX PDP Production and Marketing Preparation Initiation Proposal and XC TTM 3.3 Exit and, in any event, prior to completion of FX PDP Manufacturing/Shipment Initiation Proposal and/or XC TTM 3.4 Exit.

**A3.2.3 Numbering**

The parties agree to set a document-numbering rule for the PSAs and implement accordingly.

**A3.3 Purchase Order and Formation of Sales Contracts**

**A3.3.1 Purchase Order Content.** Buyer's purchase orders for Acquired Products shall include such information as the description, Seller's part number, Buyer's part number, quantity, unit price, payment terms, desired shipment mode, requested date of delivery, party to whom delivery is to be made, purchase order issue date, purchase order number, MIME code for destination and named port or place of destination.

**A3.3.2 Formation of contracts.** Seller shall acknowledge acceptance of each Buyer order for Acquired Product by sending an acknowledgment form that sets forth the dates on which the ordered items are scheduled for delivery to Buyer in accordance with trade term specified in a PSA, whereupon a contract of sale of those items ("Sales Contract") shall be deemed concluded between the parties.

**A3.3.3 Terms on Forms.** Any terms or conditions printed on the face or the reverse side of the purchase order form or Seller's acknowledgment form, even if such purchase order form or acknowledgment form is signed and returned by Seller to Buyer, shall not be valid unless both parties hereto expressly agree in other writing to include any such terms or conditions in this MPA, or the Sales Contract.

**A4. Intellectual Property**

**A4.1 Ownership.** Ownership of intellectual property, including proprietary rights of all inventions, works of authorship, and Technical Information created under a PSA or other arrangement under MPA between the parties shall be subject to section B12 and B13 of the 2006TA, unless otherwise specifically agreed to in the PSA between corporate officers. Nothing in the PSA shall modify intellectual property rights of the respective parties created independently of each PSA unless such modification is specifically identified in the PSA and mutually agreed upon.

**A4.2 Trademarks.** Rights and obligations of the parties relating to the use of trademarks are set forth in Part C of the 2006TA.

**A5. Export Control and Physical Security**

- A5.1** **2006TA Export Control Provisions.** The parties shall comply with the export control provisions set forth in section E13 of the 2006TA.
- A5.2** Both parties agree to comply with all laws, rules and regulations of the United States, Japan, and any other applicable countries or jurisdiction(s) regarding the export of any commodity, technology and/or software used, developed or acquired under the applicable PSA, which, at the time of export, requires license or other government approval, including, without limitation, first obtaining such license or approval.
- A5.3** Both parties agree to use commercially reasonable efforts to provide the other party with reasonable assistance, any information and documentation reasonably needed by the other party to determine the export status, and/or obtain any license or approval from applicable competent authorities regarding the export of any commodity, technology or software used, developed or acquired under this MPA.
- A5.4** **Physical Security.** Seller represents and warrants that it has adopted and will follow procedures to ensure the physical security of any Acquired Products provided or transported under the terms of any DIA, PIA, DDA or PSA. Seller represents and warrants that its physical security procedures are adequate to prevent tampering with or damage to the Acquired Products or their containers, introduction of contraband materials or substances into the Acquired Products or their containers, theft of the Acquired Products, or diversion of the Acquired Products for unlawful or unauthorized purposes. Seller represents and warrants that it will retain possession and control over the Acquired Products at all times before they are delivered to a carrier, and will not deliver such Acquired Products to any carrier other than as specified in the purchase order or in this MPA or in the applicable PSA, PIA, DDA and DIA. If Seller is a provider of transportation, carriage, forwarding or brokerage services, Seller represents and warrants that it will retain possession and control of Acquired Product at all times required under the terms of the purchase order or shipping documents, and will not deliver such Acquired Product to any person other than as identified in those documents. Seller further represents and warrants that, in the event it has any reason to believe that any Acquired Product or their containers have been stolen, tampered with, diverted contrary to this MPA (or the applicable PSA, PIA, DDA or DIA) or contrary to law, or delivered to any carrier other than as specified in a separate document agreed between Buyer and Seller, it will immediately notify Buyer of this fact in writing, providing full details. Nothing in this provision shall be deemed to limit or alter Seller's obligations or liabilities under any provision of this MPA or any PSA, PIA, DDA or DIA.
- A5.5** Subject to Seller's obligation under section E13 of the 2006TA, Buyer shall neither export nor re-export directly or indirectly, any Production Units it purchases under this MPA or applicable PSA to any country to which such export or re-export is restricted by United States government and Japanese government law or regulation without the prior authorization, if required, of the Office of Export Administration, Department of Commerce, Washington, D.C., or applicable Japanese or Chinese government authority.

**A6. Term**

- A6.1** **Terms.** This MPA shall be effective as of the Effective Date and shall continue in full force and effect for so long as the 2006TA or its successors are in effect, unless sooner terminated subject to the provisions of this MPA or both parties' agreement.
- A6.2** **No Cross Termination.** Termination for cause under any individual PSA shall not by itself constitute a material breach under this MPA or any other PSA. Termination or expiration of this MPA pursuant to section A6.1 above shall not of itself terminate any or all of the PSA's then in effect, and the terms and conditions herein applicable to such PSA's shall remain in effect in each such PSA's.

**A6.3** Terms and Termination of a PSA for Part B is provided in section B14 of the MPA.

**A6.4** Terms and Termination of a PSA for Part C is provided in section C17 of the MPA.

**A7. Compliance with Laws and Regulations**

Subject to section D8 of the 2006 TA, Seller shall be responsible to comply with the applicable governmental laws, regulations, safety requirements, governmental and non-governmental certifications described in the Specifications or other written agreements between the parties, or written notices from Buyer to Seller that advise the Seller of such applicable safety standards and legal requirements, for the countries into which Acquired Products will be marketed.

In conformance with section D8 of the 2006TA, Seller shall, unless otherwise agreed, at its expense and responsibility, take all necessary steps to ensure that the Production Units to be publicly launched and marketed and/or Preproduction Units as specified and agreed to be upgraded to mass production specifications in applicable PSA or corresponding production program agreement shall pass the safety and regulatory standards by each competent organization or authority, including major standards bodies and monetary authorities with which Buyer has agreed to comply with certain standards (hereinafter called "Safety Standards") specified in a mutual written agreement or in the Specifications. For this purpose, Buyer agrees to advise requirements of Safety Standard as described in section D8(c) of the 2006 TA and render to Seller commercially reasonable assistance. For avoidance of confusion, Seller is responsible for defects brought about by designs made in order to comply with (i) safety standards, warning labels, and legal requirements (collectively, "Requirements") that are advised by Buyer pursuant to D(8)(c) or (ii) specific instructions that are advised by Buyer pursuant to section D8 (d) of the 2006TA if alternative designs without the occurrence of such defects, which comply with the Requirements and specific instructions, could have been commercially reasonably accomplished. Seller shall not be responsible for Buyer's Components.

**A8. Force Majeure**

Neither party shall be liable for failure to perform or for delay in performance of any PSA resulting from any of the events listed in section E23 of the 2006TA ("Force Majeure Event") for that period commencing from the time of the Force Majeure Event that prevents or delays performance to the time at which such party is able to resume performance of its obligations hereunder. The parties intend to complete plans for the resumption of performance of the affected party ("Business Resumption Plan" or BRP). In BRP discussion, the parties shall discuss in good faith on such reasonable steps so as to resume performance under PSA as usual. The subject matters of the BRP discussion shall include:

- formation of a joint BRP between FX and XC;
- expedited delivery methods such as air shipment and its cost sharing, when appropriate;
- the allocation of the applicable available Acquired Products;
- the allocation of the manufacturing capacity for Acquired Products;
- possible cancellation of purchase orders affected by Force Majeure;
- using each party's capacity and available parts as a back-up for the party affected by a Force Majeure event; and
- any other subjects related to delivery and manufacturing of Acquired Products impacted by Force Majeure events.



**A9. Indemnity**

**A9.1 Subsidiaries.** Without limiting the respective responsibilities of FX and XC under this section A9, for purposes of this section, the terms “Buyer” and “Seller” may be construed to mean and include their respective Subsidiaries (and in case of FX, JV OPCO’s), if appropriate to the context.

**A9.2 IP Indemnity**

- (a) Subject to subparagraph (b) of this section, Seller shall, at its expense, defend and indemnify Buyer and its Subsidiaries (and, in the case of FX, the Fuji Xerox JV OPCO’s) from and against any suit, claim, or proceeding brought against Buyer by a third party alleging infringement in any country of any Patent, Copyright, Trademark, trade secret, or other intellectual property right as a result of the purchase or other acquisition by Buyer or its Subsidiaries (and in case of FX, JV OPCO’s) of any Product of Seller, provided Seller is promptly notified, given reasonable assistance and full information reasonably required to defend such suit, claim, or proceeding, and permitted to direct the defense. Further, Seller shall pay any damages and costs awarded against Buyer or its Subsidiaries (and in case of FX, JV OPCO’s) in such suit, claim or proceeding, but Seller shall have no liability for settlements or costs incurred without its consent. To avoid infringement, even if not alleged, Seller may, at its option and at no charge to Buyer (and in case of FX, JV OPCO’s), obtain a license, modify or substitute an equivalent of the allegedly infringing Product, provided that any modification shall not materially affect form, fit or function, and any substitute equivalent shall exhibit form, fit and function that is not materially different from the substituted Product.
- (b) Seller shall not be liable to Buyer for alleged infringement of Patents, Copyrights, Trademark, trade secret, or other intellectual property rights, except as provided in section C9 of the 2006TA, by any of Seller’s Products resulting from: (i) Buyer Components (ii) designs or components that are incorporated into such Product at the request of Buyer and which would not otherwise have been incorporated by Seller; (iii) functionality incorporated into such Product at the request of Buyer which would not otherwise have been incorporated by Seller and which could not reasonably have been incorporated in a non-infringing manner; (iv) Product that is modified or altered by Buyer, to the extent that such infringement would not have existed in the unmodified or unaltered Product or components thereof; or (v) the use, marketing or distribution of such Product by Buyer in combination with products not marketed or supplied by Seller. Notwithstanding the exception described in (v) above, Seller shall be liable for alleged combinations of Product and products not marketed or supplied by Seller, if such combination described in subsection (v) includes product(s) not marketed or supplied by Seller that the Seller could have reasonably foreseen in such combination with Product(s) at the time of Product design or development, and if Seller could have implemented in the Product(s) a design that would not have infringed when used in such combination. In the event of any of (i)–(v) above, Buyer shall defend and indemnify Seller in a manner fully equivalent to the obligations set forth in subparagraph (a) of this section.

**A9.3 Product Liability**

- (a) Scope. This section A9.3 shall not apply to infringement of any Patent, Copyright, Trademark, trade secret, or other intellectual property.
- (b) Section D8 of 2006TA. The Product Liability provisions of section D8 shall apply to each PSA unless otherwise agreed in writing by authorized personnel of both parties.  
  
For clarification regarding section D8(d) of the 2006TA, Buyer may provide to Seller specific instructions in the design of components, parts, or of the Product itself but is not obligated to do so. The offering of design information by Buyer shall not be an “specific

instruction” under section D8(e) of the 2006TA if Buyer offers such design information as a suggestion only and permits Seller to design or utilize alternative designs where there exists reasonably selectable alternatives. In instances described in the above, Seller shall utilize the Buyer design information at its own risk, and such design shall be considered a Seller design for purposes of section D8 of the 2006TA.

For clarification regarding section D8(e) of the 2006TA, Buyer shall provide Seller with the legal requirements described in section D8(c) of the 2006TA. For avoidance of confusion, Seller is responsible for defects brought about by designs made in order to comply with Requirements that are advised by Buyer pursuant to D(8)(c) or (ii) specific instructions that are advised by Buyer pursuant to section D8 (d) of the 2006TA if alternative designs without the occurrence of such defects, which comply with the Requirements and specific instructions, could have been commercially reasonably accomplished.

**A10. Limitation of Liability**

NEITHER PARTY SHALL BE LIABLE FOR INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS OR LOST CONTRACTS IN ANY WAY ARISING OUT OF ANY PSA GOVERNED BY THIS MPA, WHETHER BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), OR ANY OTHER LEGAL THEORY, AND EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION DOES NOT APPLY TO (A) ANY INDEMNIFICATION OBLIGATIONS OF THE PARTIES UNDER SECTION A9 (WHICH MAXIMUM LIABILITY LIMITATIONS SHALL BE GOVERNED BY THE TERMS OF THE 2006TA) OR (B) DAMAGES ARISING OUT OF OR RELATING TO EITHER PARTY’S FAILURE TO COMPLY WITH ITS CONFIDENTIALITY OBLIGATIONS OR (C) BUYER’S DUTY TO PAY THE FULL AMOUNTS OF ALL INVOICES THAT ARE NOT SUBJECT TO A GOOD-FAITH DISPUTE UNDER THE TERMS OF THIS MPA OR THE APPLICABLE PSA.

**A11. Waiver**

A failure to exercise, a waiver, or a delay by a party hereto of any particular provision of this MPA or any PSA shall not be deemed to constitute a prior waiver or a waiver in the future of the same or any other provision of this MPA and the PSA. All of the rights of either party under this MPA and any PSA shall be cumulative and may be exercised separately or concurrently.

**A12. Attorneys Fees**

In the event that any legal proceeding, including arbitration, is brought to enforce any of the provisions of this MPA or of any PSA, the prevailing party is entitled to recover its reasonable attorneys’ fees from the other party.

