

Martin Whalen Office Solutions
Purchase Order Terms and Conditions

1. **Definitions.** The first page of this Purchase Order is called the Cover Page. The Cover Page and the Terms and Conditions page, along with a listing of additional goods on Schedule A (if attached), represent the agreement (the "Agreement") between Martin Whalen Office Solutions (the "Company") and the Customer, as defined on the Cover Page ("Customer"), with respect to the purchase of those certain goods identified on the Cover Page and Schedule A, if attached (the "Goods" or "Equipment").
2. **Scope.** This Agreement may be executed for:
 - a) A **SALE** of the Goods. If a SALE, subject to any special terms indicated on the Cover Page or Schedule A, the Company hereby offers to sell and Customer hereby accepts to purchase those Goods in the quantity and for the price indicated on the Cover Page (and/or Schedule A). Payment terms are Cash on Delivery ("COD"). Alternatively, if Customer has a verifiable credit account in good standing with Company, Customer may elect to be invoiced for the Goods. In any circumstance, Customer will pay invoices within 30 days after the invoice date. A late charge will be assessed against Customer on invoice balances 10 days or more overdue at the rate of 1.5 percent per month, but not in excess of the lawful maximum. The Customer is responsible for paying for all collection fees, attorneys' fees and court costs incurred by the Company in enforcing the terms of this Section 2(a).
 - b) A **LEASE** of the Goods. If a LEASE, Customer will execute a separate leasing agreement which will fund the purchase of those Goods in the quantity indicated on the Cover Page for the benefit of Customer. Upon execution of leasing documents, the Customer shall be responsible to leasing company to satisfy the terms and conditions of the leasing documents. If, however, a LEASE cannot be so executed within 15 days of Customer's execution of this Agreement, Customer must immediately return the Goods to Company in Like New condition.
 - c) A **RENTAL** of the Goods. If a RENTAL, Customer will execute a separate rental agreement with the Company. Customer shall be responsible for satisfying the terms and conditions of the rental agreement.
3. **Acceptance and Non-Cancellation.** This Purchase Order and Agreement shall become binding upon the Customer's execution of this Agreement and may not be cancelled or altered thereafter without the Company's written consent.
4. **Delivery and Installation.** Unless specified otherwise on the Cover Page, the Company shall deliver and install the Goods at the location specified by Customer on the Cover Page unless: (1) Customer has not made available at that address a suitable place of installation as specified by the Company; (2) Customer has not made available suitable electrical service in accordance with the Underwriter's Lab ("UL") requirements; (3) the Goods are to be delivered to a location outside of the Company's service area. All risk of loss will transfer to the Customer upon delivery.
5. **Taxes.** Customer shall pay all federal, state, and local sales, use, property, excise, or other taxes imposed on or with respect to the purchase price of the Goods.
6. **Force Majeure.** The Company shall not be determined to be in default of any provision herein or be liable for any delay, failure in performance or interruption of services resulting from acts of God, civil or military catastrophe, strikes, embargoes, transportation delays, inability to obtain materials from suppliers, product deficiencies, or any other situation beyond the reasonable control of the Company.
7. **Default.** Customer will be in default of this Agreement if Company does not receive payment within 10 days after the date payment is due or Customer breaches any other obligation under this Agreement. Customer will pay all reasonable costs, including attorneys' fees, incurred by the Company to enforce this Agreement and/or any disputes arising with regard to the Goods. In addition to any remedies under the law, if Customer breaches this Agreement and fails to cure said breach within 20 days after receipt of notice from the Company, the Company may terminate this Agreement.