**A13. Dispute Resolution**

All disputes, controversies or differences that arise between the parties related to this MPA or any PSA which cannot be settled satisfactorily by correspondence or mutual conference shall be settled consistently with the following:

**A13.1 Escalation**

The parties agree to undertake a process of escalation directed to internal resolution between the parties. The process shall include escalation within each organization to individuals responsible for the management of the respective business units and the individual responsible for the respective XC/FX liaison organization. At least one meeting directed in whole or in part to

resolution of the matter shall be held involving at least one of the above responsible individuals from each party. If such meeting does not result in resolution of the matter, then the Chief Executive Officer and/or President of each party shall be notified and informed of the matter.

**A13.2 Arbitration**

All disputes, controversies or differences that are unable to be resolved by negotiations as set forth above, shall be settled in accordance with section E29 of the 2006TA, provided that arbitration is held in Singapore. All negotiations pursuant to this section A13 are confidential and shall be treated as compromise and settlement negotiations for purposes of the Federal Rules of Evidence and state rules of evidence. Each party shall bear its own expenses related to and incurred while performing such negotiations.

Both parties acknowledge that any breach of confidentiality and/or misappropriation of intellectual property rights may cause injuries not adequately addressable during arbitration and, therefore, agree that the non-breaching party is entitled to seek injunctive relief in addition to remedies under this section A13.2.

After a consultation with its CEO or President, if a party decides to enter an arbitration, such arbitration, shall be conducted on a confidential basis, under the then current International Chamber of Commerce (“ICC”) Rules of Arbitration strictly in accordance with the terms of this MPA, any relevant PSA, and the substantive law of the State of New York, excluding its conflict of laws provision. Before selection of any arbitrator(s), each party is obligated to notify its Chief Executive Officer that the dispute will be arbitrated. Formal submission of the dispute to the ICC shall not be necessary provided that the ICC procedural rules are followed as adapted for consistency with the terms of this section A13. The arbitration shall be held at a mutually agreeable location in Singapore and shall be conducted by either (i) one arbitrator if the parties can agree to such arbitrator or (ii) a panel of three comprising one arbitrator selected by each of the parties and a third arbitrator selected by the other two arbitrators. Unless otherwise agreed, all arbitrators shall be chosen from a list of representatives who are members of the ICC’s panel of commercial arbitrators and are knowledgeable about the copier and printer industries. The cost of the arbitration, including the fees to be paid to the arbitrator, shall be shared equally by the parties. The parties shall be limited to taking no more than three (3) depositions each. The length of each deposition shall be limited to one (1) day. No interrogatories shall be permitted. The scope of document production shall be governed by the ICC Rules of Arbitration, and the decision of the arbitrator(s) with respect thereto. The judgment upon the award rendered by the arbitrator may be entered and enforced in any court of competent jurisdiction. Neither party shall be precluded from seeking provisional remedies in the courts of any jurisdiction including, but not limited to, temporary restraining orders and preliminary injunctions, to protect its rights and interest, but such shall not be sought as a means to avoid or stay arbitration. The arbitrator(s) is not empowered to award any consequential, incidental, punitive, or exemplary damages unless otherwise permitted in section A10 hereof. The parties acknowledge that they have voluntarily agreed to arbitrate their disputes in accordance with the foregoing and each party hereby irrevocably waives any damages in excess of compensatory damages. Nothing in this section A13 is intended, nor should it be construed, to alter any other limitation or waiver of damages set forth herein.

**A14. Tax**

**A14.1 Definition**

- (a) **“Taxes” or “Tax”** under this section shall include, but are not limited to, any of the following (if imposed or collected by any governmental entity worldwide or any political subdivision thereof whether directly, by withholding or upon audit): sales, use, value added (VAT), excise, import or export, value added or similar tax or duty, and all government permit fees, or license fees in the nature of taxes including any interest, penalty, fine or addition thereon but exclusive of Excluded Taxes.

- (b) **“Excluded Taxes”** means any income taxes (including franchise taxes measured by net income), gross income taxes withheld at the source that are creditable against a party’s net income tax liability, capital taxes, employment and /or payroll taxes, or personal property taxes assessed on a lien date occurring before title to the property in question has passed to the other party under this MPA and real property taxes.

**A14.2 Before-Tax Pricing**

The parties agree that all prices agreed under this MPA and respective PSA for Acquired Products and /or any other fees are exclusive of any applicable Taxes.

**A14.3 Cooperation**

The parties hereto each agree to take all commercially reasonable steps to cooperate with the other to appropriately minimize any tax that arises under this MPA and respective PSA. Such steps shall include (but not be limited to) the measures specified in section A14.4 and A14.6 below, complying to the Japanese and United States Tax Treaty or any other tax treaty or law, such as U.S. Treasury Forms W-8BEN and APPLICATION FORM FOR INCOME TAX CONVENTION of National Tax Agency Japan, providing assistance including but not limited to production of relevant documents for tax audit, copying and making knowledgeable individuals available to answer question submitted by the tax authorities. In addition, each party shall notify the other party if its tax status in any territory changes (e.g. party becomes registered to do business). Further, the parties agree to use their reasonable best efforts to take the most efficient measures and minimize the clerical labor of the other party when complying to the treaty and/or law stated above.

**A14.4 Responsibility for Taxes**

The parties hereto agree that each of them shall be responsible for the filing, if required under the appropriate law, of all required tax returns that such party is responsible to file in, as well as the timely remittance of the taxes shown thereon. Notwithstanding the foregoing, when parties elect VMI as the terms and conditions regarding sales and delivery procedure of the Acquired Products, the responsibility for Taxes are subject to the VMI Agreement.

**A14.5 Indemnification for Taxes**

The party responsible for Taxes under this MPA and or PSA (“Indemnitor”) shall indemnify and hold harmless the other party (“Indemnitee”) for any Tax assessed upon the Indemnitee which arose due to a failure of the Indemnitor to meet its responsibilities under this section A14.

**A14.6 Responsibility for Taxes related to Royalties**

The parties shall cooperate with each other and take all commercially reasonable steps to file certificates and other documentations with taxing authorities required to obtain a reduction or elimination of or credit for, any taxes, levies or other imposts arising from transactions contemplated by this MPA and respective PSAs (“Exemption Documentation”). Such cooperation shall include but not be limited to providing any information required to secure, complete and file any documents, certificates or assurances in order that royalty payments under this MPA and respective PSA shall qualify as either “Royalties” under Article 12 or “Other Income” under Article 21, of the Tax Convention between the United States of America and Japan entered into force on March 30, 2004, or as updated by subsequent amendment or protocol, (the “Treaty”). The filing party shall reimburse the cooperating party with all reasonable incurred out of pocket expenses. The parties shall provide similar documentation in respect of any other treaty where reduction or elimination of withholding taxes or other transaction tax is allowed.

Any income taxes levied by any governmental authorities upon the payments to be made by Xerox or Fuji Xerox pursuant to this MPA and required to be withheld from said payments, shall be withheld and timely paid and reported to the appropriate tax authorities as required by applicable law. With respect to each such tax payment made hereunder the parties shall use all commercially reasonable efforts to transmit or cause to be transmitted to the other Party promptly upon receipt the official tax receipts or other evidence (with English translation attached) issued by the tax authorities sufficient to support a claim for credit against income taxes in respect of such taxes so withheld and paid. All other taxes imposed as a result of the existence or performance of this MPA shall be paid and borne by the party required to do so by applicable law.

**A14.7 Other Transactions**

In the event any transactions newly agreed by the parties which is not captured under section A14.4 and A14.6 above arises, the parties agree to negotiate in good faith on the appropriate terms and conditions with regard to the Taxes arising under such newly agreed transactions.

**A14.8 Tax Contests**

To the extent that one party to this MPA is liable to pay, reimburse or indemnify the other party for a tax assessed by a taxing authority in respect of a tax arising under this MPA ("Indemnification Provision") the party which was required to sign the tax return ("Audited Party") shall give timely notice to the other party of such tax audit or contest. The Audited Party shall control the audit and/or contest and the other party shall be allowed to participate with its level of participation being proportionate to its financial responsibility.

**A14.9 Tax Notices**

Any notices under this section A14 shall be in writing and sent by registered airmail or other practical manner to the following addresses, or such other address as either party may hereafter furnish to the other party in writing:

**TO XC:**

Xerox Corporation  
45 Glover Avenue,  
Norwalk, CT 06850, USA  
Attn: Kathleen Fanning  
Vice President Worldwide Taxes

**TO FX:**

Fuji Xerox Co., Ltd.  
9-7-3 Akasaka, Minato-ku  
Tokyo 107-0052 JAPAN  
Attn: Hiroyuki Ikeda  
Manager, Finance

**A15. Severability**

This MPA and each PSA is intended to be valid and effective throughout the world and, to the extent permissible under applicable law, shall be construed in a manner to avoid violation of or invalidity under any law. In the event that a competent authority with proper jurisdiction determines that one or more provisions of this MPA or any of the PSA's are invalid, illegal, or unenforceable, the rest of the provisions of this MPA and/or applicable PSA shall remain valid and enforceable and the invalid, illegal, or unenforceable provisions shall be replaced with valid provisions that best approximate the apparent intent of the parties.

**A16. Confidentiality**

**A16.1 Confidential Information.** The parties agree to comply with section E9 and E10 of the 2006TA. The parties acknowledge that "other confidential information" stated in section E9 includes business information, including but not limited to the information relating to disclosing party's

current, future, or proposed products, supply base, business forecasts, and procurement requirements, which are communicated to, or learned or acquired by the other party, its employees, or agents in order to enable the other party to perform its obligations hereunder; provided, however, to the extent practicable, such “other confidential information” shall be marked with an appropriate proprietary legend, or identified as proprietary within a reasonable time after disclosure in order to be treated as confidential information this is subject to section E9 of the 2006TA. Notwithstanding the above, “other confidential information” that is not marked “Confidential”, “Proprietary”, or “Private” or words of similar import shall be deemed to be confidential information for the purposes of section E9 of the 2006TA if under the circumstances prevailing at the time of disclosure the party receiving such information reasonably should have understood that it was intended by Discloser to be treated as confidential information. However, for purpose of clarification and avoidance of doubt, the parties acknowledge that full disclosure of information as stated in section B14(a) of the 06TA applies only to the Xerographic Technical Information as “Xerographic” and “Technical Information” are defined in section A6 and A13 of the 2006TA.

**A16.2 Procedures**

Notwithstanding agreement or understanding that may be contrary, the parties shall comply with the procedures and obligations of sections B14 of the 2006TA prior to any transfer of Technical Information between the parties. As a non-binding summary of section B14(a), (b), and (e) of the 2006TA intended as a reminder to the parties, the following summarizes some of the procedures and obligations set forth in section B14(a), B14(b), and B14(e):

- (a) Xerographic Technical Information shall be disclosed between the parties (B14(a));
- (b) Disclosure of all non-Xerographic Technical Information must be accomplished only through a gatekeeper process between the parties (B14(b) and B17(a)); and
- (c) Software, as defined in 2006TA, is Technical Information that requires, prior to disclosure, classification as Xerographic Technical Information or some other category of other Technical Information (which requires the gatekeeper process) (B14(e)). The parties shall use good faith, reasonable efforts and due diligence to determine into which 2006TA category the Software is likely to be applied in accordance with the definitions of “Xerography”, “Marking”, and “DPA” set forth in the 2006TA.

**A16.3 B17 of 2006TA.** In addition to the confidentiality obligations of sections E9 and E10 of the 2006TA, the obligations and procedures of section B17 of the 2006TA shall be followed by the parties. Included within these obligations and procedures is a requirement that, prior to disclosure, the persons desiring to make a disclosure of Technical Information shall refer to their respective experts on TA issues for proper classification of the information to be disclosed and the appropriate procedures to be pursued with respect to the Technical Information as so classified.

**A17. Applicable Law**

Unless otherwise agreed in writing, this MPA and each PSA shall be interpreted and construed in accordance with the laws of New York State without reference to principles of conflicts of laws. For avoidance of doubts, this section A17 shall not affect interpretation of any applicable provisions of 2006 TA. The parties agree that United Nation Convention on Contracts for International Sales of Goods shall not apply to this contract.

**A18. Entire Agreement**

This MPA and all PSA's (including the recitals thereto and attachments to each) constitute the entire agreement of the parties with respect to the subject matter of this MPA and of each respective PSA. Except as otherwise provided herein, this MPA, PSA's supersede all prior agreements or understandings, expressed or implied, between the parties regarding the subject matter of this MPA and, as applicable, the respective PSA's. This MPA and each PSA may only be modified by written agreements duly executed by authorized representatives of both parties. Unless otherwise delegated, authorization for such written modifications to this MPA and the body of a PSA (but not attachments) is restricted to corporate officers and/or individuals of the respective parties to whom authority has been delegated in writing. In respect to attachments, authorizations for such written modifications to attachments to a PSA is restricted to the individuals described in the preceding sentence or those individuals with job responsibilities that include approval of such documents. In the event that this MPA or any PSA is executed by a corporate officer of either or both parties, such agreement shall not by itself constitute an amendment of the 2006TA.

**A19. Headings**

The Article titles in this MPA have been inserted for convenience only and shall in no way be used in the interpretation hereof.

**A20. Controlling Language**

This MPA and each PSA shall be executed by the parties in the English language, and no translated version of this MPA or any PSA into any other language shall be controlling and binding upon any of the parties hereto nor shall the exchange of any such other language version be of any force or effect in the interpretation of the MPA or any PSA or in determination of the intent of either of the parties to the applicable agreements. Any portion of any document exchanged pursuant to this MPA or any PSA, which portion covers critical issues between the parties, shall be in English.

**A21. Assignment**

Neither party shall assign, transfer or otherwise dispose of this MPA and any PSA in whole or in part of any right hereunder to any third party without the prior written consent of the other party. Any attempt at an assignment without such consent shall be null and void. The delegation of operational responsibilities (such as purchase order issuance) under the PSA to a party's wholly owned subsidiaries, however, shall not be construed as assignment.

**A22. Notice**

Unless otherwise stated, all notices shall be in writing and sent by registered airmail or other practical manner to the following addresses, or such other address as either party may hereafter furnish to the other party in writing:

**TO XC:**

Global Purchasing  
800 Phillips Road, Bldg. 111-03A  
Webster, New York 14580, USA

Attn: Vice President,

**TO FX:**

MN Sales and Marketing  
Minatomirai Center Bldg. 7F  
3-6-1 Minatomirai, Nishi-ku  
Yokohama  
Kanagawa 220-0012 Japan

Attn: Manager

Purchasing Operation/ FX Acquired Product

Strategic Alliances

**Copy to:**

Xerox Corporation  
Office of General Counsel  
XC Square  
100 Clinton Avenue South  
Rochester, New York 14644, USA

**Copy to:**

Fuji Xerox Co., Ltd.  
Legal  
9-7-3 Akasaka, Minato-ku  
Tokyo 107-0052 JAPAN

Attn: Manager, BGO Operations

Attn: Manager,  
D&M Division Support

The addresses of this section A22 may be modified by authorized individuals of the respective parties without requiring formal amendment of this MPA.

**A23. Survival**

The following sections of this MPA and any applicable term of any PSA or of its amendment that modifies or supplements any of the provisions below shall survive the expiration or termination of this MPA or of the applicable PSA's: Articles A2 (Definitions); A4 (Intellectual Property); A6 (Term); A7 (Compliance with Laws and Regulations); A9 (Indemnity); A10 (Limitation of Liability); A13 (Dispute Resolution); A15 (Severability); A16 (Confidentiality); A17 (Applicable Law); A21 (Assignment); B6 (Exclusive Features); B7 (Exclusive Tooling); B14 (Terms and Termination of a PSA-D); C2 (Reference Documents); C3 (Exclusive Features); C7.2 (Spare Parts and Consumables); C9 (Manufacturing and Quality Control); C10 (Remanufacturing and Domestication); C11.7 (Documentation License); C12 (Exclusive Tooling); C14 (Warranty); C15 (Licensed Software); C17 (Terms and Termination of a PSA-P).



**Part B. Development Terms and Conditions**

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**B1. Purpose and Scope of Part B of the MPA**

Purpose and Scope of Part B is set forth in sections A3.2.1 and A3.2.2 of this MPA.

**B2. Roles and Responsibilities**

**B2.1 Seller's Responsibilities.**

- B2.1.1 Seller shall be responsible for the research, customization, design, development, fabrication and assembly of the Prototypes and Preproduction Units performed by the Seller in accordance with Milestone Schedule, Specifications and preliminary Manufacturing and Quality Plan (if applicable).
- B2.1.2 Seller shall be responsible for obtaining all the technology, labor, material, tooling and facilities necessary for design and development of Prototypes and Preproduction Units, excluding the Buyer Components.
- B2.1.3 In addition, roles and responsibilities in details of the Seller for Xerox Outbound products are set forth in section 13.1 of the Exhibit III and section 2.1 and 2.3 of Exhibit III-A of the MPA.

**B2.2 Buyer's Responsibilities.**

- B2.2.1 Buyer shall be responsible for all design and development, fabrication and assembly work of Buyer Components by itself or by Buyer's suppliers.
- B2.2.2 Buyer shall be responsible for obtaining all the technology, labor, material, tooling and facilities necessary for design and development of Buyer Components.
- B2.2.3 Buyer shall be responsible for delivering or causing Buyer's designated supplier to deliver the Buyer Components to the Seller in accordance with the Milestone Schedule.
- B2.2.4 In addition, roles and responsibilities in details of the Buyer for Xerox Outbound products are set forth in section 13.1 and 13.2 of the Exhibit III and section 2.2 and 2.3 of Exhibit III-A of the MPA.

**B2.3** Roles and responsibilities in details for individual program are stated in the PSA-D or attached as an Appendix to the PSA-D.

**B3. Milestone Schedule**

- B3.1** Both parties shall determine the Milestone Schedule. The latest version of the Milestone Schedule agreed by the parties as of the effective date of the relevant PSA-D shall be attached as an Appendix to applicable PSA-D.
- B3.2** Both parties shall adhere to the Milestone Schedule in accordance with the roles and responsibilities of each party stated in applicable PSA-D. If there is a significant risk for delay of the Milestone Schedule, the party that first becomes aware of such delay shall notify the other party. In such a case, both parties shall discuss a solution to minimize or eliminate the delay of the schedule. Both parties may advance the Milestone Schedule upon mutual agreement.
- B3.3** If the parties agree to change the Milestone Schedule, any revision of Milestone Schedule thereof shall be signed by authorized representatives of each party and incorporated into the applicable PSA-D by reference and made an integral part hereof.
- B3.4** If the Milestone Schedule cannot be met because of reasons attributable solely to either party and if expediting shipment at the time of delivering Prototypes or Preproduction Units may prevent or ameliorate such delay, the party responsible for such discrepancy shall be obligated to pay such additional costs required to expedite shipment incurred by either party without any reimbursement from the other party unless the other party agrees to change the Milestone Schedule without any additional costs after mutual discussion.

**B3.5** If the Milestone Schedule cannot be met because of reasons attributable to both parties or not attributable to either party, the parties shall discuss and determine the allocation of any additional costs incurred by the parties in good faith.

**B4. Program Management**

**B4.1** Development and launch of the individual program shall be controlled by XC's Time to Market (TTM) process and FX's Product Delivery Process (PDP). The schedule of the program management shall be specified in the Milestone Schedule.

**B4.2** Seller and Buyer shall have weekly or otherwise mutually agreed periodical telephone conferences and regular workshops to address the progress toward the next scheduled milestone, problems, if any, meeting any milestones, proposed recovery method to meet the next milestone, if necessary, and any changes in cost.

**B4.3** To ensure good communication and timely resolution of issues that arise during the term of each PSA-D, the parties shall follow a mutually agreed upon engineering work procedure, if any.

**B5. Specification and Change during development phase**

**B5.1 Specifications**

Latest version of Specifications with signature as of the date of execution of the relevant PSA-D is attached as an Appendix to such PSA-D. The parties understand that revisions in Specifications may occur during the Development Phase. Any revision thereof signed by authorized representative of each party is incorporated into by reference and made an integral part of such PSA-D.

**B5.2 Design Review**

Buyer is entitled to conduct periodic design reviews to ensure its satisfaction with the Seller performances. Upon reasonable notice, Seller shall allow Buyer during normal business hours, to visit its places of business for development and manufacturing to discuss and inspect the status of the development of the Prototypes and Preproduction Units.

**B5.3 Changes to the Specifications during the Development Phase**

If either party requests a modification in Specifications during the development phase, such requests shall be submitted by the requesting party to the other party in writing. After mutual discussion, Seller shall propose implementation plan for the requested change including affected cost and implementation schedule. Subject to Buyer's written acceptance of Seller's proposed implementation plan, schedule, and cost change, Seller will proceed with the implementation of the prescribed changes and the Specifications shall be modified accordingly to reflect such agreed upon changes. If the modification to the Specifications results in an increase or decrease in the cost of Equipment or in the length of time required for the manufacture of or delivery of those items to Buyer, then the parties shall mutually agree on (a) a price adjustment for the items equal to the cost of the changes, and/or (b) an extension of time of delivery, and/or (c) concessions on other matters including engineering fees and other cost factors.

**B5.4 Additional Development Work**

If the need for a development effort not specified in this MPA arises, the parties shall mutually discuss the implementation of such development effort in good faith. NO SUCH ADDITIONAL DEVELOPMENT EFFORT SHALL BE UNDERTAKEN WITHOUT THE PARTIES AGREEING IN WRITING.

**B6. Exclusive Features**

**B6.1 Exclusive Feature Components and Unique Keying**

B6.1.1 In this MPA, “Exclusive Feature Components” shall collectively mean “Buyer Exclusive Features”, “OEM Restricted Features” and “Unique Keying” defined as the following:

- (a) “Buyer Exclusive Features” shall mean any specific parts, components, portions of Acquired Products, software programs, whether on a stand-alone or embedded basis (collectively “Specific Components”), and specific parameters that are implemented in Specific Components:
  - (A) which are incorporated into Acquired Products upon request from Buyer; and
  - (B) (i) which are designed or developed at Buyer’s cost without subsequent reimbursement by Seller; or
  - (ii) which the parties otherwise agree that Seller shall not use them for Seller’s products without payment of commercially reasonable amount of Manufacturing License Fee (MLF) or Software License Fee (SLF) to Buyer under 2006TA.

For avoidance of doubt, any component that employs significant design of the Buyer Exclusive Features shall be deemed and treated as “Buyer Exclusive Features”.

- (b) “OEM Restricted Features” shall mean any specific parts, functions, components or portions of Acquired Products, (i) which are designed in accordance with the applicable design guide agreed by XC and FX, or (ii) which Seller developed in collaboration with Buyer (financially or technically) and are agreed to be restricted from selling in non-Xerox or Fuji Xerox brands to third parties without a mutual agreement by the parties.
- (c) “Unique Keying” shall mean Buyer’s unique keying requirements in Consumables.

B6.1.2 Provisions of this MPA relating to Exclusive Features hereunder do not affect intellectual property rights as such rights may be established pursuant to the 2006TA.

**B6.2 Exclusive Features of Acquired Product**

Exclusive Features shall be specified in the relevant PSA-D of each Acquired Product. If a program does not execute a PSA-D, Exclusive Features shall be specified in the relevant PSA-P.

**B6.3 Exclusive Features Restriction**

- B6.3.1 Seller shall not incorporate Buyer Exclusive Features and Unique Keying in any Seller’s products marketed by Seller or otherwise made available to third parties without prior written consent of Buyer or payment of reasonable reimbursement or allocation of its development cost to Buyer.
- B6.3.2 Seller shall not incorporate OEM Exclusive Features in any products marketed by third parties under non-Xerox or non-Fuji Xerox brands without prior written consent of Buyer.

**B6.4 Unique Keying and Consumables Exclusivity**

- B6.4.1 Unique Keying. Seller acknowledges that the Unique Keying in Consumables is a critical Buyer requirement. Also, one or more elements in most Unique Keying may be covered by Buyer's patents. Seller, its employees, agents, subcontractors, and distributors will not make available, market, distribute, promote, disclose, or publicize the use of any material, mechanism, or information that may be utilized to circumvent the Buyer Unique Keying without first obtaining authorized written approval by Buyer.
- B6.4.2 Consumable Exclusivity. Seller further acknowledges that it shall not make for itself or others (other than Buyer) Consumables that can be used with Buyer's Equipment if such Consumables comprise Unique Keying or other Buyer specific Consumable design requirements unless otherwise agreed by authorized personnel of Buyer. This Consumables exclusivity serves to protect the intellectual property rights of the parties in their respective territories.
- B6.4.3 Buyer's Responsibility. Concerning the Unique Keying, Buyer specific Consumable design requirements and/or marketing activities conducted outside the Territory (if XC is the Buyer) or in the Territory (if FX is the Buyer) defined in 2006TA, any regulatory or legal claims, actions, demands, legal proceeding, liabilities, damages, losses, and/or judgments relating to the use of the specified unique keying feature in Consumables shall be deemed to result from a "defect" within the meaning of D8(e) of the 2006TA, and Buyer shall be responsible for indemnification pursuant to the terms of such section D8(e) for such defect.

**B7. Exclusive Tooling**

**B7.1 Title**

All right, title and interest in and to Exclusive Tooling specified in a PSA-D, PSA-P, or any other signed agreements between Seller and Buyer shall be vested in Buyer from the commencement of the fabrication of Exclusive Tooling. Buyer bears the cost of Exclusive Tooling unless otherwise agreed. Seller holds Exclusive Tooling as bailee and shall not substitute any property for Exclusive Tooling or reproduce Exclusive Tooling except as expressly permitted in writing by Buyer. Seller shall make entries in its books showing that Exclusive Tooling is held for the account of Buyer and shall furnish to Buyer on demand a true and complete inventory of Exclusive Tooling held by Seller for any period of time requested by Buyer. Seller shall use such Exclusive Tooling exclusively for filling Buyer's orders and return Exclusive Tooling to Buyer immediately upon demand. If Buyer does not make such request within two (2) years after Seller discontinues manufacturing Production Units, Seller, having given Buyer advance notice, may deliver all such tooling to Buyer, or dispose of same, at Seller's option.