8. **Indemnification.** (a) Customer is responsible for any losses, damages, penalties, claims, suits, and actions (collectively "Claims") whether based on a theory of contract, tort, strict liability, or otherwise caused by or related to or in any manner arising out of the use, ownership, possession, or funding or financing, of the Goods (including but not limited to the negligence of Customer, Customer's employees or agents, or any third party), and, (b) Customer is responsible for any and all costs and attorneys' fees incurred by the Company relating to any such claim. Customer will reimburse and, if requested, defend the Company at Customer's own cost and expense, against any Claims. Customer's obligations under this Section 10 shall survive termination of this Agreement.
9. **WARRANTIES AND LIMITATION OF LIABILITY ON WORK PERFORMED. THERE ARE NO WARRANTIES, WHETHER EXPRESSED, IMPLIED, OR STATUTORY, ON ANY GOODS PROVIDED BY COMPANY, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NO OBLIGATION OR LIABILITY SHALL GROW OUT OF THE COMPANY RENDERING TECHNICAL OR OTHER ADVICE IN CONJUNCTION WITH GOODS PROVIDED UNDER THIS AGREEMENT.**
10. **Limitation of Liability.** The Company's total liability to Customer for any claim, whether based in contract, tort, common law, or statute, arising out of, connected with, or resulting from the furnishing or failure to furnish any Goods under this Agreement (and the associated delivery and installation of said goods) shall not exceed the cost paid by the Customer for the Goods which give rise to the claim. In no event shall the Company be liable for any incidental, consequential, or special damages incurred by Customer or any third party, including without limitation any loss of use, loss of anticipated profits, costs or downtime, or for substitute equipment, and any claims of Customer's clientele for service interruptions or failure to supply.
11. **Limited License to Use Software.** The Company grants Customer a non-exclusive, non-transferable license to use in the U.S.: (a) software and accompanying documentation provided with the Equipment ("Base Software") with which it was delivered; and (b) software and accompanying documentation identified on the Cover Page as "Application Software" only on any single unit of Equipment for as long as Customer is current in the payment, including any applicable software license fees (if any). Third Party Software may also be obtained under this Agreement and may be subject to a separate End User License Agreement. "Base Software," "Application Software," and "Third Party Software" are referred to collectively as "Software". Customer has no other rights and may not (1) distribute, copy, modify, create derivatives of, decompile, or reverse engineer Software; (2) activate Software delivered with the Equipment in an inactivated state; or (3) allow others to engage in same. Title to, and all intellectual property rights in, Software will reside solely with Company and/or its licensors (who will be considered third-party beneficiaries of this subsection). The Base Software license will terminate: (i) if Customer no longer uses or possesses the Equipment; (ii) Customer is a lessor of the Equipment and its first lessee no longer uses or possesses it; or (iii) upon the expiration of any installment payments under which Customer has rented or leased the Equipment (unless Customer has exercised an option to purchase the Equipment). Neither Company nor its licensors warrant that Software will be free from errors or that its operation will be uninterrupted.
12. **Governing Law.** This Agreement shall be governed by the laws of the state of Illinois without regard to the conflict of laws or principles of such states.
13. **Errors.** The Company reserves the right at its sole discretion to correct clerical and typographical errors in this Agreement.
14. **Severability.** The invalidity in whole or in part of any provision of this Agreement shall not affect the validity of any other provision.
15. **Modifications.** No modification, amendment, or other change shall be binding on the parties unless agreed to in writing by each party's authorized representative.
16. **Waiver.** The waiver of any breach of any of the terms and conditions set forth herein shall not be construed as a waiver of any other breach. The failure of either party to exercise any right arising from any default of the other party hereunder shall not be deemed to be a waiver of such right.
17. **Relationship.** The relationship of the parties established under this Agreement is that of independent contractor and neither party is a partner, employee, agent or joint venturer of or with the other.
18. **Assignment.** Any assignment of this Agreement by Customer without the prior written consent of the Company shall be void and unenforceable.