**B7.2 Responsibilities**

While Exclusive Tooling is in Seller's custody or control, Seller shall be responsible for:

- (a) maintaining tooling fabrication and qualification schedule as agreed between the parties;
- (b) informing Buyer of the anticipated life expectancy of the tooling;

- (c) using the Exclusive Tooling as intended and in a manner reasonably expected to provide the expected life expectancy of Exclusive Tooling for the benefit of Buyer;
- (d) visibly marking Exclusive Tooling to indicate Buyer ownership in a conspicuous manner;
- (e) maintaining Exclusive Tooling in good operating order, repair and condition;
- (f) compensating any loss or damage to Exclusive Tooling except for ordinary wear and tear; and
- (g) providing commercially reasonable warranty for the tooling in accordance with Buyer requirements.

**B7.3** Seller agrees not to use nor make available to others any parts made from tooling owned by Buyer, or portions of the Production Units for which Buyer paid the development costs, or any features which Buyer and Seller agree are to be used exclusively on Production Units without obtaining the prior written permission of Buyer.

**B7.4** Notwithstanding the provisions of this section B7.1, Buyer and Seller may agree to share the cost of Exclusive Tooling listed in an Appendix of the applicable PSA-D. Seller may use such cost-shared tooling for the production of products other than the Production Units in applicable PSA-D upon providing a notice to XC.

**B7.5** Seller shall inform Buyer of Exclusive Tooling's actual costs within three (3) months after the start of mass production units' production. Alternatively, the parties may agree to Exclusive Tooling cost based on estimated cost only.

**B7.6** In addition to Seller's responsibilities specified in B7.2, Buyer reserves the rights to:

- (a) inspect tooling and parts made from tooling for final approval;
- (b) request progress reports during the fabrication of the Exclusive Tooling on an as-needed basis and as otherwise is commercially reasonable; and
- (c) request Seller to assist Buyer's efforts to verify tooling assets within a reasonable time period in order to meet internal and external audit requirements of Buyer.

**B7.7** Notwithstanding the provisions set forth in section B7.1 above, the parties may agree on a new arrangement where the title of the Exclusive tooling will be vested in the Seller. In such event, the parties shall specify the details of the arrangement, including but not limited to the cost sharing and responsibilities of the parties, in applicable PSAs and/or other signed agreement.

**B8. Deliverables**

**B8.1** Seller agrees to deliver the Deliverables in accordance with the Specifications, Milestone Schedule, and Manufacturing and Quality Plan (if such Quality Plan is applicable). Prototypes and Preproduction Units shall be delivered to the mutually agreed places by a written statement listing the items delivered and shall be sent on the delivery terms Buyer specifies in its purchase order. Other Deliverables, both tangible and intangible, shall be delivered to the mutually agreed places using the mutually agreed method outlined in a written statement.

**B8.2** Buyer agrees to deliver Buyer's deliverables in accordance with the Milestone Schedule. Buyer Components shall be delivered to the mutually agreed places by a written statement listing the items delivered and shall be sent on the delivery terms agreed between the parties. Other Deliverables, both tangible and intangible, shall be delivered to the mutually agreed places using the mutually agreed method outlined in a written statement.

**B8.3** Deliverables List, if any, shall be attached as an Appendix to the applicable PSA-D.

**B8.4** Unless otherwise agreed, payment for Deliverables is not due until Deliverables have been delivered and accepted by the receiving party. The receiving party shall use commercially reasonable efforts to determine acceptance or rejection of Deliverables as soon as practicable.

**B9. Sales and Purchase of Prototypes and Preproduction Units**

**B9.1 Orders for Prototypes and Preproduction Units**

According to Buyer's purchase order, Seller shall deliver Prototypes and Preproduction Units to Buyer. Both parties shall mutually agree on lead time of the Prototypes and Preproduction Units, but Buyer shall only be committed to purchase those quantities set forth on purchase orders issued by Buyer or any other written agreement between the parties.

**B9.2 Buyer's acceptance procedure**

With regard to delivery of the Prototypes and Preproduction Units, Buyer's acceptance procedure shall be applied as specified in the relevant PSA-D in accordance with this section B9.2 and applicable Exhibit to the MPA. Both parties acknowledge that acceptance procedure may vary according to product type. Any program unique acceptance procedure shall be specified in each applicable PSA-D.

**B9.3 Pricing and Delivery schedule**

Pricing of Prototypes and Preproduction Units is set forth in the Appendix of the applicable PSA-D. Buyer and Seller acknowledge that the cost related to Buyer Components shall not be included in the prices of Prototypes and Preproduction Units. The cost related to Buyer Components for Preproduction Units is separately stated in the Appendix of the applicable PSA-D. The delivery schedule is set forth in the Milestone Schedule. Both parties shall mutually agree on lead-time of the Prototypes and Preproduction Units, but Buyer shall only be committed to purchase those quantities set forth on purchase orders issued by Buyer.

**B9.4 Non-cancelability and change in order quantity**

With Seller's consent, Buyer may change the quantity of Prototypes that Buyer has ordered from Seller. In such case, Buyer shall pay all actual and reasonable costs Seller incurred due to the quantity change and which could not be avoided or reduced, including scrap fees, modification costs, parts costs and storage fees where applicable. However, should Buyer change the quantity of Prototypes it orders, Seller must use reasonable efforts to mitigate its damage.

With regard to Preproduction Units, Buyer's purchase orders for Preproduction Units shall be binding and non-cancelable. Both parties agree that such purchase orders shall have no flexibility in quantity and any change of delivery date is not allowed.

**B9.5 Delivery of Buyer Components**

If Seller cannot satisfy purchase orders from Buyer due to quality or delivery problems arising from Buyer Components, Seller shall not be responsible for such supply problem. If necessary, Buyer and Seller shall discuss and determine Seller's shipment of Prototypes and Preproduction Units without integrating Buyer Components to Buyer. In case of configuration change by such Seller's shipment of Prototypes and Preproduction Units without the Buyer Components, Buyer and Seller may discuss and determine to change ship-to location to an alternate location that Buyer specifies with reasonable lead-time mutually agreed, so that Buyer may have the integration done in a different location.



**B9.6 Terms and conditions to be applied to Purchase Orders issued for Prototypes and Preproduction Units prior to executing a PSA-D**

- B9.6.1 Should purchase orders be issued for Prototypes or Preproduction Units prior to executing the applicable PSA-D, or a PSA-P if a program does not execute a PSA-D, the applicable terms and conditions of Part A and Part B of MPA shall govern and apply to such Purchase Orders. Once the applicable PSA-D or PSA-P is executed, the PSA-D or PSA-P shall supersede Purchase Orders in all respects
- B9.6.2 Purchase Order Prices. Seller shall sell to Buyer the goods or services shown on a purchase order at the prices specified. Such prices are firm for the delivery period shown and are exclusive of taxes, freight and insurance. If charges for taxes, freight and insurance are applicable, they shall be separately stated on Seller's invoice, except otherwise agreed by the parties.
- B9.6.3 Packaging. Unless specified on the purchase order, no additional charge shall be made by Seller for packaging, marking, or storage. Unless otherwise agreed by the parties, all goods shall be packaged, marked, and otherwise prepared in accordance with good commercial practices, mutually agreed specifications, or applicable government regulations required for Prototypes and Preproduction Units. Seller shall be responsible for any loss or damage due to its failure to properly package, or pack the goods.
- B9.6.4 Contents of Purchase Orders issued pursuant to this section B9.6. Section A3.3.1 provides a list of information to be included in relevant purchase orders.

**B10. Payment Terms**

**B10.1 PAS/NRE**

- B10.1.1 In the event that the parties agreed that Buyer shall pay to Seller PAS/NRE, or similar expenditures for development work for a program and in the event such PAS/NRE, or other expenditures are covered by a PSA-D, such PAS/NRE shall be payable as specified in B10.1.4 below or as set forth in the applicable Exhibit and/or PSA-D. If a program does not execute a PSA-D, PAS/NRE shall be specified in the relevant PSA-P.
- B10.1.2 PAS/NRE shall be listed as an Appendix to the applicable PSA-D, PSA-P, or DIA for XC I/B, and DCA. Any revision thereof, agreed upon in writing by authorized representatives of each party, shall be added to the list of PAS/NRE and incorporated into the applicable PSA-D by reference and made an integral part thereof.
- B10.1.3 Notwithstanding section B10.1.1 and B10.1.2 above, the PAS/NRE incurred when XC is the Seller shall be governed by the applicable DIA for XC O/B and SOD unless the situations change and the parties decide to enter into a PSA-D for a specific program in the future.
- B10.1.4 All payments of PAS/NRE shall be made by Buyer in accordance with mutually agreed method and made in Seller's currency on the 3<sup>rd</sup> working day of the second month after both the receipt of the correct invoice and debit note.
- B10.1.5 Seller shall be fully responsible, and Buyer have no liability whatsoever, for any costs or other PAS/NRE incurred by Seller in performance of its obligations hereunder which are not expressly set forth in the attachment to the applicable PSA-D or SOD.
- B10.1.6 In the event the parties agree that Buyer shall pay to Seller PAS/NRE, or similar expenditures for development work for activities which a program has not initiated, such as pay-study, the procedure stated in B10.1.2 and B10.1.3 are not applicable. The parties shall agree to apply the applicable terms of this MPA, unless otherwise agreed in writing between the parties. The agreed procedure of such PAS/NRE as of the Effective Date for XC Inbound MFP and Production Products are specified in Exhibit I-7 of the MPA.

**B10.2 Invoice and Payment for Prototypes and Preproduction Units**

Seller shall submit an invoice to Buyer for Prototypes and/or Preproduction Units each time Seller delivers Prototypes and/or Preproduction Units to the designated Buyer carrier. All payments for the sale and purchase of Prototypes and Preproduction Units shall be made in Seller's Currency on the 3<sup>rd</sup> working day of the third month after both the receipt of the correct invoice and title transfer of Prototypes and Preproduction Units. Such correct invoice shall be issued upon delivery of the Prototypes and Preproduction Units.

**B11. Manufacturing and Quality Plan**

The parties agree to reach agreement on a Manufacturing and Quality Plan prior to the first build of Preproduction Units and to begin implementing such Manufacturing and Quality Plan beginning with the manufacture of Preproduction Units. Unless otherwise agreed between the parties, the Manufacturing and Quality Plan shall be attached as an appendix to PSA-P.

**B12. Warranty for Preproduction Units**

**B12.1** Seller represents and warrants that it shall provide sufficient qualified personnel to perform Seller's obligations hereunder and shall perform all development in a competent and professional manner, in accordance with industry practices and standards generally applicable, and that it has the right and authority to grant the rights and licenses set forth in this MPA.

**B12.2** Seller further represents and warrants that the Preproduction Units shall substantially conform to the Specifications and the then-current Manufacturing and Quality Plan.

**B12.3** Seller further warrants that title to the Preproduction Units, when delivered to Buyer, is good, that transfer is lawful, and that the Preproduction Units shall be delivered free from any security interest or encumbrance.

**B12.4** Detailed warranty terms for marketing Preproduction Units shall be specified in the applicable Exhibits I, II or III unless otherwise modified in the applicable PSA-D. If a program does not execute PSA-D, then the terms shall be as specified in the applicable Exhibits I, II, or III unless otherwise modified in the applicable PSA-P.

**B12.5 DISCLAIMER**

THE REPRESENTATIONS AND WARRANTIES STATED IN THIS PART B OF THE MPA AND IN PSAs THAT INCORPORATE THIS PART B ARE EFFECTIVE ONLY WITH RESPECT TO WORK AND PRODUCTS COVERED BY THIS PART B AND APPLICABLE PSAs AND ARE EXCLUSIVE IN LIEU OF ALL OTHER WARRANTIES, AND EACH PARTY HEREBY EXPRESSLY DISCLAIMS ALL OTHER REPRESENTATIONS AND WARRANTIES RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

**B13. Licensed Software**

**B13.1** The provisions of C15 of the MPA are incorporated herein except that the provisions of C15.9.1(a) and C15.10 shall not apply to Prototypes and Preproduction Units, unless otherwise agreed under section B12.4 above.

**B13.2** In the event the Buyer provides Buyer-Provided Software, as defined in section C15.1.3 of the MPA, to the Seller, the Seller shall specify such Buyer-Provided Software under Buyer Components in an applicable appendix attached to the relevant PSA-D.

**B14. Terms and Termination of a PSA-D**

**B14.1 Terms**

PSA-D shall be effective as of the effective date set forth in each PSA-D and shall continue in full force and effect until all of the following conditions are satisfied;

- (a) the development work thereof has been completed, and
- (b) Prototypes and/or SimB1-ns have been received and accepted by Buyer, and
- (c) applicable PAS/NRE have been paid from Buyer to Seller in accordance with the terms of such PSA-D, or

**B14.2 Termination for convenience**

Either party may, subject to prior consultation with the other party, terminate each PSA-D for convenience by providing the other party with ninety (90) days prior written notice of termination.

**B14.3 Termination for cause**

Either party may terminate PSA-D by notifying the other party in writing, if any of the following conditions occurs: (i) if the other party materially breaches PSA-D and such breach is not cured within thirty (30) days after written notice of breach by the terminating party; provided, however, that this provision shall not apply if such material breach is curable and commercially reasonable efforts to promptly cure such material breach are in good faith commenced within thirty (30) days of delivery of such written notice; (ii) after thirty (30) days if a petition for relief under applicable bankruptcy regulations is filed by or against the other party, or the other party makes an assignment for the benefit of creditors, or a receiver is appointed, and such petition or assignment is not dismissed, vacated or terminated within thirty (30) days; or (iii) immediately, if the other party commits a material breach that, by its nature, is not curable.

**B14.4 Mitigation of hardship**

Each party shall be obliged to make commercially reasonable efforts to mitigate any hardship and/or adverse effects thereof, which the termination of PSA-D will cause the other party.

**B14.5 Effects of termination**

**B14.5.1 Buyer's obligation.**

In the event Buyer terminates PSA-D in accordance with section B14.2 or Seller terminates PSA-D in accordance with section B14.3, Buyer's maximum obligation to Seller shall be to pay and/or refund to Seller for the services completed as of the date of notice of termination, Prototypes and/or SimB1-ns delivered. In addition, Buyer shall be responsible for reimbursing Seller for actual, reasonable expenses incurred by Seller which could not be avoided or reduced, including reasonable winding-up expenses, work in process material to support Buyer's open purchase orders prior to the date of actual termination, provided that Seller shall provide to Buyer such evidence of reimbursable expenses as Seller requires. For clarification, Seller's obligation to minimize actual and reasonable expenses by Seller commences as of the date Seller receives the notice of termination.

**B14.5.2 Seller's obligation.**

In the event Seller terminates PSA-D in accordance with B14.2 or Buyer terminates PSA-D in accordance with section B14.3, Buyer, in its sole discretion, shall have the following options, which are Seller's maximum obligation to Buyer:

- (a) In addition to the rights conferred to Buyer under the 2006TA, Buyer may continue the development of Product planned under terminated PSA-D at its own discretion and bearing development cost and, Seller hereby grants to Buyer an irrevocable, fully paid-up license and design rights as necessary to continue the development of the Product, as applicable to existing deliverables to Buyer which Seller has developed and created under terminated PSA-D by the date of termination. Seller shall also provide, at the request of Buyer, existing documentation which are relevant to enable Buyer to continue the development of the Products into Production Units to the extent commercially reasonable. Should such license grant described above be implemented for development of the Product, both parties agree to meet in a timely manner to negotiate in good faith the process of such implementation; and/or
- (b) Seller shall promptly refund all unused payments previously made by Buyer in connection with the terminated PSA-D.

**B14.6 Return of related materials**

In the event of termination or upon expiration of PSA-D for any reason, each party may retain Technical Information and other materials and information to which it is entitled under the 2006TA. Exclusive Tooling and other tangible items belonging to the other party shall promptly be delivered to the other party unless an authorized representative of the owning party agrees that such items shall be retained by the other party or destroyed. Except as provided in the 2006TA or in applicable license agreements, copyrightable items, including derivative works, shall be used and controlled in accordance with the copyrights of the respective parties, and in the event the possessing party does not have rights in such copyrightable items, such items shall be promptly returned to the owning party or identified to the owning party and certified as destroyed and removed from files or memory devices of the possessing party. Except as provided above, Confidential Information of the other party, including duplicates, summaries, and items incorporating confidential information of the other party, shall be promptly returned to the other party or certified as destroyed and removed from memory devices of the receiving party. For items not otherwise described above in this section B14.6, each party shall return to the other party any and all documentation, materials, work product and all copies made thereof, which were obtained by either party from the other party or which were developed by Seller as a result of the development under related PSA-D.

**Part C. Mass Production Terms and Conditions**

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**C1. Purpose and Scope of Part C of the MPA**

Purpose and Scope of Part C is set forth in sections A3.2.1 and A3.2.2 of this MPA.

**C2. Reference Documents**

The terms and conditions of 2006TA and the referenced documents listed in this section C2 and/or specified in respective Exhibits and PSA (collectively, "Reference Documents") are incorporated into the applicable PSA, unless explicitly stated otherwise. The terms of each Reference Document as of the effective date of a particular PSA will continue to apply to such PSA notwithstanding any subsequent amendment of such Reference Document unless the PSA or such amendment to the Reference Document specifically provides otherwise or the amended Reference Document specifically provides that it supersedes the prior Reference Agreement for previously executed agreements.

1. Standardized Currency Risk Sharing Methodology ("CRSM") effective as of January 1, 2000 between XC and FX;
2. Amended and Restated Vendor Managed Inventory Agreement ("VMI Agreement") effective as of December 1, 2011 as amended;
3. Agreement on Trade Terms for Multinational Transactions effective as of December 1, 2003, and Amendment to Agreement on Trade Terms for Multinational Transactions effective as of December 1, 2009, collectively "DDU Agreement" or as thereafter amended from time to time;
4. Letter Agreement on New "Modified DDU" Process effective as of June 1, 2004, Amendment No.1 to Letter Agreement on New "Modified DDU" Process effective as of July 1, 2007, and updated Attachment II "Roles and Responsibilities under DDU" to Letter Agreement on New "Modified DDU" Process dated February 14, 2011, collectively, "Modified DDU Letter Agreement" or as thereafter amended from time to time;
5. XC/FX Remanufacturing and Conversion Compensation Agreement ("RCCA") effective as of November 30, 2009 as amended;
6. Parts and Consumables Pricing Agreement ("P&CPA") dated effective as of February 28, 2007 as amended;
7. Burns/Yamamoto December 19, 2006 Transfer Pricing Principles Document;
8. 2012 Process Principles and Framework for Setting Transfer Prices ("TP Framework") effective as of May 1, 2012;
9. Corporate Warranty Agreement ("Warranty Agreement") effective as of September 1, 2011, as amended from time to time;
10. Letter Agreement on De-featured CRUM Purchasing for Xerox Phaser effective as of February 25, 2004;
11. Software License Fee Payment Agreement ("SLF Payment Agreement") with effective date of April 1, 2009, as amended;
12. Letter agreement on the supply/demand process for Spare Parts ("Spare Parts Letter Agreement") as of March 23, 2010; and
13. Electronic Industry Code of Conduct Agreement as of December 1, 2008 as amended.

**C3. Exclusive Features**

Terms and conditions relating to Exclusive Features are set forth in section B6 of this MPA.

**C4. Pricing and Payment Terms**

**C4.1 Pricing**

The prices for Production Units shall be specified in each PSA pursuant to provisions of Exhibits I-III of this MPA. Pricing for Production Units may be adjusted after the execution of the applicable PSA as specified in the applicable Exhibit and the PSA, by mutual written agreement of the parties, or in accordance with the applicable Reference Documents.

**C4.2 Payment Terms**

Buyer shall pay for Acquired Products on the 3<sup>rd</sup> working day of the third month after both Buyer's receipt of the correct invoice and after title to the applicable Acquired Products has transferred except for the following Acquired Products that;

- (a) the VMI Agreement governs and applies to;
- (b) the relevant Exhibit of this MPA or the relevant PSA specify different payment terms; or
- (c) authorized executives of the parties otherwise agree in writing.

Seller shall send the invoice to Buyer only after transfer of title.

Either party when discovering an invoice discrepancy shall notify the other party immediately in writing to initiate investigation of the invoice. Buyer and Seller shall negotiate in good faith to resolve the discrepancy. Such invoices shall not be deemed past due until such discrepancy has been resolved. In the event that a discrepancy in payment or invoicing is discovered after payment has been made, Seller, after consultation with Buyer, shall adjust and submit to Buyer a corrected invoice or issue a credit or debit, as the situation requires.

**C4.3 DDU expenses**

DDU expenses, if applicable, will be allocated between the parties in accordance with the then applicable DDU Agreement and Modified DDU Agreement.

**C4.4 Currency Risk Sharing**

C4.4.1 Unless a PSA covering the purchase and sale of Production Units specifies a fixed price in a specified currency for certain Production Units or when CRSM is excluded pursuant to a PSA or by an applicable corporate agreement, the parties shall share currency risk using the then current currency sharing formula agreed upon between the parties.

C4.4.2 The parties acknowledge that the application of CRSM will incorporate and be governed by the final corporate agreement concerning transactions to which CRSM shall apply. For transactions to which CRSM applies, the purchase price to Buyer shall be calculated using the formula specified in C4.4.3 below. For transactions to which CRSM does not apply, the purchase price to the Buyer shall be in the currency shown in the appendix of the applicable PSA.

C4.4.3 As of the Effective Date of this MPA, the following formula is the CRSM formula:

$$\{ [(Base Rate + Market rate)/2] / Base Rate \} = Rate \text{ in the applicable Base Currency}$$

C4.4.4 **Base Exchange Rate.** Where applicable, the parties shall apply the Base Exchange Rate ("BER" or "Base Rate", which is called the "Baseline Rate" in CRSM) for Production Units in accordance with section 1.A.3 of CRSM. The BER for Equipment, Options, and Prime Consumables as defined in TP Framework, or other Consumables which are mutually agreed in individual PSA to be subject to CRSM shall be stated in an appendix of each PSA. For Spare Parts and certain Consumables, corporate annual Base Rate defined in section 1.A.3 of CRSM shall apply.



- C4.4.5 In accordance with section 1.A.4 of CRSM, currency risk sharing shall be based on invoice creation date.
- C4.4.6 It is the parties' expectation that the BER shall remain unchanged for the life of Equipment, Options, and Prime Consumables as defined in TP Framework, or other Consumables which are mutually agreed in individual PSA to be subject to CRSM, except that, for Spare Parts and certain Consumables, the corporate annual Base Rate defined in section 1.A.3 of CRSM shall apply. In the event that the parties experience a large currency fluctuation as provided in section 2.C.1 of CRSM, then the parties shall take necessary measures stipulated in 2.C.1 through 2.C.2 of CRSM.

**C5. Trade Terms**

- C5.1 Production Units to which the VMI program applies:** The trade terms shall be applied in accordance with the VMI Agreement.
- C5.2 Production Units to which the VMI program does not apply:** The trade terms shall be specified in the relevant Exhibit of this MPA and such terms shall apply to all PSAs incorporating the said Exhibit.

**C6. Supply and Demand Rules**

- C6.1 Usual terms for ordering and delivery.** Matters related to ordering and delivery of Production Units such as lead time including one for ramp up period and flexibility shall be specified in the relevant Exhibit of this MPA and such terms shall apply to all PSAs incorporating the said Exhibit unless the PSA specifically provides otherwise.

**C7. End of Life/Discontinuance**

**C7.1 Equipment and Options**

- C7.1.1 Discontinuance of Equipment Subject to VMI Program. Relevant sections of the VMI Agreement, such as without limitation section 3.12, shall govern discontinuance/end of life process and responsibilities of the parties.
- C7.1.2 Discontinuance of Non-VMI Equipment. The terms and conditions of either party wishing to discontinue purchasing or sale of Equipment, shall be specified in the relevant Exhibit of this MPA and such terms shall apply to all PSAs incorporating the said Exhibit unless the relevant PSA specifically provides otherwise.
- C7.1.3 Discontinuance of Options. Discontinuance of purchasing or sales of Options shall usually be subject to the terms and conditions for discontinuance of relevant Equipment. However, End-of-life provisions for Options may be negotiated separately if Buyer requests Seller to continue supplying such Options after the discontinuance of the Equipment.

**C7.2 Spare Parts and Consumables**

When the production or purchasing of the Equipment has terminated or permanently ceased, Seller shall, unless the PSA specifically provides otherwise, remain responsible for supply of Spare Parts and Consumables for seven (7) years from the date of whichever applies of the following:

- (a) termination of production of Equipment; or
- (b) stop order taking (“SOT”) date of Equipment if the Equipment is made by a third party.

In the event that Buyer requires an end of life purchase for Spare Parts and Consumables for use after such seven-year period, Buyer is responsible to make that purchase during such seven (7) year period and to keep the inventory. If Seller should encounter or anticipate difficulty in supplying any Spare Parts or Consumables for the aforementioned seven (7) year period of supply, Seller will promptly notify Buyer and the parties will work in good faith to find an acceptable solution. If Buyer requests in writing an extension to the Stop Order Taking date for Spare Parts or Consumables, the Parties agree to discuss and negotiate the date, however, Seller reserves the right to determine the actual SOT date.

The parties recognize that in instances where Equipment comprises individual modules manufactured by third parties such as, without limitation, certain DFE’s, the Seller may anticipate, based upon its agreement with such independent supplier, that the aforementioned seven (7) year period may not be available for such individual modules and related Options, Consumables, and Spare Parts. In such instances, Seller will inform Buyer, and the PSA will incorporate end-of-life terms based upon the terms available from the independent supplier. Seller agrees to use good faith efforts to negotiate end-of-life terms that provide the aforementioned seven (7) year period whenever such terms are reasonably possible.

**C7.3 Delay of Follow-on Product**

In the event the delivery schedule of a planned follow-on product of the current Production Units being developed by Seller is delayed, Buyer and Seller shall negotiate in good faith to find an acceptable solution including, but not limited to, adjustment of the end of life date for the Production Units.

**C7.4 Request for Bidding Support**

Even after the discontinuance/end of life notice, in the event that Buyer needs Production Units to fulfill a customer request, demand or an ability to make and fulfill customer bids, Seller will make commercially reasonable efforts to supply the applicable Production Units to Buyer.

**C8. Specification and Change**

**C8.1 Conformance to Specifications.** All Production Units supplied to Buyer by Seller shall conform to the Specifications attached to each PSA.

**C8.2 Change in Specifications.** If either party requests the other for a change in the Specification, such matters including engineering fees, and other design and development cost factors shall be determined upon mutual discussion and written agreement of the parties. The Parties may optionally include within any PSA (including as an Exhibit) a specific process for providing notice and approval for design changes (“Change Control Procedures”).