THE CUSTOMER ACKNOWLEDGES THAT S/HE HAS READ THIS AGREEMENT, UNDERSTANDS IT, HAS THE AUTHORITY TO ENTER INTO THIS AGREEMENT AND BIND THE CUSTOMER TO SAME, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS. this Agreement supersedes any prior proposals, quotations, or communications, written or oral, regarding the purchase of the Goods from the Company. The Customer further understands the Company is not a party to any leasing documents executed between Customer and the leasing company, and this Agreement is not intended to supersede any leasing documents, or other contracts or agreements which Customer may execute with the Company.

Initial _____
Date _____



A Xerox Company

**MAINTENANCE AGREEMENT
 MWOS – A XEROX COMPANY
 148 N KINZIE AVE, BRADLEY, IL 60915
 Phone (815)933-3358**

BILL TO:

Customer Name:	Village of Romeoville
Address:	1050 W Romeo Road
City, State, Zip:	Romeoville, IL 60446
Phone:	815-886-7200

EQUIPMENT LOCATION: (SAME AS BILL TO)

Customer Name:	
Address:	
City, State, Zip:	
Phone:	

Equipment Model #	Equipment Serial Number	Equipment Start Meter
See Schedule A for List of Devices		

Contract Effective: From: _____ To: _____

Usage/Rate Breakdown

900,000/Year	B&W Copies	\$1,158.33/Mo	Base Rate	\$.0075	Overage Rate
130,000/Year	Color Copies	Included	Base Rate	\$.055	Overage Rate
	Tabloid Color		Base Rate		Overage Rate
	Color Extra Long		Base Rate		Overage Rate
	B&W Prints		Base Rate		Overage Rate
	Color Prints		Base Rate		Overage Rate
	B&W Flat Fee Units		Unit Rate		Overage Rate
	CLR Flat Fee Units		Unit Rate		Overage Rate
	Ink Jet Flat Fee Units		Unit Rate (Toner Only)		Overage Rate
	Total Base Fee				

Items Included (check all that apply)

Parts **Toner** **Other (Specified Below)**

Items Excluded and Special Terms

12-Month Contract Term

MWOS Diagnostic Application

In the event MWOS 360 Diagnostic Application is not installed or a MWOS representative is required to visit your office to obtain these meters, a meter administration charge may be added to your overage invoice.

MWOS 360 Diagnostic Application Installed? YES NO

Meter requests for non-networked devices should be emailed to the contact below. For multiple devices and contacts please submit a separate schedule A.

Meter Contact Name (Print Name):	Phone Number:	Email Address:
Sadiq Jimoh	815-886-5533	sjimoh@romeoville.org

Acknowledgment

THE TERMS AND CONDITIONS ON THE REVERSE SIDE HEREOF ARE INCORPORATED IN AND MADE PART OF THIS AGREEMENT. NO ONE IS AUTHORIZED TO CHANGE, ALTER OR AMEND THE TERMS OR CONDITIONS OF THIS AGREEMENT UNLESS AGREED TO IN WRITING BY BOTH PARTIES. BY SIGNING THIS AGREEMENT YOU ACKNOWLEDGE RECEIPT OF PAGE TWO AND THREE AND AGREE TO THE TERMS ON ALL 3 PAGES OF THIS AGREEMENT.

Customer Signature:	MWOS Sales Representative Signature:	MWOS Contract's Manager Signature:
	Mark Koll	
Print Name:	Print Name:	Print Name:
	Mark Koll	

TERMS AND CONDITIONS

1. **SERVICES.** Throughout this Agreement the words "We," "Our," and "Us" refer to Company. The words "You" and "Your" refer to the Customer indicated on the reverse. This Agreement covers both the labor and materials for adjustments, repairs, and replacement of parts necessitated by normal use of the Equipment listed on the face of this Agreement ("Services"). Services do not include the following: (a) repairs due to (i) misuse, neglect, or abuse (including, without limitation, improper voltage or use of supplies that do not conform to the manufacturers' specifications), (ii) use of options, accessories, products, supplies not provided by Company; (iii) non-Company alterations, relocation, or service; (iv) loss or damage resulting from accidents, fire, water, natural disasters, electrical fault, interconnection fault or theft; (b) maintenance requested outside Company's normal business hours or this Agreement, (c) software or connected hardware, (d) hard drive replacement, (e) Thermal heads, process units, and fuser units for Facsimile Machines, (f) Thermal Heads and MICR Toner for Laser Printers, and parts and labor for all non-laser printers. Scanner coverage includes labor only and is billed annually. Zebra printers are labor only. Replacement parts may be new, reprocessed, or recovered. Supplies provided by Company are in accordance with the copy volumes set forth on the face of this Agreement and within the manufacturer's stated yields and do not include staples or paper. Supplies are to be used exclusively for the Equipment and remain Company property until consumed. You will return, or allow Company to retrieve, any unused supplies at the termination/expiration of this Agreement. You are responsible for the cost of excess supplies. You authorize Equipment to be connected to automatic meter reading software and/or device or, if we otherwise request, you will provide us with accurate meter readings for each item of the Equipment when and by such means as we request. If you do not permit the Company to use automatic meter reading software and/or devices, Company may charge a monthly fee for manually performing meter reads. If you do not provide meter reads as required, Company may estimate the reading and bill accordingly. You shall provide adequate space and electrical service for the operation of the Equipment in accordance with UL and/or manufacturer's specifications. Supplies will be shipped via UPS Ground. All shipping methods, including, but not limited to, UPS Ground, Overnight, and/or Messenger Service, will be billed to the Customer. Service provided outside Company's standard business hours or for computer/network issues will be at Company hourly rates in effect at the time of Service. If, at any time during the Term, Customer upgrades, modifies, or adds equipment, Customer shall promptly notify Company. Company maintains the right to inspect any upgrades and modifications to Equipment and/or additional equipment and, in its sole discretion, determine whether equipment is eligible for Service. If approved, the Agreement will be amended to include such changes, including pricing modifications. Unless otherwise agreed to in writing, Customer remains solely responsible for any and all Customer data stored within the Equipment and the removal of such data upon removal of Equipment or termination of this Agreement. Customer is required to notify the Company of any additional equipment at Customer's site capable of using Company provided supplies. This will include any new equipment or existing equipment not included in the original contract due to errors or omissions. In the event such equipment is discovered, it will automatically be added to this Agreement with the meter at the time of discovery or be added at the current flat fee rate along with any other associated charges. Any other declarations, considerations, promises or incentives relating to this Agreement must be documented within this contract to be considered valid and binding.