**C8.3 Impact Upon Costs.** If any Buyer or Seller request for a change in the Specification as described in section C8.2 above results in an increase in the length of time required for the manufacture or delivery of those items to Buyer or increase or decrease in the cost of the applicable Production Units, then:

- C8.3.1 the parties shall mutually agree (i) to an extension of time of delivery without the Seller incurring any liability for such extension; (ii) any price adjustments for items equal to the cost of the changes; or (iii) on such matters including engineering fees and other cost factors, or

C8.3.2 If Seller is requesting a change in Specifications, Buyer may elect not to accept the proposed change in the Specification, and if Seller cannot provide the Production Units in accordance with the agreed-upon Specification for any cause not attributable to Buyer, then Buyer may either accept the proposed change in Specification or cancel orders of previously placed orders for Production Units that cannot conform to agreed-upon Specifications; provided, however, that Buyer shall not unreasonably withhold its acceptance of such changes if such change in the Specification shall not substantially negatively affect the time, delivery or performance of the applicable Production Units. Buyer shall be under no obligations to accept changes in Specifications that materially adversely affect system performance or that increase the agreed-upon transfer price for the Production Units. However, if the change in Specifications requested by Seller is unavoidable and not attributable to actions or inactions by Seller, the parties shall, without obligation to accept material changes or increases in cost, discuss fair and appropriate countermeasures to such change in good faith.

**C8.4** **Changed Safety Standards.** Should any of the Safety Standards (as defined in section A7 (Compliance with Laws) of this MPA) be changed or modified for any reason, or should new Safety Standards become applicable, Buyer shall furnish Seller with information regarding the change promptly upon learning of such information. If a change of Safety Standard comes to Seller's knowledge and Seller has a reasonable doubt that Buyer does not know of such change, Seller shall voluntarily notify Buyer of such information as far as Seller knows in relation to current products or currently planned products. For avoidance of doubt, Seller is not obligated to inquire into Safety Standard in Buyer's marketing territory. Seller shall modify Production Units (except Buyer Components) so as to satisfy such new Safety Standards and, unless otherwise agreed in writing, obtain clearance, passage, or listing by a competent organization or authority. Unless otherwise agreed in writing, Seller shall be responsible for the costs of such modifications arising from the Safety Standard change except that if Buyer's delay in notifying Seller resulted in Seller not having a commercially reasonable period to deal with such changed Safety Standard, then Buyer shall be responsible for the costs of such modifications until Seller has a commercially reasonable period to deal with such Safety Standard change. Provided, however, for Production Units to be marketed primarily only in Low Penetration Markets (as defined below), unless otherwise agreed, Buyer shall generally be responsible for the costs of such modifications. For Low Penetration Markets, the costs of such modifications shall be negotiated in good faith between the parties.

Seller shall not be liable for any damage or claim arising from violations of the changed or modified Safety Standards or the application of new Safety Standards unless Seller has already known of such changed, modified or new Safety Standards (for the avoidance of doubt, Seller shall not be obligated to inquire into such new Safety Standards by itself) or receives from Buyer or a third party information identifying the changed or modified or new Safety Standards beforehand within a reasonable preparation period, in which case Seller shall be liable for violations that could have been avoided.

Low Penetration Markets shall be described in each PSA for the purchase and sale of Production Units. If such a PSA fails to describe the applicable Low Penetration Markets, then the parties agree that no Low Penetration Markets are applicable to the PSA.

**C8.5** **Meeting Safety Standards.** No Production Units shall be delivered by Seller until they have passed the Safety Standards, and have been listed by a competent organization or authority. However, if Buyer so directs or gives its consent in writing, Seller shall be entitled to ship any portion of Production Units, without incurring any liability on the part of Seller, before such clearance or listing is final.

**C8.6** **Buyer Internal Safety Standard.** In addition to the above, Seller shall be responsible for compliance of the Specification of Production Units and relevant requirements included in the currently applicable internal safety standards of Buyer identified in this subsection C8.6. The common internal safety standard for XC and FX is identified as C11-EHS-700 Series. Buyer's internal safety standard shall be "currently applicable" if Buyer has notified Seller of any proposed change from Buyer's previously mutually accepted internal safety standard with a reasonable preparation period and Seller accepts the proposed change.

- C8.7**      **Sales by Seller of Similar Products.** In the event that the Safety Standards applicable in the countries where Seller sells product substantially similar to Acquired Products should be changed or modified for any reason, or new Safety Standards should become applicable, Seller, without obligation, will make good faith efforts to provide information relating to such Safety Standards as reference data for Buyer.
- C8.8**      **Replacement Units.** Subject to the provisions of section C8.4 above, if Buyer requests Seller to provide fully tested field replacement units (“FRUs”) and/or engineering replacement units (“ERUs”) to modify the Production Units that are in Buyer’s or its distributors’ inventory or installed at end user customers’ sites and that were delivered before Seller delivers Production Units in compliance with new Safety Standards, Seller shall, at Buyer’s expense, provide the FRUs and/or ERUs. Buyer shall, at its own expense, implement the modification using the FRUs and/or ERUs.
- C8.9**      **Presale Upgrades.** In the event that modification of a Production Unit that is in inventory, transit or at VMI Hub as defined in VMI Agreement is required by a change of the Safety Standards or an enforcement of new Safety Standards, Buyer and Seller will discuss the process and expense allocation for such modification in good faith.

**C9.      Manufacturing and Quality Control**

**C9.1      Manufacturing**

The Seller is responsible for manufacturing the Production Units in accordance with a Manufacturing and Quality Plan. Unless otherwise agreed between the parties, the Manufacturing and Quality Plan shall be attached as an appendix to the PSA. The parties agree that they will not unreasonably withhold agreement to substitute existing documentation for a full Manufacturing and Quality Plan.

**C9.2      Inspection and Test Procedures**

Seller shall develop and employ inspection and test procedures designed to assure that all outgoing Production Units manufactured by Seller meet quality levels, defined as conformance with all requirements of the respective Specifications or substitute agreed upon document. The test and inspection procedures shall specify the actual steps to be taken in the testing of outgoing material from Seller’s location. Seller shall approve all outgoing Production Units manufactured by Seller in accordance with procedures mutually approved by Buyer and Seller as set forth in the Manufacturing and Quality Plan attached as an appendix to the PSA. Only Production Units that are approved shall be shipped unless Buyer specifically agrees in writing to receipt of non-conforming goods.

**C9.3      Manufacturing and Quality Plan**

- C9.3.1      For those Acquired Products in respect to which a Manufacturing and Quality Plan is attached to a PSA as an appendix, Seller shall inspect such Acquired Product before shipment according to the Manufacturing and Quality Plan.
- C9.3.2      The parties expect this Manufacturing and Quality Plan may require changes over time and may be modified by mutual agreement of the parties.
- C9.3.3      The parties agree to use reasonable efforts to reach the targets set forth in the Manufacturing and Quality Plan, but failure to reach such targets shall not constitute a breach of this MPA or an applicable PSA.

C9.3.4 All changes in Production Units that affect the form, fit, function or any performance requirement of the Specifications shall be executed in conformance with the change control procedures described in the PSA or Manufacturing and Quality Plan.

**C9.4 Buyer Incoming Inspection**

Buyer shall have the right to conduct at its expense an incoming inspection of Production Units at the destination of its choice within sixty (60) calendar days from the date of physical delivery to premises under Buyer's control in accordance with mutually agreed upon incoming inspection procedures as set forth in the Manufacturing and Quality Plan. In the event that Buyer exercises its rights to conduct an incoming inspection, Buyer shall notify Seller of the results of such inspection (acceptance or rejection) within two (2) weeks after conducting the incoming inspection. Seller will continue to ship Production Units during such inspection period unless Buyer provides Seller with a written notice requesting Seller to hold shipment. If Buyer rejects any Production Unit due to failure to meet the agreed upon inspection criteria and/or Specifications, then Seller shall provide one of the following remedies mutually agreed upon by the parties: (i) repair the rejected Production Unit at Seller's expense, or (ii) send a replacement part to Buyer by expedited delivery, if reasonably required, or (iii) issue a credit for the rejected Production Unit. Buyer further agrees to permit Seller a reasonable opportunity to verify any inspection results in question as requested.

**C9.5 Buyer Responsibility**

Buyer shall be responsible for any failures resulting from, but not limited to, storage and/or transportation of Production Units after risk of loss has transferred to Buyer, provided that Seller has complied with agreed packaging specifications. In the event that packaging Specifications are not provided for fragile and/or expensive Acquired Products, then Buyer shall be entitled to open discussions with the Seller regarding the type and requirements of packaging.

**C9.6 Manufacturing Location Change**

The manufacturing site of each Production Unit shall be specified in the Manufacturing and Quality Plan. In the event Seller desires to change the manufacture site of the Equipment, Options, and Consumables manufactured by Seller and Spare Parts specifically listed in a PSA during the term of the applicable PSA, ninety (90) days advance written notice including a detail relocation plan shall be sent to Buyer and Seller shall obtain Buyer's consent for quality control purposes. Such consent shall not be unreasonably withheld.

**C10. Remanufacturing and Domestication**

**C10.1 Remanufacturing and Conversion**

Terms and conditions for remanufacturing and/or conversion of Equipment and Options shall be governed by the RCCA, where applicable. The applicable PSA may include provisions setting forth whether remanufacturing and/or conversion is expected at the time of the execution of such PSA. The parties recognize that such expectation may change over the life of the program. Certain Equipment and Options sourced from third parties may be outside the scope of this section C10.1.

**C10.2 Technical Information**

In relation to operations not covered by the RCCA, including without limitation processes to configure newly manufactured Production Units for sale, Seller shall provide, at Buyer's reasonable request, Technical Information and/or tools (software and/or hardware) that is reasonably necessary to enable Production Units to perform as set forth in the Specifications and to understand, program, reset, and/or monitor digital metering components of Production Units, including without limitation, meter reset tools and CRUM formatting, programs and settings. Hardware tools, if any, shall be provided at actual direct cost of the hardware plus a negotiated

percentage covering handling charge applicable to each hardware tool. Technical Information and software, including without limitation diagnostic software that are in Seller's possession, shall be provided without charge in accordance with the Gatekeeper process outlined in 2006TA. The parties shall agree in writing on the intended use of such Technical Information and/or tools. Buyer shall use such Technical Information and/or tools only for the intended purpose agreed between the parties.

**C10.3 Domestication**

At the option of Buyer, Buyer may manufacture or have made Production Units or portions thereof in accordance with the terms of local law, section D2 (Manufacturing License Fee) and E11 of the 2006TA, and where applicable, P&CPA, TP Framework, and the relevant PSA as such agreements are amended from time to time. The prices and SDF, as defined in section 2.15 of the TP Framework, of Equipment, Options, and Prime Negotiation PAC Package, as defined in P&CPA, shall be negotiated between the parties in accordance with the terms specified in the TP Framework. The terms and conditions for PAC Package and Type 1 and Type 2 Parts, as respectively defined in P&CPA, including the prices of PAC other than Prime Negotiation PAC Package, shall primarily be governed by P&CPA unless otherwise governed by the TP Framework. At Buyer's request, Seller shall make available, at prices and terms in accordance with the P&CPA, materials, parts and tools reasonably requested by Buyer to support domestication. In addition, Seller will provide reasonable technical assistance (including without limitation copies of relevant specifications and prompt disclosure of the information and tools described in section C10.2 above) and shall provide technical support in accordance with the terms specified in section 5.4 of Part III and IV of P&CPA, as applicable. The applicable PSA may include provisions setting forth whether domestication of Prime Negotiation PAC Package is expected at the time of the execution of such PSA. The parties recognize that such expectation may change over the life of the program. Certain Equipment and Options sourced from third parties may be outside the scope of this section C10.3.

**C10.4 Use of Recycled Parts**

If Seller wishes to use recycled or remanufactured parts for Acquired Products, Acquired Product shall comply with Specifications and Seller shall notify Buyer of its plan to use recycled parts. Production Units using recycled parts will be covered by the Warranty Agreement. Buyer will not unreasonably withhold its consent for Seller's plan to use recycled parts for the Acquired Product. If Buyer needs detailed information about Seller's use of recycled parts, Seller shall provide such information upon Buyer's reasonable request.

**C11. Servicing and Documentation**

- C11.1** Buyer shall, at its own responsibility and expense, provide after-sales service and maintenance of Equipment and Options for its customers. Any remedies under C14 of this MPA shall be provided only to Buyer.
- C11.2** **Buyer Responsibility for Spare Parts.** Buyer is responsible for maintaining at its own cost and expense an adequate stock of Spare Parts. Pursuant to purchase orders placed with Seller, Seller shall supply Buyer with Spare Parts at prices listed in an appendix of the PSA.
- C11.3** Unless the P&CPA applies to the applicable Spare Parts, the prices of Spare Parts shall stay constant during the term of the applicable PSA unless and until Seller notifies Buyer at least six (6) months in advance of any revision of the prices due to commercially reasonable and justifiable reason(s) on the part of Seller and for as long as Seller has agreed pursuant to EOL terms specified in C7 of this MPA to supply the Spare Parts.

**C11.4 Expected Service Documentation**

For each PSA, Seller shall supply Buyer, in accordance with the Gatekeeper process where applicable, with Documentation requested by Buyer to prepare and publish service documents and manuals for Production Units. The following are expected to be requested and provided for most PSA's:

- (a) Spare Parts Pricing lists
- (b) Parts location diagrams
- (c) Block diagrams with signal flow
- (d) Exploded mechanical views
- (e) Planned maintenance procedures and schedule
- (f) Installation and checkout
- (g) Diagnostic and verification procedures
- (h) Calibration information and schematics
- (i) Any other information required for training service personnel agreed between the parties.

**C11.5 End User Documentation**

Buyer may request materials for use by Buyer to prepare Documentation, brochures and other product literature, including, but not limited to, operator manuals, maintenance and parts manuals, catalogs, specification sheets, and other data necessary or appropriate for the sale and subsequent support of Production Units or to satisfy legal or end user requirements. Upon Buyer's request, Seller shall provide to Buyer, on an ongoing basis during the term of a PSA, at Seller's expense, such existing materials in camera ready electronic file, electronic source file, and hard copy form in the English language and any other language applicable outside the Territory (for XC) and inside the Territory (for FX) provided that they are in Seller's possession and available in English and/or such other languages. At a minimum, such documentation shall be those documents that are supplied generally by Seller to its customer service engineers and/or technical specialists for the Production Units. If the materials are written in Japanese, and translation into English or other languages is required, Seller shall provide such materials in Japanese. Unless otherwise agreed in writing, Buyer shall be responsible for translation of received materials into languages not available from Seller.

**C11.6 Service Documentation**

Buyer may reasonably request all engineering drawings and other documentation (by part number) that are necessary or appropriate to fulfill Buyer's service obligations for Production Unit. Upon Buyer request, Seller shall provide to Buyer, on an ongoing basis during the term of a PSA, at Seller's expense, such existing drawings and documentation in camera-ready electronic file and hard copy form in the English language and any other language applicable outside the Territory (for XC) and inside the Territory (for FX) provided that they are in Seller's possession and available in English and/or such other languages. If the drawings and documentation are written in Japanese and translation into English or other languages is required, Buyer shall be responsible for the translation.

**C11.7 Documentation License**

To the extent not already granted by the 2006TA and subject to any obligations imposed on Seller by its third party licensors, Seller grants to Buyer a royalty-free, non-exclusive, multi-site right and license to use, reproduce (in any medium including firmware), prepare derivative works of, display, perform and distribute Documentation outside the Territory (for XC) and inside the Territory (for FX) with a right to sublicense the same to its Subsidiaries, and may grant its contractors and authorized distribution channels the same rights solely in connection with the

applicable Production Units. The parties agree that any translation or other localization of the Documentation permitted hereunder constitute a derivative work that does not reflect or contain significant added value and will be owned by Seller pursuant to Part B of the 2006TA.

**C12. Exclusive Tooling**

Terms and conditions relating to Exclusive Tooling are set forth in section B7 of this MPA.

**C13. Intentionally left blank**

**C14. Warranty**

**C14.1 Incorporation of Warranty Agreement**

The Warranty Agreement and its successors shall be deemed incorporated herein. Except as provided in section C15.9 and C15.10 below relating to Licensed Software Warranties, all terms and conditions, including but not limited to Normal Warranty and Systemic Defect specified in the Warranty Agreement shall apply to all PSAs under this Part C of the MPA.

**C14.2 Eligible Populations of Less than 1000 units of Equipment**

Subject to section III 2.2.(b) of Warranty Agreement, when the total production of the Equipment is less than 1000 units over the four month period that determines an Eligible Population, the terms and conditions under this section C14.2 shall apply unless otherwise agreed:

- 1) In the event that the number of Equipment that is based on a particular Equipment platform produced over a four consecutive month period is between 401 units and 999 units and delivered under applicable PSA(s), the total number of the units produced over such four consecutive month period shall be deemed as the Eligible Population. The number of occurrences of defects required under section III 2.2(a)(iii) of Warranty Agreement shall be five (5) percent of such Eligible Population.
- 2) In the event that the number of Equipment based on a particular Equipment platform produced over a four consecutive month period is 400 units or less and delivered under applicable PSA, the number of occurrences of defects required under section III 2.2(a)(iii) of Warranty Agreement shall be 20, and the Systemic Defect Warranty remedies shall become applicable upon the occurrence of the twentieth (20<sup>th</sup>) Systemic Defect failure applicable to the Equipment produced over a four consecutive month period.
- 3) In the event that the total number of the Equipment produced over a four consequence month period is less than 20 and the identical failure occurs on almost all (including all) of such produced Equipment, both parties may discuss whether the remedies are applied or not on a case by case basis.

If the parties decide that the provisions of this section C14.2 do not apply, then the relevant PSA shall specify the terms and conditions, if any, which will specifically apply to such relevant PSA. In the event that the applicable PSA does not specify the terms and conditions, then this section C14.2 shall apply.

For clarification, the parties shall determine and specify in the applicable PSA(s) whether the Equipment covered under multiple PSA's comprise variations upon a common platform such that units under multiple PSA's shall be aggregated when determining Eligible Population.



**C15. Licensed Software**

**C15.1 Definition**

- C15.1.1 **“Licensed Software”** shall collectively mean Embedded Software and Distribution Software. **“Embedded Software”** shall mean any and all controller software, application software, operating software, and firmware embedded inside the Equipment, Options, Spares Parts, and/or Consumables, whether or not specifically designated in the appendix of the applicable PSA. **“Distribution Software”** shall mean any driver software, controller software, operating system software, application software which do not comprise Embedded Software, and/or any derivative works, enhancements, improvements, additions, maintenance modifications, updates, upgrades, or other versions of Embedded Software, which will be supplied separately from Embedded Software. Licensed Software does not include any operating software, application software or firmware delivered with or within the Buyer Components (whether on a standalone or embedded basis) and standalone application software in respect to which the parties separately enter into a license agreement, including but not limited to Free Flow<sup>®</sup>, DocuShare<sup>®</sup> and DocuWorks<sup>®</sup>.
- C15.1.2 **“Program Specific License Agreement”** or **“PSLA”** means a program specific license agreement, if any, which may be executed prior to the execution of the PSA to identify the Licensed Software in conjunction with Acquired Product to be licensed pursuant to the terms of this section C15 and to provide any additional or different license terms for the Licensed Software than the terms that are specified in this section C15. Upon execution of the PSA, a PSLA shall be attached to the PSA as an appendix and shall become an integral part thereof. The Parties agree that in the event of an actual conflict between the terms and conditions in a PSLA and a PSA (i.e., terms which are contained in the PSA but are not contained in the PSLA do not constitute a conflict) the terms and conditions of the last PSLA or PSA to be executed will control provided that such last PSLA or PSA to be executed specifically refers to the prior provision intended to be superseded by the later agreement.
- C15.1.3 **“Buyer-Provided Software”** shall mean software provided by the Buyer to the Seller to add into the Licensed Software. Buyer shall provide Seller with copies of Buyer-Provided Software specified under Buyer Components in an applicable appendix attached to the relevant PSA-D or PSA-P, and Buyer shall license the Seller for the sole purpose of embedding such Buyer-Provided Software into the Licensed System and system testing and technical support analysis related to such Buyer-Provided Software. In case the Buyer-Provided Software contains “Third Party Software”, as defined in section C15.5.1 herein, the Buyer is responsible for the payment of applicable “Third Party Royalties”, also defined in section C15.5.1 below. Buyer is responsible for the cost of Buyer-Provided Software. The parties agree that during the Transfer Price negotiations, the parties will determine the effect, if any, of royalties paid by Buyer for software provided to Seller and whether such royalties shall be considered in relation to Exhibit 3 of the TP Framework. Buyer-provided software may be documented in the pricing memo and/or PSA exhibits.

**C15.2 License from Seller**

- C15.2.1 License Grant to Embedded Software. Subject to any PSA or PSLA containing additional or different license terms for specific Acquired Products, Seller grants to Buyer a non-transferable, non-exclusive, right and license outside the Territory (if XC is the Buyer) or in the Territory (if FX is the Buyer) to use, translate and localize, display and, by itself and/or through subsidiaries and authorized distribution channels, sub-license, market and distribute to end-user customers by sublicense, the Embedded Software in object code format and solely as part of the Acquired Product, unless otherwise stipulated in the relevant PSA or PSLA.

- C15.2.2 License Grant to Distribution Software. Subject to any PSLA containing additional or different license terms for a specific PSA, Seller grants to Buyer a non-transferable, non-exclusive, multi-site right and license outside the Territory (if XC is the Buyer) or in the Territory (if FX is the Buyer) to use, reproduce (in any medium including firmware), translate and display and, by itself and/or through subsidiaries and authorized distribution channels, sub-license, market and distribute to end-user customers by sublicense, the Distribution Software in object code format and solely as part of or in conjunction with the applicable unit of Acquired Product, unless otherwise stipulated in the relevant PSA or PSLA.
- C15.2.3 Buyer and Buyer Affiliates may continue to distribute Licensed Software after Equipment's End of Life subject to the conditions set forth in the applicable license grant, to conditions within the applicable PSA, and/or to the limitations upon the content and duration of Seller's software technical support as provided in section C15.8 below or other applicable agreement.

### C15.3 Limitations of License Grant

Neither Buyer nor its authorized distributors and their respective customers shall have any right to modify, reverse engineer, disassemble or decompile any part of Licensed Software, and title to Licensed Software resides solely with Seller and its vendors or licensors. The license described in the preceding section C15.2 is subject to Buyer, in connection with its marketing and distribution of the applicable Acquired Products, entering into binding end-user agreements that: (i) shall be commercially reasonable (ii) shall adequately protect Seller's rights as licensor, and (iii) shall contain any provisions required by Seller's third party licensor(s) of Licensed Software subject to the conditions set forth in section C15.5 below. The license described in section C15.2 is also subject to reproducing for end-user customers all notices or additional terms and conditions required to be notified to the end-users that Seller provides or incorporates into any documentation, including but not limited to, the user manuals prepared in connection with its marketing and distribution of the Acquired Products, provided, however, that Buyer shall have a reasonable period of time after receipt of any such Seller-provided notices or additional terms and conditions to ensure reproduction of such notices or additional terms. The parties shall consult each other as necessary with respect to the terms of Buyer's end user licenses to ensure that Buyer's end user license conforms to conditions of the applicable license grant set forth in this section C15 and in any PSA and PSLA. With respect to those modules of such software designed to be used to diagnose hardware and/or software malfunctions ("**Diagnostic Software**") in the Acquired Products, Buyer may only sublicense those modules of Diagnostic Software (i) that the parties agree are necessary for a commercially reasonable level of service to be provided for the hardware component of the Acquired Products and (ii) to self-service end-users. The parties agree that any translation or other localization of the Licensed Software and Documentation thereof permitted hereunder constitute a derivative work that does not reflect or contain significant added value and will be owned by Seller pursuant to section B13 of the 2006 TA.

### C15.4 Seller/Buyer Software

- C15.4.1 Unless otherwise agreed in writing by authorized personnel of both parties, Buyer and Seller shall not have rights to use Licensed Software disclosed by the other for its own products or to disclose or license to third parties such Licensed Software in source or object code form except as may be provided under the terms of the 2006TA, including, without limitation, section D3 of the 2006TA.
- C15.4.2 Gatekeeper Process. The FX/XC Gatekeeper process in accordance with the 2006TA must be completed prior to disclosure of any source code.

**C15.5 Third Party Software**

- C15.5.1 With respect to Licensed Software that is to be distributed pursuant to this MPA and that is proprietary to a person other than Seller (“**Third Party Licensor**”), Seller will use commercially reasonable efforts to obtain a license for Buyer that enables Buyer to exercise the rights granted hereunder to distribute such third-party proprietary software components (“**Third Party Software**”) in the Territory (if FX is the Buyer) or outside the Territory (if XC is the Buyer) or, if Seller cannot do so, Seller will use commercially reasonable efforts to provide Buyer with a commercially reasonable alternative or use commercially reasonable efforts to assist Buyer in obtaining the appropriate license.
- C15.5.2 Buyer’s right to sublicense Third Party Software shall be exercisable only in the terms and conditions set forth in the respective original license agreement between the Seller and such Third Party Licensor.
- C15.5.3 Third Party Licensor Requirements. Upon receipt of written notice from the other party, each party shall comply with the required provisions and limitations imposed by applicable Third Party Licensor.

**C15.6 Royalty Payments and Avoidance of Double Payments to the Third Party Licensors**

- C15.6.1 Third Party Royalties. Except as provided in this subsection or as otherwise agreed in writing by authorized personnel of both parties, Seller shall pay any applicable royalties to third parties (“**Third Party Royalties**” or “**TPR**”) and such TPR paid by Seller shall be recognized as a portion of Seller’s cost of a Production Unit. The TPR may be separately identified in a price list of the relevant PSA for the applicable Third Party Software. Such Seller-paid TPR shall be paid in accordance with the terms stipulated in section C15.7 below.
- C15.6.2 TPR Payment by the Buyer. Where the Buyer has contract provisions with the Third Party Licensor to allow direct payment of royalties and similar software fees by the Buyer, the parties may agree that the Buyer is the party that will pay applicable TPR. Seller shall not unreasonably withhold its agreement to such an arrangement if Buyer’s aggregated cost can be lowered by such arrangement. It is believed that as of the Effective Date of this MPA, XC, as Buyer, has such an arrangement with Nuance, and both XC and FX, as Buyer have such an arrangement with Adobe.
- C15.6.3 Avoidance of Double Payment. During development phase of a project such as during TTM3.2 or when the transfer prices of the Production Units are negotiated, whichever is earlier, the parties shall share with each other such information as necessary in order to prevent double payment by the parties of TPR to the Third Party Licensor on the same Third Party Software applicable to a unit of Acquired Product where such double payments can be avoided pursuant to the terms of the applicable Third Party License agreement.
- C15.6.4 In the event that the Buyer pays TPR to Third Party Licensors, and where the transfer price of the applicable Production Unit is determined pursuant to the TP Framework, the parties may agree that such TPR is considered to be among the items to be removed from the SASP as stipulated in the Exhibit 3 of TP Framework, provided however that such arrangement shall be clearly specified in the relevant TP Letter. Other arrangements for reduction of the transfer price for Buyer-paid TPR may be agreed between the parties in relation to transfer prices for Acquired Product not subject to the TP Framework if and when such circumstances arise.
- C15.6.5 For programs governed by the terms of Exhibit III of the MPA, each PSLA will provide a list of such Third Party Software for which royalties are paid by either Seller or Buyer in the form of an appendix, and such appendix will specify that Seller shall pay all such royalties unless Buyer is specifically identified as the party with responsibility for payment of such royalties.