2. **TERM AND PAYMENT.** Except as otherwise provided for herein, this Agreement will commence on the start date indicated on the face of this Agreement and remain in effect for one (1) year; and unless notified in writing sixty (60) days prior to its expiration, this Agreement shall automatically renew for additional one (1) year periods. In the event the fees herein are included in your lease payment, the Term shall run concurrently with the lease agreement and will be subject to the renewal provisions provided for therein. Unless stated otherwise all base rates will be billed monthly with any overages or per print/copy charges calculated quarterly. The meter count at installation or, in the case of owned printers, at assessment, will be used for overage calculations. You agree to pay Company the base and unit rates and all other sums when due and payable. The base and unit rates entitle you to Services for a specific number and type (i.e. black & white, color, scan) of Prints/Copies as identified on the face of this Agreement and will be billed in advance. In addition, You agree to pay the Overage Rate for each Print/Copy that exceeds the applicable number and type of Prints/Copies provided in the base rate(s) which amount shall be billed in arrears and is payable as indicated on the face of this Agreement. Any invoice disputes must be documented to MWOS within 90 days of invoice date. A Print/Copy is defined as standard 8.5"x11" copy (larger size copies may register two meter clicks). No credit will be applied towards unused copies/prints. Your obligation to pay all sums when due shall be absolute and unconditional and is not subject to any abatement, offset, defense or counterclaim. If any payment is not paid within 30 days of its due date, you will pay a late charge not to exceed 7% of each late payment (or such lesser rate as is the maximum allowable by law). Company has the right to withhold service and supplies, without recourse, for any non-payment. Unless otherwise stated on the face of this Agreement, Company may increase the Base Rate(s) and/or the Overage Rate(s) on an annual basis, in an amount not to exceed 15%. Company retains the right to have all or some of the amounts due hereunder billed and/or collected by third parties. If Customer requires any specialized billing procedure or invoicing, Company reserves the right to bill an administrative fee not to exceed \$100 per invoice.

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

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

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

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

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

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

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

10. **ASSIGNMENT:** You may not sell, transfer, or assign this Agreement without the prior written consent of Company. Company may sell, assign or transfer this Agreement.

11. **NOTICES:** All notices required or permitted under this Agreement shall be by registered mail to such party at the address set forth in this Agreement, or at such other address as such party may designate in writing from time to time. Any notice from Company to you shall be effective three days after it has been deposited in the mail, duly addressed. All such notices to Company from you shall be effective after it has been received via registered U.S. Mail.

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

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

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

Customer Initials: _____



A Xerox Company

Schedule "A"

CONTRACT NO

This Schedule "A" is to be attached to and becomes part of the Agreement dated _____ by and between the undersigned and Martin Whalen Office Solutions.

Table with columns: MAKE, MODEL, LOCATION, EQ#, SERIAL NO., B/W START, CLR START. Rows include Xerox models like XC560, WC7225, WC5335, etc., with locations like Fire Station #1, REMA, Police - Training, etc.

Multiple horizontal lines for additional data entry or notes.

CUSTOMER ACCEPTANCE

Signature line for Village of Romeoville, with fields for SIGNATURE, TITLE, and Dated.

(Schedule A)