**C15.7 Royalty Reports, Payment and Audits**

- C15.7.1 TPR Reporting and Payment Process. In the event the TPR is paid by the Seller but is not included in the cost of the Production Units, the parties shall agree on the specific procedures for royalty reporting and payment in the relevant Exhibit I-III or the PSA or any other agreement duly executed between the parties.
- C15.7.2 Payment Terms and Tax. In such event as specified in section C15.7.1 above, then the payment to Seller for the TPR shall be made in accordance with the terms and conditions specified in section C4.2 entitled "Payment Terms". Any withholding tax lawfully levied by applicable tax authorities with regard to royalties paid to third parties shall be made in accordance with the terms and conditions specified in section A14.6 entitled "Responsibility for Taxes related to Royalties".
- C15.7.3 Royalty Report for Configuration Changes. Where:
- (i) third party software agreements of Seller provide for different royalty amounts for different system speed configuration; or
  - (ii) where PSAs provide that different transfer prices will be charged based upon different configurations of speed, options, or other changes, and where Buyer implements the selected configuration,
- then Buyer and Seller will agree upon procedures for Buyer to report to Seller the number and selection of the various configurations such that proper royalty amounts may be paid to third party vendors and/or proper transfer price amounts will be paid to Seller. Specific provisions related to reports for royalty computations are provided in Exhibit I of the MPA.
- C15.7.4 Royalty Report and Payment for XC's FreeFlow Print Servers (FFPS) related Royalties. The parties have agreed, as of the Effective Date, on the terms and conditions of the royalty reporting and payment for FFPS related TPR and software license fee for Licensed Software that is proprietary to XC, as stipulated in the SLF Payment Agreement as defined in section C2.11.
- C15.7.5 Audits. Not more than once per any twelve (12) month period, upon reasonable but not less than forty-five (45) days prior written notice, Seller may, at its expense and solely through an independent auditor reasonably acceptable to Buyer, audit Buyer's books and records to determine whether the prescribed report complies with the terms and conditions set forth in this section. Any such audit shall be conducted at a mutually agreed location and shall not unreasonably interfere with Buyer's business activities. Buyer's books and records that such independent auditor has access to during the audit, along with any other information necessary to verify Buyer's reports specified in the relevant Exhibit or PSA, will be considered confidential information and such independent auditor shall not disclose to Seller any information other than information relating to the computation and accuracy of Buyer's reports.

**C15.8 Software Technical Support**

Unless otherwise agreed in writing, Buyer shall provide first and second-level technical support and the Seller shall provide the third-level technical support for the Licensed Software licensed to the Buyer from the Seller as part of or in conjunction with the Acquired Product in the Territory (if FX is the Buyer) or outside the Territory (if XC is the Buyer). Buyer shall provide third level support for the Buyer Components. XC's SPAR process and FX's internal process comparable to the XC SPAR process shall each be referred to as a "**Software Maintenance Process**". For

Licensed Software, Seller shall provide, or cause a Third Party Licensor to provide, third level support in accordance with the then current Software Maintenance Process. Third level support is limited to corrections of coding errors and bug fixes designed to maintain compliance with product specification and/or applicable user documentation and excludes any upgrades that extend the life or enhance the functionality of the software. Licensed Software problems will be communicated and statused via email. Seller will use reasonable efforts to correct coding errors. Buyer acknowledges that such efforts may include equipment analysis and extended downtime. Some Licensed Software problems may be deferred after discussions between the parties due to fix complexity (software regressions) and/or other business reasons related to the time and/or cost of making the fix when compared to the benefits to be achieved by the fix. Seller shall provide or cause to be provided not less than third level support for all Licensed Software embodied in (or distributed by Seller in conjunction with) Acquired Products for a period lasting after Buyer's last order for the applicable Mass Production unit until at least the number of months specified in the applicable PSA for such support; provided, however, that if support fees must be paid by Buyer, then such period of support as specified in the applicable PSA may be shortened if applicable support fees are not paid.

**C15.9 Licensed Software Warranties**

C15.9.1 Representations. The provisions of the Warranty Agreement shall not apply for Licensed Software.

C15.9.1(a) The Licensed Software will materially conform to its user and service documentation in effect as of the date the applicable Acquired Products is delivered to Buyer.

C15.9.1(b) Viruses or Destructive Code. No software provided by Seller in or as an Acquired Product shall contain any malicious code, program, or subroutine, including without limitation, disabling code, computer viruses and spyware code, that could damage, disable, destroy, or alter software, firmware, or hardware, or could provide unauthorized access or reveal any data or other information accessed through or processed by the software without Buyer's (or, if applicable, the end user's) consent.

C15.9.1(c) Seller does not warrant that the Licensed Software will be free from errors or that its operation will be uninterrupted.

**C15.10 Licensed Software Warranty Remedies**

Seller will use its Software Maintenance Process (as referenced in section C15.8 above) for remedies in response to software warranty issues. In the event that Licensed Software comprises firmware (non-re-programmable computer chips), then, in addition to remedies as set forth in the applicable Software Maintenance Process, defects in the hardware portion of such Embedded Software that comprises firmware shall be deemed defects subject to the remedies set forth in the Warranty Agreement below if the following conditions are met:

C15.10.1 the defects in the hardware portion of such Embedded Software comprising firmware are classified as Software Maintenance Process Priority 1-3 (Critical –Major) defects; and

C15.10.2 such defects are not adequately resolved through software or other workarounds within the time periods specified in the Software Maintenance Process (including any extensions of time as applicable).

The procedures set forth in subsections 4.1(a)(i)-(iii) of the Warranty Agreement shall be deemed satisfied pursuant to procedures of the Software Maintenance Process.

**C16. Terms and Conditions to be applied to purchase orders for Production Units issued prior to executing PSA-P**

- C16.1** Should purchase orders be issued for Production Units prior to executing the applicable PSA-P, the applicable terms and conditions of Part A and Part C of the MPA shall govern and apply to such purchase orders. Once the applicable PSA-P is executed, the PSA-P shall supersede purchase orders in all respects.
- C16.2** **Purchase Order Prices.** Seller shall sell to Buyer the goods or services shown on a purchase order at the prices specified. Such prices are firm for the delivery period shown and are exclusive of taxes, freight and insurance. If charges for taxes, freight and insurance are applicable, they shall be separately stated on Seller's invoice, except otherwise agreed by the parties.
- C16.3** **Packaging.** Unless specified on the purchase order, no additional charge shall be made by Seller for packaging, marking, or storage. Unless otherwise agreed by the parties, all goods shall be packaged, marked, and otherwise prepared in accordance with good commercial practices, mutually agreed specifications, or applicable government regulations required for Prototypes and Preproduction Units. Seller shall be responsible for any loss or damage due to its failure to properly package, or pack the goods.
- C16.4** **Contents of Purchase Orders issued pursuant to this section C16.** Section A3.3.1 provides a list of information to be included in relevant purchase orders.

**C17. Terms and Termination of a PSA-P**

**C17.1 Terms**

Each PSA-P shall be effective as of its Effective Date set forth in the PSA-P and, unless earlier terminated in accordance with the provisions of this MPA or the PSA-P, shall continue in full force and effect for the term specified in the applicable PSA-P. If no such term is specified, the term shall be 3 years. A PSA-P shall be automatically renewed for one (1) year and thereafter from year to year, unless either of the parties gives the other party at least six (6) months prior written notice to terminate the PSA-P before the expiration of the initial or any renewed term of the PSA-P. If either party gives such prior written notice, the PSA-P shall terminate on the initial or, as the case may be, duly renewed expiration date hereof. Notwithstanding the above, the maximum period in which a PSA-P shall remain in effect shall be ten (10) years from the Effective Date unless the parties agree otherwise in writing or unless Production Units covered by a PSA-P continue to be purchased by Buyer from Seller at the end of such ten (10) year period.

**C17.2 Termination for Cause.** A PSA-P may be cancelled or terminated under any of the following conditions:

- (i) sixty (60) days after receipt of a written notice specifying a default under any material provision of the applicable PSA-P, which failure remains uncorrected during the sixty (60) day notice period; provided, however, that this provision shall not apply: (i) to unresolved SPAR-type actions providing that Seller has undertaken good faith efforts pursuant to the relevant SPAR process (which may be specified in the PSA-P); or (ii) if such material breach is curable and commercially reasonable efforts to promptly cure such material breach are in good faith commenced within thirty (30) days of delivery of such written notice.
- (ii) immediately upon written notice if the other party: (i) becomes insolvent, makes a general assignment for the benefit of creditors, goes into liquidation or receivership, ceases or threatens to cease to carry on business or disposes of the whole or any substantial part of its assets; or (ii) implements or undergoes any substantial change in the composition of Board of Directors and/or management which gives the other party a

reasonable basis to believe that the benefits that it expected to derive from this MPA are in substantial jeopardy; or (iii) commits a material breach that, by its nature, is not curable. The occurrences specified in clauses (i) and (ii) above shall not be deemed to be a material breach of a PSA-P by the terminated party (i.e., the party that is insolvent, etc.) and, in such case, termination of the applicable PSA-P shall be the terminating party's sole remedy unless the terminated party knowingly and willfully engaged in the activities described in such clauses (i) and (ii) for the purpose of avoiding its obligations under this MPA or the applicable PSA-Ps.

**C17.3 Effect of Termination**

- C17.3.1 In the event of termination of a PSA-P for any reason whatsoever, each party may retain Technical Information and other materials and information to which it is entitled under the 2006TA. Exclusive Tooling and other tangible items belonging to the other party shall promptly be delivered to the other party unless an authorized representative of the owning party agrees that such items shall be retained or destroyed. Except as provided in the 2006TA or in applicable license agreements, copyrightable items, including derivative works, shall be used and controlled in accordance with the copyrights of the respective parties, and in the event the possessing party does not have rights in such copyrightable items, such items shall be promptly returned to the owning party or identified to the owning party and certified as destroyed and removed from files or memory devices of the possessing party. Except as provided above, Confidential Information of the other party, including duplicates, summaries, and items incorporating confidential information of the other party, shall be promptly returned to the other party or certified as destroyed and removed from memory devices of the receiving party. For items not otherwise described above in this subsection C17.3.1, each party shall return to the other party items belonging to the other party that are not necessary for the support of customers or for other continuing operations and obligations, including those obligations set forth in subsection C17.3.3 below.
- C17.3.2 Remedies. In the event of cancellation or termination of a PSA-P pursuant to the provisions of C17.2(ii) above, the non-defaulting party's remedies shall be as follows: (i) reimbursement by the defaulting party for direct damages incurred by the non-defaulting party as a result of the termination or cancellation, and (ii) except as may be limited by the 2006TA or as limited to the direct damages as set forth in the preceding clause (i), the termination or cancellation shall be without prejudice to any other equitable or other remedies to which either party may be legally entitled.
- C17.3.3 Continuing Obligations. In the event of termination or cancellation pursuant to C17.2 above:  
The non-terminating party shall continue to be obligated to use commercially reasonable efforts to mitigate any hardship and adverse effects that the terminating party may incur as a result of the termination or cancellation.  
If the terminating party is the Buyer, the terminating party will be permitted to place a last order for Production Units, including, without limitation, Spare Parts and Consumables, and the terminated party shall make commercially reasonable efforts to fulfill such last order.
- C17.3.4 Customer Support. In the event of termination or cancellation for any reason, both parties shall be obligated to use commercially reasonable efforts to support the customer base for the affected Production Units, including, without limitation, the requirements for Spare Parts and Consumables in C7.2 above and software support specified in C15.8 Software Technical Support above.

C17.3.5 Licenses of Licensed Software to customers of Production Units shall remain in effect notwithstanding termination or cancellation of the applicable PSA-P pursuant to which customers acquired such Production Units.

*(Remainder of this page intentionally left blank)*



IN WITNESS WHEREOF, the parties hereto have caused this MPA to be executed by their duly authorized representatives as of the Effective Date set forth above.

Xerox Corporation

Fuji Xerox Co., Ltd.

By: /s/ Russell Peacock  
Name: Russell Peacock  
Title: Corporate Vice President  
Date: September 9, 2013

By: /s/ Hitoshi Fujiwara  
Name: Hitoshi Fujiwara  
Title: Executive Vice President and Director  
Date: August 20, 2013

*The end of this document.*